

1 **H. B. 2886**

2  
3 (By Delegates White, Eldridge, Marcum, Miley,  
4 Skaff, Stowers, R. Phillips and Reynolds)

5  
6 (By Request of the Department of Revenue)

7 [Introduced March 8, 2013; referred to the  
8 Committee on Roads and Transportation then Finance.]

**FISCAL  
NOTE**

9  
10 A BILL to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9,  
11 §11-14C-10, §11-14C-13 and §11-14C-19, of the Code of West  
12 Virginia, 1931, as amended, to amend said code by adding  
13 thereto a new section, designated §11-14C-6a; to amend and  
14 reenact §11-15-18b of said code; and to amend and reenact  
15 §11-15A-13a of said code, all relating to the taxation of  
16 alternative fuel; defining terms; requiring the Tax  
17 Commissioner to determine the gasoline gallon equivalent for  
18 alternative fuels; imposing tax on motor fuel equivalent  
19 gallons; specifying the point of imposition of tax on  
20 alternative fuels not otherwise taxed at the point of  
21 imposition; providing that propane used in a motor vehicle is  
22 subject to the tax; requiring alternative fuel bulk end-users,  
23 providers of alternative fuels and retailers of alternative  
24 fuels to be licensed; establishing bonding requirements for

1 alternative fuel bulk end-users, providers of alternative  
2 fuels and retailers of alternative fuels; establishing due  
3 dates for returns and payments of tax on alternative fuels;  
4 and specifying effective dates for amendments.

5 *Be it enacted by the Legislature of West Virginia:*

6 That §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13  
7 and §11-14C-19, of the Code of West Virginia, 1931, as amended, be  
8 amended and reenacted; that said code be amended by adding thereto  
9 a new section, designated §11-14C-6a; that §11-15-18b of said code  
10 be amended and reenacted; and that §11-15A-13a of said code be  
11 amended and reenacted, all to read as follows:

12 **ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

13 PART I. GENERAL PROVISIONS

14 **§11-14C-2. Definitions.**

15 As used in this article and unless the context requires  
16 otherwise, the following terms have the meaning ascribed herein.

17 (1) "Agricultural purposes" means the activities of:

18 (A) Cultivating the soil, including the planting and  
19 harvesting of crops, for the commercial production of food, fiber  
20 and ornamental woodland products;

21 (B) Using land for breeding and management of farm livestock  
22 including dairy, apiary, equine or poultry husbandry; and

23 (C) Using land for the practice of horticulture including the

1 growing of Christmas trees, orchards and nursery stock. ~~Provided,~~  
2 ~~That~~ Agricultural purposes shall do not include commercial  
3 forestry, growing of timber for commercial purposes or ~~any~~ other  
4 activity that normally would not be included in subdivision (A),  
5 (B) or (C) of this definition.

6 (2) "Aircraft" includes any airplane or helicopter.

7 (3) "Alcohol" means motor fuel grade ethanol or a mixture of  
8 motor fuel-grade ethanol and methanol, excluding denaturant and  
9 water that is a minimum of ninety-eight percent ethanol or methanol  
10 by volume.

11 (4) "Alternative fuel" means a combustible gas or liquid that  
12 is used or suitable for use as a motor fuel in an internal  
13 combustion engine or motor to propel any form of vehicle, machine,  
14 or mechanical contrivance and includes, but is not limited to,  
15 products commonly known as butane, propane, compressed natural gas,  
16 liquefied natural gas, liquefied petroleum gas, natural gas  
17 hydrocarbons and derivatives, liquid hydrocarbons derived from  
18 biomass, P-series fuels and hydrogen. For purposes of this article  
19 electricity is not an alternative fuel.

20 (5) "Alternative fuel bulk end-user" means a person who  
21 maintains storage facilities for alternative fuel and uses part or  
22 all of the stored fuel to operate a motor vehicle.

1       (6) "Alternative fuel commercial refueling infrastructure"  
2 means property owned by a commercial establishment and used for  
3 storing alternative fuels and for dispensing such alternative fuels  
4 into the fuel tanks of vehicles owned by the same person or entity  
5 that owns the alternative fuel commercial refueling infrastructure  
6 or into the fuel tanks of privately owned vehicles or commercial  
7 vehicles other than those owned by the same person or entity that  
8 owns the alternative fuel commercial refueling infrastructure, or  
9 any combination thereof. "Alternative fuel vehicle commercial  
10 refueling infrastructure" includes, but is not limited to,  
11 compression equipment, storage tanks and dispensing units for  
12 alternative fuel at the point where the fuel is delivered:  
13 Provided, That the property is not located on a private residence  
14 or private home. "Alternative fuel commercial refueling  
15 infrastructure" does not include any building, infrastructure,  
16 equipment, apparatus, terminal or connections for servicing,  
17 charging or providing electricity to plug-in hybrid electric  
18 vehicles or electric vehicles. "Alternative fuel vehicle  
19 commercial refueling infrastructure" includes alternative fuel  
20 vehicle commercial refueling infrastructure property as described  
21 in this subdivision which is owned by a lessor or landlord and  
22 leased to or rented to a lessee or tenant as part of a residence  
23 for such lessee or tenant.

1       (7) "Alternative fuel home refueling infrastructure" means  
2 property owned by a private individual for personal use that is  
3 located at the individual's private residence or private home and  
4 used for storing and dispensing alternative fuels into fuel tanks  
5 of the property owner's motor vehicles. This includes, but is not  
6 limited to, compression equipment, storage tanks and dispensing  
7 units for alternative fuel at the point where the fuel is  
8 delivered. For purposes of this article, "alternative fuel home  
9 refueling infrastructure" does not include any building,  
10 infrastructure, equipment, apparatus, terminal or connections for  
11 servicing, charging or providing electricity to plug-in hybrid  
12 electric vehicles or electric vehicles. "Alternative fuel home  
13 refueling infrastructure" does not include alternative fuel vehicle  
14 refueling infrastructure property owned by a lessor or landlord  
15 which is leased to or rented to a lessee or tenant as part of a  
16 residence for such lessee or tenant.

17       ~~(4)~~ (8) "Article" or "this article" means article fourteen-c,  
18 chapter eleven of this code.

19       ~~(5)~~ (9) "Assessment" means a written determination by the  
20 commissioner of the amount of taxes owed by a taxpayer.

21       ~~(6)~~ (10) "Aviation fuel" means aviation gasoline or aviation  
22 jet fuel.

1       ~~(7)~~ (11) "Aviation gasoline" means motor fuel designed for use  
2 in the operation of aircraft other than jet aircraft and sold or  
3 used for that purpose.

4       ~~(8)~~ (12) "Aviation jet fuel" means motor fuel designed for use  
5 in the operation of jet or turbo-prop aircraft and sold or used for  
6 that purpose.

7       ~~(9)~~ (13) "Biodiesel fuel" means ~~any~~ motor fuel or mixture of  
8 motor fuels that is derived, in whole or in part, from agricultural  
9 products or animal fats, or the wastes of such products or fats,  
10 and is advertised as, offered for sale as, suitable for use or used  
11 as motor fuel in an internal combustion engine.

12       ~~(10)~~ (14) "Blended fuel" means a mixture composed of gasoline  
13 or diesel fuel and another liquid including, but not limited to,  
14 gasoline blend stocks, gasohol, ethanol, methanol, fuel grade  
15 alcohol, diesel fuel enhancers and resulting blends, other than a  
16 de minimus amount of a product such as carburetor detergent or  
17 oxidation inhibitor, that can be used as a motor fuel in a highway  
18 vehicle.

19       ~~(11)~~ (15) "Blender" means a person who produces blended motor  
20 fuel outside the bulk transfer/terminal system.

21       ~~(12)~~ (16) "Blending" means the mixing of one or more petroleum  
22 products, with or without another product, regardless of the  
23 original character of the product blended, if the product obtained

1 by the blending is capable of use in the generation of power for  
2 the propulsion of a motor vehicle, an airplane or a marine vessel.  
3 Blending does not include mixing that occurs in the process of  
4 refining by the original refiner of crude petroleum or the blending  
5 of products known as lubricating oil in the production of  
6 lubricating oils and greases.

7 ~~(13)~~ (17) "Bulk plant" means a motor fuel storage and  
8 distribution facility that is not a terminal and from which motor  
9 fuel may be removed at a rack.

10 ~~(14)~~ (18) "Bulk transfer" means any transfer of motor fuel  
11 from one location to another by pipeline tender or marine delivery  
12 within a bulk transfer/terminal system, including, but not limited  
13 to, all of the following:

14 (A) ~~A marine vessel~~ Movement of motor fuel from a refinery or  
15 terminal to a terminal by a marine vessel;

16 (B) Pipeline movements of motor fuel from a refinery or  
17 terminal to a terminal;

18 (C) Book transfer of motor fuel within a terminal between  
19 licensed suppliers prior to completion of removal across the rack;  
20 and

21 (D) Two-party exchange between licensed suppliers or between  
22 licensed suppliers and permissive suppliers.

1       ~~(15)~~ (19) "Bulk user" means a person who maintains storage  
2 facilities for motor fuel and uses part or all of the stored motor  
3 fuel to operate a motor vehicle, watercraft or aircraft.

4       ~~(16)~~ (20) "Bulk transfer/terminal system" means the motor fuel  
5 distribution system consisting of refineries, pipelines, marine  
6 vessels and terminals. Motor fuel in a refinery, a pipeline, a  
7 terminal or a marine vessel transporting motor fuel to a refinery  
8 or terminal is in the bulk transfer/terminal system. Motor fuel in  
9 a motor fuel storage facility including, but not limited to, a bulk  
10 plant that is not part of a refinery or terminal, in the motor fuel  
11 supply tank of ~~any~~ an engine or motor vehicle, in a marine vessel  
12 transporting motor fuel to a motor fuel storage facility that is  
13 not in the bulk transfer/terminal system, or in ~~any~~ a tank car,  
14 rail car, trailer, truck or other equipment suitable for ground  
15 transportation is not in the bulk transfer/terminal system.

