

H. B. 2832

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(By Delegates Ellington, Householder, Faircloth, Storch, Gearheart,
Rowan, Folk, Border, Howell, Cooper and Shott)

[Introduced February 20, 2015; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating
to reducing the motor fuel excise tax.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted
to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax ~~composed of a flat rate equal to~~
~~\$.205~~ of 20¢ per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable
component comprised of:

(~~1~~) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b,
article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this
chapter, as applicable. ~~Provided, That the motor fuel excise tax shall take effect January 1, 2004:~~
~~Provided, however, That the variable component shall be equal to five percent of the average~~

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

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

9 (b) *Determination of average wholesale price.*—

10 (1) To simplify determining the average wholesale price of all motor fuel, the Tax
11 Commissioner shall, effective with the period beginning the first day of the month of the effective
12 date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel
13 for each annual period on the basis of sales data gathered for the preceding period of July 1 through
14 October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax
15 Commissioner at least thirty days in advance of each January 1 by filing notice of the average
16 wholesale price in the State Register and by other means as the Tax Commissioner considers
17 reasonable.

18 (2) The “average wholesale price” means the single, statewide average per gallon wholesale
19 price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes
20 on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the
21 Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel
22 and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this

1 ~~state, or other information regarding wholesale selling prices as the Tax Commissioner may gather~~
2 ~~or a combination of information. In no event shall the average wholesale price be determined to be~~
3 ~~less than \$.97 per gallon of motor fuel. For calendar year 2009, the average wholesale price of motor~~
4 ~~fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined~~
5 ~~pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21,~~
6 ~~2007, and published in the State Register on November 30, 2007. On and after January 1, 2010, in~~
7 ~~no event shall the average wholesale price be determined to be less than \$2.34 per gallon of motor~~
8 ~~fuel. On and after January 1, 2011, the average wholesale price shall not vary by more than ten~~
9 ~~percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for~~
10 ~~the previous calendar year. Any limitation on the average wholesale price of motor fuel contained~~
11 ~~in this subsection shall not be applicable to alternative fuel.~~

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

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

20 ~~(e) (b) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk~~
21 ~~transfer/terminal system as of the close of the business day preceding January 1, 2004, and upon~~
22 ~~which the tax levied by this section has not been paid. For the purposes of this section, "close of the~~

1 business day" means the time at which the last transaction has occurred for that day. The floorstocks
2 tax is payable by the person in possession of the motor fuel on January 1, 2004. The amount of the
3 floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this
4 section multiplied by the gallons in storage as of the close of the business day preceding January 1,
5 2004.

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

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

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

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

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

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

18 (4) In determining the amount of floorstocks tax due under this section, the amount of motor
19 fuel in dead storage may be excluded. There are two methods for calculating the amount of motor
20 fuel in dead storage:

21 (A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in
22 dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more,

1 the amount of motor fuel in dead storage is four hundred gallons; or

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

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

11 (e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent
12 for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and
13 by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may
14 redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline
15 gallon equivalent in the State Register at least thirty days in advance of January 1 for the next
16 succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate
17 by reference provisions of the National Institute of Standards and Technology, United States
18 Department of Commerce, the Internal Revenue Code, United States Treasury Regulations, the
19 Internal Revenue Service publications or guidelines or other publications or guidelines which may
20 be useful in determining, setting or describing the gasoline gallon equivalent for each alternative fuel
21 used as motor fuel.

NOTE: The purpose of this bill is to reduce the tax on motor fuel.

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