16       ~~(17)~~ (21) "Carrier" means ~~any~~ an operator of a pipeline or  
17 marine vessel engaged in the business of transporting motor fuel  
18 above the terminal rack.

19       ~~(18)~~ (22) "Code" means the Code of West Virginia, 1931, as  
20 amended.

21       ~~(19)~~ (23) "Commercial watercraft" means a watercraft employed  
22 in the business of commercial fishing, transporting persons or  
23 property for compensation or hire or ~~any~~ other trade or business.



1       ~~(20)~~ (24) "Commissioner" or "Tax Commissioner" means the West  
2 Virginia State Tax Commissioner or his or her delegate.

3       ~~(21)~~ (25) "Compressed natural gas" means natural gas that has  
4 been compressed and dispensed into motor fuel storage containers  
5 and is advertised as, offered for sale as, suitable for use as or  
6 used as an engine motor fuel.

7       ~~(22)~~ (26) "Corporate or partnership officer" means an officer  
8 or director of a corporation, partner of a partnership or member of  
9 a limited liability company who as an officer, director, partner or  
10 member is under a duty to perform on behalf of the corporation,  
11 partnership or limited liability company, the tax collection,  
12 accounting or remitting obligations.

13       ~~(23)~~ (27) "Dead storage" is the amount of motor fuel that  
14 cannot be pumped out of a motor fuel storage tank because the motor  
15 fuel is below the mouth of the draw pipe. The amount of motor fuel  
16 in dead storage is two hundred gallons for a tank with a capacity  
17 of less than ten thousand gallons and four hundred gallons for a  
18 tank with a capacity of ten thousand gallons or more.

19       ~~(24)~~ (28) "Denaturants" means and includes gasoline, natural  
20 gasoline, gasoline components or toxic or noxious materials added  
21 to motor fuel grade ethanol to make it unsuitable for beverage use  
22 but not unsuitable for automotive use.

1       ~~(25)~~ (29) "Designated inspection site" means ~~any~~ a state  
2 highway inspection station, weigh station, agricultural inspection  
3 station, mobile station or other location designated by the  
4 commissioner to be used as a motor fuel inspection site.

5       ~~(26)~~ (30) "Destination state" means the state, territory or  
6 foreign country to which motor fuel is directed for delivery into  
7 a storage facility, a receptacle, a container or a type of  
8 transportation equipment for the purpose of resale or use. The  
9 term ~~shall~~ does not include a tribal reservation of ~~any~~ a  
10 recognized Native American tribe.

11       ~~(27)~~ (31) "Diesel fuel" means ~~any~~ a liquid that is advertised  
12 as, offered for sale as, sold for use as, suitable for use as or  
13 used as a motor fuel in a diesel-powered highway vehicle or  
14 watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed  
15 diesel fuel and kerosene but ~~shall~~ does not include gasoline or  
16 aviation fuel.

17       ~~(28)~~ (32) "Distributor" means a person who acquires motor fuel  
18 from a licensed supplier, permissive supplier or from another  
19 licensed distributor for subsequent sale or use.

20       ~~(29)~~ (33) "Diversion" means transporting motor fuel outside a  
21 reasonably direct route from the source to the destination state.

22       ~~(30)~~ (34) "Division" or "State Tax Division" means the Tax  
23 Division of the West Virginia Department of Revenue.

1       ~~(31)~~ (35) "Dyed diesel fuel" means diesel fuel that meets the  
2 dyeing and marking requirements of section 4082, Title 26, United  
3 States Code, regardless of how the diesel fuel was dyed.

4       ~~(32)~~ (36) "End seller" means the person who sells motor fuel  
5 to the ultimate user of the motor fuel.

6       ~~(33)~~ (37) "Export" means to obtain motor fuel in West Virginia  
7 for sale or other distribution in another state, territory or  
8 foreign country.

9       ~~(34)~~ (38) "Exporter" means a person that exports motor fuel  
10 from this state. The seller is the exporter of motor fuel  
11 delivered out-of-state by or for the seller and the purchaser is  
12 the exporter of motor fuel delivered out-of-state by or for the  
13 purchaser.

14       ~~(35)~~ (39) "Fuel" means motor fuel.

15       ~~(36)~~ ~~"Fuel alcohol" means methanol or motor fuel grade~~  
16 ~~ethanol.~~

17       ~~(37)~~ (40) "Fuel grade ethanol" means the ASTM standard in  
18 effect on the effective date of this article as the D-4806  
19 specification for denatured motor fuel grade ethanol for blending  
20 with gasoline.

21       ~~(38)~~ (41) "Fuel supply tank" means ~~any~~ a receptacle on a motor  
22 vehicle from which motor fuel is supplied for the propulsion of the  
23 motor vehicle.

1       ~~(39)~~ (42) "Gallon" means a unit of liquid measure as  
2 customarily used in the United States containing two hundred  
3 thirty-one cubic inches by volume and expresses the volume at 60  
4 degrees Fahrenheit.

5       ~~(40)~~ (43) "Gasohol" means a blended motor fuel composed of  
6 gasoline and motor fuel alcohol.

7       ~~(41)~~ (44) "Gasoline" means ~~any~~ a product commonly or  
8 commercially known as gasoline, regardless of classification, that  
9 is advertised as, offered for sale as, sold for use as, suitable  
10 for use as or used as motor fuel in an internal combustion engine,  
11 including gasohol, but does not include special fuel as defined in  
12 this section.

13       ~~(42)~~ (45) "Gasoline blend stocks" includes any petroleum  
14 product component of gasoline, such as naphtha, reformate, or  
15 toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be  
16 blended for use in a motor fuel. ~~However,~~ The term does not  
17 include any substance that will be ultimately used for consumer  
18 nonmotor fuel use and is sold or removed in drum quantities of  
19 fifty-five gallons or less at the time of the removal or sale.

20       (46) "Gallon equivalent" means the amount of an alternative  
21 fuel that is considered to be the equivalent of a gallon of  
22 gasoline according to the National Institute of Standards and

1 Technology Handbook 130 or pursuant to guidelines issued by the Tax  
2 Commissioner.

3 ~~(43)~~ (47) "Gross gallons" means the total measured product,  
4 exclusive of any temperature or pressure adjustments,  
5 considerations or deductions, in U.S. gallons.

6 ~~(44)~~ (48) "Governmental entity" means this state or ~~any a~~  
7 political subdivision thereof or the United States or its  
8 commissioners, agencies and instrumentalities.

9 ~~(45)~~ (49) "Heating oil" means any combustible liquid,  
10 including, but not limited to, #1 fuel oil, #2 dyed fuel oil and  
11 kerosene that is burned in a boiler, furnace or stove for heating  
12 or ~~for~~ industrial processing purposes.

13 ~~(46)~~ (50) "Highway" means every way or place of whatever  
14 nature open to the use of the public for purposes of vehicular  
15 travel in this state including the streets and alleys in towns and  
16 cities.

17 ~~(47)~~ (51) "Highway vehicle" means any self-propelled vehicle,  
18 trailer or semitrailer that is designed or used for transporting  
19 persons or property over the public highway and includes all  
20 vehicles subject to registration under article three, chapter  
21 seventeen-a of this code.

22 ~~(48)~~ (52) "Import" means to bring motor fuel into this state  
23 by motor vehicle, marine vessel, pipeline or any other means.

1 ~~However,~~ Import does not include bringing motor fuel into this  
2 state in the motor fuel supply tank of a motor vehicle if the motor  
3 fuel is used to power that motor vehicle.

4 ~~(49)~~ (53) "Importer" means a person that imports motor fuel  
5 into this state. The seller is the importer for motor fuel  
6 delivered into this state from outside of this state by or for the  
7 seller and the purchaser is the importer for motor fuel delivered  
8 into this state from outside of this state by or for the purchaser.

9 ~~(50)~~ (54) "Import verification number" means the number  
10 assigned by the commissioner ~~with respect~~ to a single transport  
11 vehicle delivery into this state from another state upon request  
12 for an assigned number by an importer or the transporter carrying  
13 taxable motor fuel into this state for the account of an importer.

14 ~~(51)~~ (55) "In this state" means the area within the borders of  
15 West Virginia including all territory within the borders of West  
16 Virginia that is owned by the United States of America.

17 ~~(52)~~ (56) "Invoiced gallons" means the gallons actually billed  
18 on an invoice for payment.

19 ~~(53)~~ (57) "Licensee" means ~~any~~ a person licensed by the  
20 commissioner pursuant to section ten of this article.

21 ~~(54)~~ (58) "Liquid" means ~~any~~ a substance that is liquid above  
22 its freezing point.

1       ~~(55)~~ (59) "Liquefied natural gas" means natural gas that has  
2 been liquefied at -126.1 degrees centigrade and stored in insulated  
3 cryogenic tanks for use as an engine motor fuel.

4       ~~(56)~~ (60) "Motor carrier" means ~~any~~ a vehicle used, designated  
5 or maintained for the transportation of persons or property and  
6 having two axles and a gross vehicle weight exceeding twenty-six  
7 thousand pounds or having three or more axles regardless of weight  
8 or ~~is~~ used in combination when the weight of the combination  
9 exceeds twenty-six thousand pounds or registered gross vehicle  
10 weight, and any aircraft, barge or other watercraft or railroad  
11 locomotive transporting passengers or freight in or through this  
12 state: *Provided*, That the gross vehicle weight rating of the  
13 vehicles being towed is in excess of ten thousand pounds. The term  
14 motor carrier does not include any type of recreational vehicle.

15       ~~(57)~~ (61) "Motor fuel" means gasoline, blended fuel, aviation  
16 fuel, ~~and~~ any special fuel and alternative fuel.

17       ~~(58)~~ (62) "Motor fuel transporter" means a person who  
18 transports motor fuel outside the bulk transfer/terminal system by  
19 means of a transport vehicle, a railroad tank car or a marine  
20 vessel.

21       ~~(59)~~ (63) "Motor vehicle" means automobiles, motor carriers,  
22 motor trucks, motorcycles and all other vehicles or equipment,

1 engines or machines which are operated or propelled by combustion  
2 of motor fuel.

3 ~~(60)~~ (64) "Net gallons" means the amount of motor fuel  
4 measured in gallons when adjusted to a temperature of sixty degrees  
5 Fahrenheit and a pressure of fourteen and seven-tenths pounds  
6 pressure per square inch.

7 ~~(61)~~ (65) "Permissive supplier" is a person who may not be  
8 subject to the taxing jurisdiction of this state but who meets both  
9 of the following requirements: (A) Is registered under Section  
10 4101 of the Internal Revenue Code for transactions in motor fuel in  
11 the bulk transfer/terminal system; and (B) a position holder in  
12 motor fuel only located in another state or a person who receives  
13 motor fuel only in another state pursuant to a two-party exchange:  
14 *Provided*, That a person is classified as a supplier if it has or  
15 maintains, occupies or uses, within this state, directly or by a  
16 subsidiary, an office, distribution house, sales house, warehouse,  
17 or other place of business, or any agent or representative (by  
18 whatever name called) operating within this state under the  
19 authority of the supplier or its subsidiary.

20 ~~(62)~~ (66) "Person" means ~~any~~ an individual, firm, cooperative,  
21 association, corporation, limited liability corporation, estate,  
22 guardian, executor, administrator, trust, business trust,  
23 syndicate, partnership, limited partnership, copartnership,



1 organization, limited liability partnership, joint venture,  
2 receiver and trustee in bankruptcy. "Person" also means a club,  
3 society or other group or combination acting as a unit, ~~or~~ a public  
4 body including, but not limited to, this state and any other state  
5 and ~~any~~ an agency, commissioner, institution, political subdivision  
6 or instrumentality of this state or any other state and, also, ~~any~~  
7 an officer, employee or member of any of the foregoing who, as an  
8 officer, employee or member, is under a duty to perform or is  
9 responsible for the performance of an act prescribed by the  
10 provisions of this article.

11 ~~(63)~~ (67) "Position holder" means the person who holds the  
12 inventory position in motor fuel in a terminal as reflected on the  
13 records of the terminal operator. A person holds the inventory  
14 position in motor fuel when that person has a contract with the  
15 terminal operator for the use of storage facilities and terminaling  
16 services for motor fuel at the terminal. The term includes a  
17 terminal operator who owns motor fuel in the terminal.

18 ~~(64)~~ (68) "Principal" means:

19 (A) If a partnership, all its partners;

20 (B) If a corporation, all its officers, directors, and  
21 controlling direct or indirect owners;

22 (C) If a limited liability company, all its members; or

23 (D) An individual.

1       (69) "Producer/manufacturer" means a person who produces,  
2 refines, blends, distills, manufactures or compounds motor fuel.

3       (70) "Provider of alternative fuel" means a person who does  
4 one or more of the following:

5       (A) Acquires alternative fuel for sale or delivery to an  
6 alternative fuel bulk end-user or an alternative fuel retailer;

7       (B) Maintains storage facilities for alternative fuel  
8 including alternative fuel home refueling infrastructures and  
9 alternative fuel commercial refueling infrastructures, part or all  
10 of which the person uses or sells to someone other than an  
11 alternative fuel bulk end-user or an alternative fuel retailer to  
12 operate a highway vehicle;

13       (C) Sells alternative fuel and uses part of the fuel acquired  
14 for sale to operate a highway vehicle by means of a fuel supply  
15 line from the cargo tank of the vehicles to the engine of the  
16 vehicle;

17       (D) Imports alternative fuel into this state by a means other  
18 than the usual tank or receptacle connected with the engine of a  
19 highway vehicle for use by that person to operate a highway  
20 vehicle.

21       ~~(65)~~ (71) "Rack" means a mechanism for delivering motor fuel  
22 from a refinery, terminal, marine vessel or bulk plant into a

1 transport vehicle, railroad tank car or other means of transfer  
2 that is outside the bulk transfer/terminal system.

3 ~~(66)~~ (72) "Railroad locomotive" means ~~any~~ diesel-powered  
4 equipment or machinery that rides on railroad rails and includes a  
5 switching engine.

6 ~~(67)~~ (73) "Receive" means ~~any~~ acquisition of ownership or  
7 possession of motor fuel.

8 ~~(68)~~ (74) "Refiner" means ~~any~~ a person who owns, operates or  
9 otherwise controls a refinery.

10 ~~(69)~~ (75) "Refinery" means a facility for the manufacture or  
11 reprocessing of finished or unfinished petroleum products usable as  
12 motor fuel and from which motor fuel may be removed by pipeline or  
13 marine vessel or at a rack.

14 ~~(70)~~ (76) "Removal" means a physical transfer other than by  
15 evaporation, loss or destruction. A physical transfer to a  
16 transport vehicle or other means of conveyance outside the bulk  
17 transfer/terminal system is complete upon delivery into the means  
18 of conveyance.

19 ~~(71)~~ (77) "Retailer" means a person who sells motor fuel at  
20 retail or dispenses motor fuel at a retail location.

21

22 (78) "Retailer of alternative fuel" means a person who  
23 maintains storage facilities, including alternative fuel vehicle

1 commercial refueling infrastructure, for alternative fuel and who  
2 sells the fuel at retail or dispenses the fuel at a retail location  
3 to operate a motor vehicle.

4 ~~(72)~~ (79) "Special fuel" means ~~any~~ a gas or liquid, other than  
5 gasoline, used or suitable for use as motor fuel in an internal  
6 combustion engine or motor to propel any form of vehicle, machine,  
7 or mechanical contrivance and includes products commonly known as  
8 natural or casing-head gasoline, diesel fuel, dyed diesel fuel,  
9 biodiesel fuel, transmix, ~~and all forms of motor fuel commonly or~~  
10 ~~commercially known or sold as butane, propane, liquefied natural~~  
11 ~~gas, liquefied petroleum gas, compressed natural gas product or a~~  
12 ~~combination of liquefied petroleum gas and a compressed natural gas~~  
13 ~~product.~~ methanol, ethanol, methanol fuel, M100, ethanol fuel,  
14 E100, ethanol fuel blend, E85 and any fuel mixture that contains  
15 eighty-five percent or more alcohol by volume when combined with  
16 gasoline or other fuels and liquid fuel derived from coal through  
17 the Fischer-Tropsch process. "Special fuel" does not include  
18 alternative fuel or any petroleum product or chemical compound such  
19 as alcohol, industrial solvent, heavy furnace oil or lubricant,  
20 unless blended in or sold for use as motor fuel in an internal  
21 combustion engine.

22 ~~(73)~~ (80) "State" or "this state" means the State of West  
23 Virginia.

1       ~~(74)~~ (81) "Supplier" means a person that is:

2           (A) Subject to the general taxing jurisdiction of this state;

3           (B) Registered under Section 4101 of the Internal Revenue Code  
4 for transactions in motor fuel in the bulk transfer/terminal  
5 distribution system; and

6           (C) One of the following:

7           (i) A position holder in motor fuel in a terminal or refinery  
8 in this state and may concurrently ~~also~~ be a position holder in  
9 motor fuel in another state; or

10          (ii) A person who receives motor fuel in this state pursuant  
11 to a two-party exchange.

12          A terminal operator ~~shall not be considered~~ is not a supplier  
13 based solely on the fact that the terminal operator handles motor  
14 fuel consigned to it within a terminal.

15       ~~(75)~~ (82) "Tax" or "this tax" is the motor fuel excise tax  
16 imposed by this article and includes within its meaning interest  
17 and additions to tax and penalties unless the context requires a  
18 more limited meaning.

19       ~~(76)~~ (83) "Taxpayer" means ~~any~~ a person required to file a  
20 return for the tax imposed by this article or ~~any~~ a person liable  
21 for payment of the tax imposed by this article.

22       ~~(77)~~ (84) "Terminal" means a motor fuel storage and  
23 distribution facility to which a terminal control number has been

1 assigned by the Internal Revenue Service, to which motor fuel is  
2 supplied by pipeline or marine vessel and from which motor fuel may  
3 be removed at a rack.

4 ~~(78)~~ (85) "Terminal operator" means a person who owns,  
5 operates or otherwise controls a terminal.

6 ~~(79)~~ (86) "Transmix" means: (A) The buffer or interface  
7 between two different products in a pipeline shipment; or (B) a mix  
8 of two different products within a refinery or terminal that  
9 results in an off-grade mixture.

10 ~~(80)~~ (87) "Transport vehicle" means a vehicle designed or used  
11 to carry motor fuel over the highway and includes a straight truck,  
12 a straight truck/trailer combination and a semitrailer combination  
13 rig.

14 ~~(81)~~ (88) "Trustee" means a person who is licensed as a  
15 supplier or a permissive supplier and receives tax payments from  
16 and on behalf of another pursuant to section twenty-four of this  
17 article.

18 ~~(82)~~ (89) "Two-party exchange" means a transaction in which  
19 motor fuel is transferred from one licensed supplier or permissive  
20 supplier to another licensed supplier or permissive supplier  
21 pursuant to an exchange agreement; and

1 (A) Includes a transfer from the person who holds the  
2 inventory position in taxable motor fuel in the terminal as  
3 reflected on the records of the terminal operator;

4 (B) Is completed prior to removal of the product from the  
5 terminal by the receiving exchange partner; and

6 (C) Is recorded on the terminal operator's books and records  
7 with the receiving exchange partner as the supplier that removes  
8 the motor fuel across the terminal rack for purposes of reporting  
9 the transaction to this state.

10 ~~(83)~~ (90) "Use" means the actual consumption or receipt of  
11 motor fuel by ~~any~~ a person into a motor vehicle, aircraft or  
12 watercraft.

13 ~~(84)~~ (91) "Watercraft" means any vehicle used on waterways.

14 **§11-14C-5. Taxes levied; rate.**

15 (a) There is hereby levied on all motor fuel an excise tax  
16 composed of a flat rate equal to \$.205 per invoiced gallon and, on  
17 alternative fuel, on each gallon equivalent, plus a variable  
18 component comprised of:

19 (1) On motor fuel other than alternative fuel, either the tax  
20 imposed by section eighteen-b, article fifteen of this chapter or  
21 the tax imposed under section thirteen-a, article fifteen-a of this  
22 chapter, as applicable: *Provided*, That the motor fuel excise tax  
23 shall take effect January 1, 2004: *Provided, however*, That the

1 variable component shall be equal to five percent of the average  
2 wholesale price of the motor fuel: *Provided further*, That the  
3 average wholesale price shall be no less than \$.97 per invoiced  
4 gallon and is computed as hereinafter prescribed in this section:  
5 *And provided further*, That on and after January 1, 2010, the  
6 average wholesale price shall be no less than \$2.34 per invoiced  
7 gallon and is computed as hereinafter prescribed in this section;  
8 and

9 (2) On alternative fuel, either the tax imposed by section  
10 eighteen-b, article fifteen of this chapter or the tax imposed  
11 under section thirteen-a, article fifteen-a of this chapter, as  
12 applicable. The tax on alternative fuel takes effect on January 1,  
13 2014, with a variable component equal to five percent of the  
14 average wholesale price of the alternative fuel.

15 (b) *Determination of average wholesale price.* --

16 (1) To simplify determining the average wholesale price of all  
17 motor fuel, the Tax Commissioner shall, effective with the period  
18 beginning the first day of the month of the effective date of the  
19 tax and each January 1 thereafter, determine the average wholesale  
20 price of motor fuel for each annual period on the basis of sales  
21 data gathered for the preceding period of July 1 through October  
22 31. Notification of the average wholesale price of motor fuel  
23 shall be given by the Tax Commissioner at least thirty days in



1 advance of each January 1 by filing notice of the average wholesale  
2 price in the State Register and by ~~any~~ other means as the Tax  
3 Commissioner considers reasonable.

4 (2) The "average wholesale price" means the single, statewide  
5 average per gallon wholesale price, rounded to the third decimal  
6 (thousandth of a cent), exclusive of state and federal excise taxes  
7 on each gallon of motor fuel or on each gallon equivalent of  
8 alternative fuel as determined by the Tax Commissioner from  
9 information furnished by suppliers, importers and distributors of  
10 motor fuel and alternative fuel providers, alternative bulk  
11 end-users and retailers of alternative fuel in this state, or other  
12 information regarding wholesale selling prices as the Tax  
13 Commissioner may gather or a combination of information. ~~Provided,~~  
14 ~~That~~ In no event shall the average wholesale price be determined to  
15 be less than \$.97 per gallon of motor fuel. ~~Provided, however,~~  
16 ~~That~~ For calendar year 2009, the average wholesale price of motor  
17 fuel shall not exceed the average wholesale price of motor fuel for  
18 calendar year 2008 as determined pursuant to the notice filed by  
19 the Tax Commissioner with the Secretary of State on November 21,  
20 2007, and published in the State Register on November 30, 2007.  
21 ~~Provided further, That~~ On and after January 1, 2010, in no event  
22 shall the average wholesale price be determined to be less than  
23 \$2.34 per gallon of motor fuel. ~~And provided further, That~~ On and

1 after January 1, 2011, the average wholesale price shall not vary  
2 by more than ten percent from the average wholesale price of motor  
3 fuel as determined by the Tax Commissioner for the previous  
4 calendar year.

5 (3) All actions of the Tax Commissioner in acquiring data  
6 necessary to establish and determine the average wholesale price of  
7 motor fuel, in providing notification of his or her determination  
8 prior to the effective date of ~~any~~ a change in rate, and in  
9 establishing and determining the average wholesale price of motor  
10 fuel may be made by the Tax Commissioner without compliance with  
11 the provisions of article three, chapter twenty-nine-a of this  
12 code.

13 (4) In ~~any~~ an administrative or court proceeding brought to  
14 challenge the average wholesale price of motor fuel as determined  
15 by the Tax Commissioner, his or her determination is presumed to be  
16 correct and shall not be set aside unless it is clearly erroneous.

17 (c) There is hereby levied a floorstocks tax on motor fuel  
18 held in storage outside the bulk transfer/terminal system as of the  
19 close of the business day preceding January 1, 2004, and upon which  
20 the tax levied by this section has not been paid. For the purposes  
21 of this section, "close of the business day" means the time at  
22 which the last transaction has occurred for that day. The  
23 floorstocks tax is payable by the person in possession of the motor

1 fuel on January 1, 2004. The amount of the floorstocks tax on  
2 motor fuel is equal to the sum of the tax rate specified in  
3 subsection (a) of this section multiplied by the gallons in storage  
4 as of the close of the business day preceding January 1, 2004.

5 (1) Persons in possession of taxable motor fuel in storage  
6 outside the bulk transfer/terminal system as of the close of the  
7 business day preceding January 1, 2004, shall:

8 (A) Take an inventory at the close of the business day  
9 preceding January 1, 2004, to determine the gallons in storage for  
10 purposes of determining the floorstocks tax;

11 (B) Report no later than January 31, 2004, the gallons on  
12 forms provided by the commissioner; and

13 (C) Remit the tax levied under this section no later than June  
14 1, 2004.

15 (2) In the event the tax due is paid to the commissioner on or  
16 before January 31, 2004, the person remitting the tax may deduct  
17 from their remittance five percent of the tax liability due.

18 (3) In the event the tax due is paid to the commissioner after  
19 June 1, 2004, the person remitting the tax shall pay, in addition  
20 to the tax, a penalty in the amount of five percent of the tax  
21 liability due.

22 (4) In determining the amount of floorstocks tax due under  
23 this section, the amount of motor fuel in dead storage may be

1 excluded. There are two methods for calculating the amount of  
2 motor fuel in dead storage:

3 (A) If the tank has a capacity of less than ten thousand  
4 gallons, the amount of motor fuel in dead storage is two hundred  
5 gallons and if the tank has a capacity of ten thousand gallons or  
6 more, the amount of motor fuel in dead storage is four hundred  
7 gallons; or

8 (B) Use the manufacturer's conversion table for the tank after  
9 measuring the number of inches between the bottom of the tank and  
10 the bottom of the mouth of the drainpipe: *Provided*, That the  
11 distance between the bottom of the tank and the bottom of the mouth  
12 of the draw pipe is presumed to be six inches.

13 (d) Every licensee who, on the effective date of any rate  
14 change, has in inventory any motor fuel upon which the tax or any  
15 portion thereof has been previously paid shall take a physical  
16 inventory and file a report thereof with the commissioner, in the  
17 format as required by the commissioner, within thirty days after  
18 the effective date of the rate change, and shall pay to the  
19 commissioner at the time of filing the report any additional tax  
20 due under the increased rate.

21 (e) The Tax Commissioner shall determine by January 1, 2014,  
22 the gasoline gallon equivalent for each alternative fuel by filing  
23 a notice of the gasoline gallon equivalent in the State Register

1 and by other means that the Tax Commissioner considers reasonable.  
2 The Tax Commissioner may redetermine the gasoline gallon equivalent  
3 for each alternative fuel by filing a notice of the gasoline gallon  
4 equivalent in the State Register at least thirty days in advance of  
5 January 1 for the next succeeding tax year. For purposes of this  
6 notice, the Tax Commissioner may adopt or incorporate by reference  
7 provisions of the National Institute of Standards and Technology,  
8 United States Department of Commerce, the Internal Revenue Code,  
9 United States Treasury Regulations, the Internal Revenue Service  
10 publications or guidelines or other publications or guidelines  
11 which may be useful in determining, setting or describing the  
12 gasoline gallon equivalent for each alternative fuel used as motor  
13 fuel.

14 **§11-14C-6a. Point of imposition of motor fuels tax on alternative**  
15 **fuel.**

16 (a) The tax levied pursuant to section five of this article is  
17 imposed on alternative fuel without regard to whether it is sold,  
18 transported or distributed within the bulk transfer/terminal system  
19 or outside of the bulk transfer/terminal system.

20 (b) The tax levied pursuant to section five of this article is  
21 imposed on alternative fuel that is not otherwise taxed at the  
22 point of imposition prescribed under section six of this article at  
23 the following points of imposition in the following order:

1       (1) At the time alternative fuel is withdrawn from the storage  
2 facility including alternative fuel home refueling infrastructures  
3 and alternative fuel commercial refueling infrastructures;

4       (2) If not taxed at the point of imposition described in  
5 subdivision (1) of this subsection, then at the time alternative  
6 fuel is sold for use in a highway vehicle;

7       (3) If not taxed at the point of imposition described in  
8 subdivision (1) or at the point of imposition described in  
9 subdivision (2) of this subsection, then at the time alternative  
10 fuel is used in a highway vehicle.

11 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

12       (a) *Per se exemptions from flat rate component of tax.* --  
13 Sales of motor fuel to the following, or as otherwise stated in  
14 this subsection, are exempt per se from the flat rate of the tax  
15 levied by section five of this article and the flat rate may not be  
16 paid at the rack:

17       (1) All motor fuel exported from this state to any other state  
18 or nation: *Provided,* That the supplier collects and remits to the  
19 destination state or nation the appropriate amount of tax due on  
20 the motor fuel transported to that state or nation. ~~*Provided,*~~  
21 ~~*however, That*~~ This exemption does not apply to ~~any~~ motor fuel  
22 which is transported and delivered outside this state in the motor  
23 fuel supply tank of a highway vehicle;

- 1 (2) Sales of aviation fuel;  
2 (3) Sales of dyed special fuel; and  
3 (4) Sales of propane unless sold for use in a motor vehicle.

4 (b) *Per se exemptions from variable component of tax.* -- Sales  
5 of motor fuel to the following are exempt per se from the variable  
6 component of the tax levied by section five of this article and the  
7 variable component may not be paid at the rack:

8 All motor fuel exported from this state to any other state or  
9 nation: *Provided,* That the supplier collects and remits to the  
10 destination state or nation the appropriate amount of tax due on  
11 the motor fuel transported to that state or nation. ~~*Provided,*~~  
12 ~~however, That~~ This exemption does not apply to ~~any~~ motor fuel  
13 which is transported and delivered outside this state in the motor  
14 fuel supply tank of a highway vehicle.

15 (c) *Refundable exemptions from flat rate component of tax.* --  
16 ~~Any~~ A person having a right or claim to any of the following  
17 exemptions from the flat rate component of the tax levied by  
18 section five of this article shall first pay the tax levied by this  
19 article and then apply to the Tax Commissioner for a refund:

20 (1) The United States or ~~any~~ agency thereof: *Provided,* That  
21 if the United States government, or ~~any~~ agency or instrumentality  
22 thereof, does not pay the seller the tax imposed by section five of  
23 this article on ~~any~~ a purchase of motor fuel, the person selling

1 tax previously paid motor fuel to the United States government, or  
2 its agencies or instrumentalities, may ~~then~~ claim a refund of the  
3 flat rate component of tax imposed by ~~said~~ section five of this  
4 article on those sales;

5 (2) ~~Any~~ A county government or unit or agency thereof;

6 (3) ~~Any~~ A municipal government or any agency thereof;

7 (4) ~~Any county boards~~ A county board of education;

8 (5) ~~Any~~ An urban mass transportation authority created  
9 pursuant to the provisions of article twenty-seven, chapter eight  
10 of this code;

11 (6) ~~Any~~ A municipal, county, state or federal civil defense or  
12 emergency service program pursuant to a government contract for use  
13 in conjunction therewith or to ~~any person on whom is imposed a~~  
14 ~~requirement~~ a person who is required to maintain an inventory of  
15 motor fuel for the purpose of the program: *Provided*, That motor  
16 fueling facilities used for these purposes are not capable of  
17 fueling motor vehicles and the person in charge of the program has  
18 in his or her possession a letter of authority from the Tax  
19 Commissioner certifying his or her right to the exemption.  
20 ~~*Provided, however, That*~~ In order for this exemption to apply,  
21 motor fuel sold under this subdivision and subdivisions (1) through  
22 (5), inclusive, of this subsection shall be used in vehicles or



1 equipment owned and operated by the respective government entity or  
2 government agency or authority;

3       (7) All invoiced gallons of motor fuel purchased by a licensed  
4 exporter and subsequently exported from this state to any other  
5 state or nation: *Provided*, That the exporter has paid the  
6 applicable motor fuel tax to the destination state or nation prior  
7 to claiming this refund or the exporter has reported to the  
8 destination state or nation that the motor fuel was sold in a  
9 transaction not subject to tax in that state or nation. ~~*Provided*,~~  
10 ~~however, That~~ A refund may not be granted on ~~any~~ motor fuel which  
11 is transported and delivered outside this state in the motor fuel  
12 supply tank of a highway vehicle;

13       (8) All gallons of motor fuel used and consumed in stationary  
14 off-highway turbine engines;

15       (9) All gallons of ~~special~~ fuel used for heating any public or  
16 private dwelling, building or other premises;

17       (10) All gallons of ~~special~~ fuel used for boilers;

18       (11) All gallons of motor fuel used as a dry cleaning solvent  
19 or commercial or industrial solvent;

20       (12) All gallons of motor fuel used as lubricants, ingredients  
21 or components of ~~any~~ a manufactured product or compound;

22       (13) All gallons of motor fuel sold for use or used as a motor  
23 fuel for commercial watercraft;

1           (14) All gallons of ~~special~~ motor fuel sold for use or  
2 consumed in railroad diesel locomotives;

3           (15) All gallons of motor fuel purchased in quantities of  
4 twenty-five gallons or more for use as a motor fuel for internal  
5 combustion engines not operated upon highways of this state;

6           (16) All gallons of motor fuel purchased in quantities of  
7 twenty-five gallons or more and used to power a power take-off unit  
8 on a motor vehicle. When a motor vehicle with auxiliary equipment  
9 uses motor fuel and there is no auxiliary motor for the equipment  
10 or separate tank for a motor, the person claiming the refund may  
11 present to the Tax Commissioner a statement of his or her claim and  
12 is allowed a refund for motor fuel used in operating a power  
13 take-off unit on a cement mixer truck or garbage truck equal to  
14 twenty-five percent of the tax levied by this article paid on all  
15 motor fuel used in such a truck;

16           (17) Motor fuel used by ~~any~~ a person regularly operating ~~any~~  
17 a vehicle under a certificate of public convenience and necessity  
18 or under a contract carrier permit for transportation of persons  
19 when purchased in an amount of twenty-five gallons or more:  
20 *Provided*, That the amount refunded is equal to \$0.6 per gallon:  
21 *Provided, however*, That the gallons of motor fuel have been  
22 consumed in the operation of urban and suburban bus lines and the  
23 majority of passengers use the bus for traveling a distance not

1 exceeding forty miles, measured one way, on the same day between  
2 their places of abode and their places of work, shopping areas or  
3 schools; and

4 (18) All gallons of motor fuel that are not otherwise exempt  
5 under subdivisions (1) through (6), inclusive, of this subsection  
6 and that are purchased and used by any bona fide volunteer fire  
7 department, nonprofit ambulance service or emergency rescue service  
8 that has been certified by the municipality or county wherein the  
9 bona fide volunteer fire department, nonprofit ambulance service or  
10 emergency rescue service is located.

11 (d) *Refundable exemptions from variable rate component of tax.*  
12 -- Any of the following persons may claim an exemption from the  
13 variable rate component of the tax levied by section five of this  
14 article on the purchase and use of motor fuel by first paying the  
15 tax levied by this article and then applying to the Tax  
16 Commissioner for a refund.

17 (1) The United States or ~~any~~ agency thereof: *Provided*, That  
18 if the United States government, or ~~any~~ agency or instrumentality  
19 thereof, does not pay the seller the tax imposed by section five of  
20 this article on any purchase of motor fuel, the person selling tax  
21 previously paid motor fuel to the United States government, or its  
22 agencies or instrumentalities, may ~~then~~ claim a refund of the

1 variable rate of tax imposed by ~~said~~ section five of this article  
2 on those sales.

3 (2) This state and its institutions;

4 (3) ~~Any~~ A county government or unit or agency thereof;

5 (4) ~~Any~~ A municipal government or ~~any~~ agency thereof;

6 (5) ~~Any county boards~~ A county board of education;

7 (6) ~~Any~~ An urban mass transportation authority created  
8 pursuant to the provisions of article twenty-seven, chapter eight  
9 of this code;

10 (7) ~~Any~~ A municipal, county, state or federal civil defense or  
11 emergency service program pursuant to a government contract for use  
12 in conjunction therewith, or to ~~any person on whom is imposed a~~  
13 ~~requirement~~ a person who is required to maintain an inventory of  
14 motor fuel for the purpose of the program: *Provided*, That fueling  
15 facilities used for these purposes are not capable of fueling motor  
16 vehicles and the person in charge of the program has in his or her  
17 possession a letter of authority from the Tax Commissioner  
18 certifying his or her right to the exemption;

19 (8) ~~Any~~ A bona fide volunteer fire department, nonprofit  
20 ambulance service or emergency rescue service that has been  
21 certified by the municipality or county ~~wherein~~ where the bona fide  
22 volunteer fire department, nonprofit ambulance service or emergency  
23 rescue service is located; or

1           (9) All invoiced gallons of motor fuel purchased by a licensed  
2 exporter and subsequently exported from this state to any other  
3 state or nation: *Provided*, That the exporter has paid the  
4 applicable motor fuel tax to the destination state or nation prior  
5 to claiming this refund. ~~*Provided, however, That*~~ A refund may not  
6 be granted on ~~any~~ motor fuel which is transported and delivered  
7 outside this state in the motor fuel supply tank of a highway  
8 vehicle.

9           (e) The provision in subdivision (9), subsection (a), section  
10 nine, article fifteen of this chapter that exempts as a sale for  
11 resale those sales of gasoline and special fuel by a distributor or  
12 importer to another distributor does not apply to sales of motor  
13 fuel under this article.

14                                   PART 3. MOTOR FUEL LICENSING.

15 **§11-14C-10. Persons required to be licensed.**

16           (a) A person shall obtain the appropriate license or licenses  
17 issued by the commissioner before conducting the activities of:

- 18           (1) A supplier which includes a refiner;  
19           (2) A permissive supplier;  
20           (3) An importer;  
21           (4) An exporter;  
22           (5) A terminal operator;  
23           (6) A blender;

- 1 (7) A motor fuel transporter; ~~or~~  
 2 (8) A distributor;  
 3 (9) A producer/manufacturer;  
 4 (10) An alternative fuel bulk end-user;  
 5 (11) A provider of alternative fuel; or  
 6 (12) A retailer of alternative fuel.

7 (b) A person who is engaged in more than one activity for  
 8 which a license is required shall have a separate license for each  
 9 activity, except as otherwise determined by the commissioner.

10 **§11-14C-13. Bond requirements.**

11 (a) ~~There shall be filed with~~ Along with an application for a  
 12 license required by section eleven of this article, either a cash  
 13 bond or a continuous surety bond in the amount or amounts specified  
 14 in this section shall be filed. ~~Provided, That~~ If a person has  
 15 filed applications for licenses for more than one activity, the  
 16 commissioner may combine the amount of the cash bond or continuous  
 17 surety bond required for each licensed activity into one amount  
 18 that shall be no less than the largest amount required for any of  
 19 those activities for which the license applications are filed.  
 20 ~~Provided, however, That~~ If a continuous surety bond is filed, an  
 21 annual notice of renewal shall be filed thereafter. ~~Provided~~  
 22 ~~further, That~~ If the continuous surety bond includes the  
 23 requirements that the commissioner is to be notified of

1 cancellation at least sixty days prior to the continuous surety  
2 bond being canceled, an annual notice of renewal is not required.  
3 The bond, whether a cash bond or a continuous surety bond, ~~shall be~~  
4 is conditioned upon compliance with the requirements of this  
5 article, ~~be~~ payable to this state and ~~be~~ in the form required by  
6 the commissioner. The amount of the bond is as follows:

7       (1) For a supplier license, the amount shall be a minimum of  
8 \$100,000 or an amount equal to three months' tax liability,  
9 whichever is greater, ~~Provided, That the amount~~ but shall not  
10 exceed \$2 million: ~~Provided, however, That~~ When required by the  
11 commissioner to file a cash bond or a continuous surety bond in an  
12 additional amount, the licensee shall comply with the  
13 commissioner's notification within thirty days after receiving that  
14 notification;

15       (2) For a permissive supplier license, the amount shall be a  
16 minimum of \$100,000 or an amount equal to three months' tax  
17 liability, whichever is greater, ~~Provided, That the amount~~ but  
18 shall not exceed \$2 million. ~~Provided, however, That~~ When required  
19 by the commissioner to file a cash bond or a continuous surety bond  
20 in an additional amount, the licensee shall comply with the  
21 commissioner's notification within thirty days after receiving that  
22 notification;

1           (3) For a terminal operator license, the amount shall be a  
2 minimum of \$100,000 or an amount equal to three months' tax  
3 liability, whichever is greater, ~~Provided, That the amount~~ but  
4 shall not exceed \$2 million. ~~Provided, however, That~~ When required  
5 by the commissioner to file a cash bond or a continuous surety bond  
6 in an additional amount, the licensee shall comply with the  
7 commissioner's notification within thirty days after receiving that  
8 notification;

9           (4) For an importer license for a person, other than a  
10 supplier, that imports by transport vehicle or another means of  
11 transfer outside the bulk transfer/terminal system motor fuel  
12 removed from a terminal located in another state in which: (A) The  
13 state from which the motor fuel is imported does not require the  
14 seller of the motor fuel to collect a motor fuel excise tax on the  
15 removal either at that state's rate or the rate of the destination  
16 state; and (B) the seller of the motor fuel is not a permissive  
17 supplier, the amount shall be a minimum of \$100,000 or an amount  
18 equal to three months' tax liability, whichever is greater,  
19 ~~Provided, That the amount~~ but shall not exceed \$2 million.  
20 ~~Provided, however, That~~ When required by the commissioner to file  
21 a cash bond or a continuous surety bond in an additional amount,  
22 the licensee shall comply with the commissioner's notification  
23 within thirty days after receiving that notification;



1           (5) For an importer license for a person that imports by  
2 transport vehicle or another means outside the bulk  
3 transfer/terminal system motor fuel removed from a terminal located  
4 in another state in which: (A) The state from which the motor fuel  
5 is imported requires the seller of the motor fuel to collect a  
6 motor fuel excise tax on the removal either at that state's rate or  
7 the rate of the destination state; or (B) the seller of the motor  
8 fuel is a permissive supplier, the amount shall be a minimum of  
9 \$2,000 or an amount equal to three months' tax liability, whichever  
10 is greater, ~~Provided, That the amount~~ but shall not exceed  
11 \$300,000. ~~Provided, however, That~~ When required by the  
12 commissioner to file a cash bond or a continuous surety bond in an  
13 additional amount, the licensee shall comply with the  
14 commissioner's notification within thirty days after receiving that  
15 notification;

16           (6) For a license as both a distributor and an importer as  
17 described in subdivision (4) of this subsection, the amount shall  
18 be a minimum of \$100,000 or an amount equal to three months' tax  
19 liability, whichever is greater, ~~Provided, That the amount~~ but  
20 shall not exceed \$2 million. ~~Provided, however, That~~ When required  
21 by the commissioner to file a cash bond or a continuous surety bond  
22 in an additional amount, the licensee shall comply with the

1 commissioner's notification within thirty days after receiving that  
2 notification;

3       (7) For a license as both a distributor and an importer as  
4 described in subdivision (5) of this subsection, the amount shall  
5 be a minimum of \$2,000 or an amount equal to three months' tax  
6 liability, whichever is greater, ~~Provided, That the amount~~ but  
7 shall not exceed \$300,000. ~~Provided, however, That~~ When required  
8 by the commissioner to file a cash bond or a continuous surety bond  
9 in an additional amount, the licensee shall comply with the  
10 commissioner's notification within thirty days after receiving that  
11 notification;

12       (8) For an exporter license, the amount shall be a minimum of  
13 \$2,000 or an amount equal to three months' tax liability, whichever  
14 is greater, ~~Provided, That the amount~~ but shall not exceed  
15 \$300,000. ~~Provided, however, That~~ When required by the  
16 commissioner to file a cash bond or a continuous surety bond in an  
17 additional amount, the licensee shall comply with the  
18 commissioner's notification within thirty days after receiving that  
19 notification;

20       (9) For a blender license, the amount shall be a minimum of  
21 \$2,000 or an amount equal to three months' tax liability, whichever  
22 is greater, ~~Provided, That the amount~~ but shall not exceed  
23 \$300,000. ~~Provided, however, That~~ When required by the

1 commissioner to file a cash bond or a continuous surety bond in an  
2 additional amount, the licensee shall comply with the  
3 commissioner's notification within thirty days after receiving that  
4 notification;

5 (10) For a distributor license, the amount shall be a minimum  
6 of \$2,000 or an amount equal to three months' tax liability,  
7 whichever is greater, ~~Provided, That the amount~~ but shall not  
8 exceed \$300,000. ~~Provided, however, That~~ When required by the  
9 commissioner to file a cash bond or a continuous surety bond in an  
10 additional amount, the licensee shall comply with the  
11 commissioner's notification within thirty days after receiving that  
12 notification;

13 (11) For a motor fuel transporter license, there ~~shall be~~ is  
14 no bond; ~~and~~

15 (12) For a producer/manufacturer license, there is no bond. If  
16 the taxpayer fails to file a return or remit tax due under this  
17 article, the commissioner may require a cash bond or a continuous  
18 surety bond in an amount to be determined by the commissioner. When  
19 required by the commissioner to file a cash bond or a continuous  
20 surety bond, the licensee shall comply with the commissioner's  
21 notification within thirty days after receiving that notification;

22 (13) For an alternative fuel bulk end-user, a provider of  
23 alternative fuel and a retailer of alternative fuel, there is no

1 bond. If the taxpayer fails to file a return or remit tax due under  
2 this article, the commissioner may require a cash bond or a  
3 continuous surety bond in an amount to be determined by the  
4 commissioner. When required by the commissioner to file a cash  
5 bond or a continuous surety bond, the licensee shall comply with  
6 the commissioner's notification within thirty days after receiving  
7 that notification; and

8       ~~(12)~~ (14) An applicant for a licensed activity listed under  
9 subdivisions (1) through (10), inclusive, of this subsection may,  
10 in lieu of posting either the cash bond or continuous surety bond  
11 required by this subsection, provide proof of financial  
12 responsibility acceptable to the commissioner. ~~Provided, That~~ The  
13 proof of financial responsibility ~~shall~~ must demonstrate the  
14 absence of circumstances indicating risk with the collection of  
15 taxes from the applicant. ~~Provided, however, That the following~~  
16 ~~shall constitute~~ The following constitutes proof of financial  
17 responsibility:

18       (A) Proof of \$5 million net worth ~~shall constitute~~ constitutes  
19 evidence of financial responsibility in lieu of posting the  
20 required bond;

21       (B) Proof of \$2,500,000 net worth constitutes financial  
22 responsibility in lieu of posting fifty percent of the required  
23 bond; and

1 (C) Proof of \$1,250,000 net worth constitutes financial  
2 responsibility in lieu of posting twenty-five percent of the  
3 required bond. Net worth is calculated on a business, not  
4 individual basis.

5 ~~(13)~~ (15) In lieu of providing either cash bond, a continuance  
6 surety bond or proof of financial responsibility acceptable to the  
7 commissioner, an applicant for a licensed activity listed under  
8 this subsection that has established with the state tax division a  
9 good filing record that is accurate, complete and timely for the  
10 preceding eighteen months shall be granted a waiver of the  
11 requirement to file either a cash bond or continuance surety bond.  
12 ~~Provided, That~~ When a licensee that has been granted a waiver of  
13 the requirement to file a bond violates a provision of this  
14 article, the licensee shall file the applicable bond as stated in  
15 this subsection.

16 ~~(14)~~ (16) ~~Any~~ A licensee who disagrees with the commissioner's  
17 decision requiring new or additional security may seek a hearing by  
18 filing a petition with the Office of Tax Appeals in accordance with  
19 the provisions of section nine, article ten-a of this chapter.  
20 ~~Provided, That~~ The hearing shall be provided within thirty days  
21 after receipt by the office of tax appeals of the petition. ~~for the~~  
22 ~~hearing.~~

1           (b) The surety must be authorized under article nineteen,  
2 chapter thirty-three of this code to engage in business of  
3 transacting surety insurance within this state. The cash bond and  
4 the continuous surety bond are conditioned upon faithful compliance  
5 with the provisions of this article, including the filing of the  
6 returns and payment of all tax prescribed by this article. The  
7 cash bond and the continuous surety bond shall be approved by the  
8 commissioner as to sufficiency and form and shall indemnify the  
9 state against ~~any~~ loss arising from the failure of the taxpayer to  
10 pay, for any cause whatever, the motor fuel excise tax levied by  
11 this article.

12           (c) ~~Any~~ Surety on a continuous surety bond furnished hereunder  
13 ~~shall be~~ is relieved, released and discharged from all liability  
14 accruing on the bond after the expiration of sixty days from the  
15 date the surety shall have lodged, by certified mail, with the  
16 commissioner, a written request to be discharged. Discharge from  
17 the continuous surety bond ~~shall~~ does not relieve, release or  
18 discharge the surety from liability already accrued or which ~~shall~~  
19 will accrue before the expiration of the sixty-day period.  
20 Whenever ~~any~~ a surety seeks discharge as herein provided, it is the  
21 duty of the principal of the bond to supply the commissioner with  
22 another continuous surety bond or a cash bond prior to the  
23 expiration of the original bond. Failure to provide a new

1 continuous surety bond or a cash bond shall result in the  
2 commissioner canceling each license and registration previously  
3 issued to the person.

4 (d) ~~Any~~ A taxpayer that has furnished a cash bond hereunder  
5 ~~shall be~~ is relieved, released and discharged from all liability  
6 accruing on the cash bond after the expiration of sixty days from  
7 the date the taxpayer shall have lodged, by certified mail, with  
8 the commissioner, a written request to be discharged and the amount  
9 of the cash bond refunded. ~~Provided, That~~ The commissioner may  
10 retain all or part of the cash bond until ~~such time as the~~  
11 ~~commissioner may perform~~ the commissioner performs an audit of the  
12 taxpayer's business or three years, whichever first occurs.  
13 Discharge from the cash bond shall not relieve, release or  
14 discharge the taxpayer from liability already accrued or which  
15 ~~shall~~ will accrue before the expiration of the sixty-day period.  
16 Whenever ~~any~~ a taxpayer seeks discharge as herein provided, it is  
17 the duty of the taxpayer to provide the commissioner with another  
18 cash bond or a continuous surety bond prior to the expiration of  
19 the original cash bond. Failure to provide either a new cash bond  
20 or a continuous surety bond shall result in the commissioner  
21 canceling each license and registration previously issued to the  
22 taxpayer.

23 PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

1 **§11-14C-19. When tax return and payment are due.**

2 (a) The tax levied by this article shall be paid by each  
3 taxpayer on or before the last day of the calendar month by check,  
4 bank draft or money order payable to the commissioner for the  
5 amount of tax due, if any, for the preceding month. ~~Provided, That~~  
6 The commissioner may require all or certain taxpayers to file tax  
7 returns and payments electronically. The return required by the  
8 commissioner shall accompany the payment of tax. ~~Provided,~~  
9 ~~however, That~~ If no tax is due, the return required by the  
10 commissioner shall be completed and filed before the last day of  
11 the calendar month for the preceding month.

12 (b) The following shall file a monthly return as required by  
13 this section:

14 (1) A terminal operator;

15 (2) A supplier;

16 (3) An importer;

17 (4) A blender;

18 (5) A person incurring liability under section eight of this  
19 article for the backup tax on motor fuel;

20 (6) A permissive supplier;

21 (7) A motor fuel transporter; and

22 (8) An exporter; and

23 (9) A producer/manufacturer.



1        (c) (1) For the calendar years beginning January 1, 2014, the  
2 tax levied by this article on alternative fuel that is subject to  
3 tax at the point of imposition prescribed in section 6a of this  
4 article, shall be paid by the alternative fuel bulk end-user,  
5 provider of alternative fuel or retailer of alternative fuel on or  
6 before January 31 of every year, unless determined by the  
7 commissioner that payment must be made more frequently, by check,  
8 bank draft, or money order payable to the commissioner for the  
9 amount of tax due. The commissioner may require all or certain  
10 taxpayers to file tax returns and payments electronically. The  
11 return required by the commissioner shall accompany the payment of  
12 tax. If no tax is due, the return required by the commissioner  
13 shall be completed and filed before January 31.

14 **ARTICLE 15. CONSUMER SALES AND SERVICE TAX.**

15 **§11-15-18b. Tax on motor fuel effective January 1, 2004.**

16        (a) *General.* -- Effective January 1, 2004, all sales of motor  
17 fuel and alternative fuel subject to the flat rate of the tax  
18 imposed by section five, article fourteen-c of this chapter, are  
19 subject to the tax imposed by this article ~~which shall comprise and~~  
20 comprises the variable component of the tax imposed by ~~said~~ section  
21 five, article fourteen-c of this chapter and ~~be~~ is collected and  
22 remitted at the time the tax imposed by said section is remitted.  
23 Sales of motor fuel and alternative fuel upon which the tax imposed

1 by this article has been paid ~~shall not thereafter be~~ is not again  
2 taxed under the provisions of this article. This section ~~is~~  
3 ~~construed so~~ means that all gallons of motor fuel and equivalent  
4 gallons of alternative fuel sold and delivered or delivered in this  
5 state are taxed one time.

6 (b) *Measure of tax.* -- The measure of tax imposed by this  
7 article is as follows:

8 (1) On sales of motor fuel, ~~is~~ the average wholesale price as  
9 defined and determined in section five, article fourteen-c of this  
10 chapter. For purposes of maintaining revenue for highways, and  
11 recognizing that the tax imposed by this article is generally  
12 imposed on gross proceeds from sales to ultimate consumers, whereas  
13 the tax on motor fuel herein is imposed on the average wholesale  
14 price of the motor fuel; in no case, for the purposes of taxation  
15 under this article, ~~shall~~ may the average wholesale price be  
16 determined to be less than \$.97 per gallon of motor fuel for all  
17 gallons of motor fuel sold during the reporting period,  
18 notwithstanding any provision of this article to the contrary.  
19 ~~Provided, That~~ On and after January 1, 2010, for the purpose of  
20 taxation under this article, in no case ~~shall~~ may the average  
21 wholesale price be determined to be less than \$2.34 per gallon of  
22 motor fuel for all gallons of motor fuel sold during the reporting

1 period notwithstanding any provision of this article to the  
2 contrary.

3 (2) On sales of alternative fuel, the average wholesale price  
4 as defined and determined in section five, article fourteen-c of  
5 this chapter.

6 (c) *Definitions.* -- For purposes of this article, the terms  
7 "gasoline" and "special fuel" are defined as provided in section  
8 two, article fourteen-c of this chapter. Other terms used in this  
9 section have the same meaning as when used in a similar context in  
10 said article. "Alternative fuel" as defined in section two,  
11 article fourteen-c of this chapter is taxable in accordance with  
12 this article and article fourteen-c of this chapter.

13 (d) *Tax return and tax due.*

14 (1) The tax imposed by this article on sales of motor fuel  
15 shall be paid by each taxpayer on or before the last day of the  
16 calendar month by check, bank draft, certified check or money order  
17 payable to the Tax Commissioner for the amount of tax due for the  
18 preceding month notwithstanding any provision of this article to  
19 the contrary. ~~Provided, That~~ The commissioner may require all or  
20 certain taxpayers to file tax returns and payments electronically.  
21 The return required by the commissioner shall accompany the payment  
22 of tax. ~~Provided, however, That~~ If no tax is due, the return

1 required by the commissioner shall be completed and filed on or  
2 before the last day of the month.

3

4 (2) (A) For the calendar years beginning January 1, 2014,  
5 through and including the calendar year ending December 31, 2020,  
6 the tax imposed by this article on sales of alternative fuel  
7 subject to tax at the point of imposition prescribed in section  
8 six-a, article fourteen-c, of this chapter, shall be paid by each  
9 taxpayer annually on or before the thirty-first day of January by  
10 check, bank draft, certified check or money order payable to the  
11 Tax Commissioner for the amount of tax due for the preceding  
12 calendar year notwithstanding any provision of this article to the  
13 contrary. The commissioner may require all or certain taxpayers to  
14 file tax returns and payments electronically. The return required  
15 by the commissioner shall accompany the payment of tax. If no tax  
16 is due, the return required by the commissioner shall be completed  
17 and filed on or before January 31.

18 (B) For the calendar year beginning January 1, 2021, and  
19 thereafter, the tax imposed by this article on sales of alternative  
20 fuel subject to tax at the point of imposition prescribed in  
21 section six-a, article fourteen-c, of this chapter, shall be paid  
22 by each taxpayer on or before the last day of the calendar month by  
23 check, bank draft, or money order payable to the commissioner for

1 the amount of tax due, if any, for the preceding month. The  
2 commissioner may require all or certain taxpayers to file tax  
3 returns and payments electronically. The return required by the  
4 commissioner shall accompany the payment of tax. ~~Provided,~~  
5 ~~however,~~ That If no tax is due, the return required by the  
6 commissioner shall be completed and filed before the last day of  
7 the calendar month for the preceding month.

8 (e) *Compliance.* -- To facilitate ease of administration and  
9 compliance by taxpayers, the Tax Commissioner shall require persons  
10 liable for the tax imposed by this article on sales of motor fuel  
11 to file a combined return and make a combined payment of the tax  
12 due under this article on sales of motor fuel and the tax due under  
13 article fourteen-c of this chapter on motor fuel. In order to  
14 encourage use of a combined return each month and the making of a  
15 single payment each month for both taxes, the due date of the  
16 return and tax due under ~~said~~ article fourteen-c of this chapter is  
17 the last day of each month notwithstanding any provision in said  
18 article to the contrary. The Tax Commissioner may prescribe  
19 reporting and payment requirements for tax due under this article  
20 on alternative fuel which accommodate the due dates and  
21 requirements prescribed in this article and article fourteen-c of  
22 this chapter, either under a separate return and payment or a

1 combined return and payment, within the discretion of the Tax  
2 Commissioner.

3 (f) *Dedication of tax.* -- All tax collected under the  
4 provisions of this section, after deducting the amount of ~~any~~  
5 refunds lawfully paid, shall be deposited in the road fund in the  
6 State Treasurer's office and used only for the purpose of  
7 construction, reconstruction, maintenance and repair of highways  
8 and payment of principal and interest on state bonds issued for  
9 highway purposes. ~~Provided, That~~ Notwithstanding any provision to  
10 the contrary, ~~any~~ tax collected on the sale of aviation fuel after  
11 deducting the amount of ~~any~~ refunds lawfully paid shall be  
12 deposited in the State Treasurer's office and transferred to the  
13 State Aeronautical Commission to be used for the purpose of  
14 matching federal funds available for the reconstruction,  
15 maintenance and repair of public airports and airport runways.

16 (g) *Construction.* -- This section ~~is not construed as taxing~~  
17 ~~any~~ does not tax a sale of motor fuel which this state is  
18 prohibited from taxing under the constitution of this state or the  
19 constitution or laws of the United States.

20 (h) *Effective date.* -- The provisions of this section take  
21 effect on January 1, 2004. The provisions of this section enacted  
22 during the 2007 legislative session take effect on January 1, 2008.

1 The provisions of this section enacted during the 2013 regular  
2 legislative session take effect on January 1, 2014.

3 **ARTICLE 15A. USE TAX.**

4 **§11-15A-13a. Tax on motor fuel effective January 1, 2004.**

5 (a) *Imposition of tax.* --

6 (1) *On deliveries in this state.* -- Effective January 1, 2004,  
7 ~~all~~ motor fuel furnished or delivered within this state which is  
8 subject to the flat rate of the tax imposed by section five,  
9 article fourteen-c of this chapter is subject to the tax imposed by  
10 this article which ~~shall comprise~~ comprises the variable component  
11 of the tax imposed by ~~the said~~ section five, article fourteen-c,  
12 and shall be collected and remitted at the time the tax imposed by  
13 ~~the said~~ section five, article fourteen-c is remitted. ~~Provided,~~  
14 ~~That~~ The amount of tax due under this article shall ~~in no event~~ not  
15 be less than five percent of the average wholesale price of motor  
16 fuel as determined in accordance with said section five, article  
17 fourteen-c.

18 (2) *On purchases out-of-state subject to motor fuel tax.* --  
19 Effective January 1, 2004, an excise tax is ~~hereby~~ imposed on the  
20 importation into this state of motor fuel purchased outside this  
21 state when the purchase is subject to the flat rate of the tax  
22 imposed by section five, article fourteen-c of this chapter.  
23 ~~Provided, That~~ The rate of the tax due under this article shall ~~in~~

1 ~~no event~~ not be less than five percent of the average wholesale  
2 price of the motor fuel, as determined in accordance with said  
3 section five, article fourteen-c. ~~Provided, however, That~~ The  
4 motor fuel subject to the tax imposed by this article ~~shall~~  
5 ~~comprise~~ comprises the variable component of the tax imposed by ~~the~~  
6 ~~said~~ section five, article fourteen-c, and shall be collected and  
7 remitted by the seller at the time the seller remits the tax  
8 imposed by the said section five, article fourteen-c.

9       (3) *On other purchases out-of-state.* -- An excise tax is  
10 ~~hereby~~ imposed on the use or consumption in this state of motor  
11 fuel purchased outside this state at the rate of five percent of  
12 the average wholesale price of the motor fuel, as determined in  
13 accordance with section five, article fourteen-c of this chapter.  
14 ~~Provided, That~~ Motor fuel contained in the fuel supply tank of a  
15 motor vehicle that is not a motor carrier ~~shall not be~~ is not  
16 taxable except that motor fuel imported in the fuel supply tank or  
17 auxiliary tank of construction equipment, mining equipment, track  
18 maintenance equipment or other similar equipment, ~~shall be~~ is taxed  
19 in the same manner as that in the fuel supply tank of a motor  
20 carrier.

21       (4) On use of alternative fuel - Effective January 1, 2014,  
22 an excise tax is imposed on alternative fuel used within this state  
23 which is subject to the flat rate of the tax imposed by section



1 five, article fourteen-c of this chapter. Alternative fuel is  
2 subject to the tax imposed by this article and comprises the  
3 variable component of the tax imposed by the section five, article  
4 fourteen-c of this chapter and shall be collected and remitted at  
5 the time the tax imposed by section five, article fourteen-c of  
6 this chapter is remitted. ~~Provided, That~~ The amount of tax due  
7 under this article shall not be less than five percent of the  
8 average wholesale price of alternative fuel as determined in  
9 accordance with section five, article fourteen-c of this chapter.

10 (b) *Definitions.* -- For purposes of this article, the terms  
11 "gasoline" and "special fuel" are defined as provided in section  
12 two, article fourteen-c of this chapter. Other terms used in this  
13 section have the same meaning as when used in a similar context in  
14 article fourteen-c of this chapter.

15 (c) *Computation of tax due from motor carriers.* -- Every  
16 person who operates or causes to be operated a motor carrier in  
17 this state shall pay the tax imposed by this section on the average  
18 wholesale price of all gallons or equivalent gallons of motor fuel  
19 used in the operation of ~~any~~ a motor carrier within this state,  
20 under the following rules:

21 (1) The total amount of motor fuel used in the operation of  
22 the motor carrier within this state is that proportion of the total  
23 amount of motor fuel used in ~~any~~ a motor carrier's operations

1 within and without this state, that the total number of miles  
2 traveled within this state bears to the total number of miles  
3 traveled within and without this state.

4 (2) A motor carrier shall first determine the gross amount of  
5 tax due under this section on the average wholesale value,  
6 determined under section five, article fourteen-c of this chapter,  
7 of ~~all~~ motor fuel used in the operation of the motor carrier within  
8 this state during the preceding quarter, as if all gasoline and  
9 special fuel had been purchased outside this state.

10 (3) Next, the taxpayer shall determine the total tax paid  
11 under article fifteen of this chapter on all motor fuel purchased  
12 in this state for use in the operation of the motor carrier.

13 (4) The difference between (2) and (3) is the amount of tax  
14 due under this article when (2) is greater than (3), or the amount  
15 to be refunded or credited to the motor carrier when (3) is greater  
16 than (2), which refund or credit is allowed in the same manner and  
17 under the same conditions as a refund or credit is allowed for the  
18 tax imposed by article fourteen-a of this chapter.

19 (d) *Return and payment of tax.* -- Tax due under this article  
20 on the uses or consumption in this state of motor fuel shall be  
21 paid by each taxpayer on or before January 25 , April 25, July 25  
22 and October 25 of each year, notwithstanding any provision of this  
23 article to the contrary, by check, bank draft, certified check or

1 money order, payable to the Tax Commissioner, for the amount of tax  
2 due for the preceding quarter. ~~Provided, That~~ The tax due under  
3 this article ~~that comprises~~ comprising the variable component of  
4 the tax due under article fourteen-c of this chapter is due on the  
5 last day of the month. Every taxpayer shall make and file with his  
6 or her remittance, a return showing the information the Tax  
7 Commissioner requires. The tax due under this article comprising  
8 the variable component of the tax due under article fourteen-c of  
9 this chapter on alternative fuel, is due and shall be collected and  
10 remitted at the time the tax imposed by section five, article  
11 fourteen-c of this chapter is due, collected and remitted.

12 (e) *Compliance.* -- To facilitate ease of administration and  
13 compliance by taxpayers, the Tax Commissioner shall require motor  
14 carriers liable for the taxes imposed by this article on the use of  
15 motor fuel in the operation of motor carriers within this state,  
16 and the tax imposed by article fourteen-a of this chapter on such  
17 gallons of motor fuel, to file a combined return and make a  
18 combined payment of the tax due under this article and article  
19 fourteen-a of this chapter on the fuel. In order to encourage use  
20 of a combined return and the making of a single payment each  
21 quarter for both taxes, the due date of the return and tax due  
22 under article fourteen-a of this chapter is the last day of  
23 January, April, July and October of each calendar year: Provided,

1 That the Tax Commissioner may prescribe reporting and payment  
2 requirements for tax due under this article on alternative fuel  
3 which accommodate the due dates and requirements prescribed in this  
4 article and article fourteen-c of this chapter, either under a  
5 separate return and payment or a combined return and payment,  
6 within the discretion of the Tax Commissioner.

7       (f) *Dedication of tax to highways.* -- ~~All~~ Tax collected under  
8 the provisions of this section, after deducting the amount of ~~any~~  
9 refunds lawfully paid, shall be deposited in the "road fund" in the  
10 State Treasurer's office and used only for the purpose of  
11 construction, reconstruction, maintenance and repair of highways  
12 and payment of principal and interest on state bonds issued for  
13 highway purposes.

14       (g) *Construction.* -- The tax imposed by this article on the  
15 use of motor fuel in this state ~~is not construed as taxing any~~ does  
16 not tax motor fuel which the state is prohibited from taxing under  
17 the Constitution of this state or the Constitution or laws of the  
18 United States.

19       (h) *Effective date.* -- The provisions of this section take  
20 effect January 1, 2004. The provisions of this section enacted  
21 during the 2013 legislative session take effect on January 1, 2014.

NOTE: The purpose of this bill is to provide a framework for computation, payment and reporting of the Motor Fuel Excise Tax on alternative fuels.

§11-14C-6a is new; therefore, it has been completely underscored.

Strike throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.