

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 555**

BY SENATORS CARMICHAEL, GAUNCH AND PLYMALE

[Originating in the Committee on Finance; reported on

February 29, 2016]



1 A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating  
2 to providing the flat tax motor fuel, other than alternative fuels, is increased by 3 cents,  
3 unless actual average wholesale price of motor fuel rises above \$2.00 per invoiced gallon;  
4 setting minimum level for average wholesale price of motor fuel; and providing effective  
5 dates.

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

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

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

**§11-14C-5. Taxes levied; rate.**

1 (a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to  
2 \$.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable  
3 component comprised of:

4 (1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-  
5 b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this  
6 chapter, as applicable: *Provided*, That the motor fuel excise tax shall take effect January 1, 2004:  
7 *Provided, however*, That the variable component shall be equal to five percent of the average  
8 wholesale price of the motor fuel: *Provided further*, That the average wholesale price shall be no  
9 less than 97 cents per invoiced gallon and is computed as hereinafter prescribed in this section:  
10 *And provided further*, That on and after January 1, 2010, the average wholesale price shall be no  
11 less than \$2.34 per invoiced gallon and is computed as hereinafter prescribed in this section: *And*  
12 *provided further*, That on and after January 1, 2017, the average wholesale price shall be no less  
13 *than \$2.54 per invoiced gallon and is computed as hereinafter prescribed in this section. However,*  
14 *on and after July 1, 2016, the flat tax component of the invoiced value of motor fuel, other than*  
15 *alternative fuel, shall be increased by 3 cents in addition to the \$.205 flat tax and variable*  
16 *component specified in this subsection: And provided further, That whenever the actual*

17 calculation of the average wholesale price per gallon of motor fuel goes above \$2.00 per invoiced  
18 gallon the 3 cent addition is no longer in effect for that year when the Tax Commissioner's  
19 notification goes into effect on January 1 of that calendar year; and

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

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

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

33 (2) The “average wholesale price” means the single, statewide average per gallon  
34 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal  
35 excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as  
36 determined by the Tax Commissioner from information furnished by suppliers, importers and  
37 distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and  
38 retailers of alternative fuel in this state, or other information regarding wholesale selling prices as  
39 the Tax Commissioner may gather or a combination of information. In no event shall the average  
40 wholesale price be determined to be less than 97 cents per gallon of motor fuel. For calendar year  
41 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of  
42 motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax

43 Commissioner with the Secretary of State on November 21, 2007, and published in the State  
44 Register on November 30, 2007. On and after January 1, 2010, in no event shall the average  
45 wholesale price be determined to be less than \$2.34 per gallon of motor fuel. On and after  
46 January 1, 2017, the average wholesale price shall be no less than \$2.54 per invoiced gallon and  
47 is computed as hereinafter prescribed in this section. On and after January 1, ~~2014~~ 2017, the  
48 average wholesale price shall not vary by more than ten percent from the average wholesale price  
49 of motor fuel as determined by the Tax Commissioner for the previous calendar year. Any  
50 limitation on the average wholesale price of motor fuel contained in this subsection shall not be  
51 applicable to alternative fuel.

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

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

60 (c) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk  
61 transfer/terminal system as of the close of the business day preceding January 1, 2004, and upon  
62 which the tax levied by this section has not been paid. For the purposes of this section, "close of  
63 the business day" means the time at which the last transaction has occurred for that day. The  
64 floorstocks tax is payable by the person in possession of the motor fuel on January 1, 2004. The  
65 amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in  
66 subsection (a) of this section multiplied by the gallons in storage as of the close of the business  
67 day preceding January 1, 2004.

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

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

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

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

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

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

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

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

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

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

95           (e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon  
96 equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State  
97 Register and by other means that the Tax Commissioner considers reasonable. The Tax  
98 Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a  
99 notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of  
100 January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner  
101 may adopt or incorporate by reference provisions of the National Institute of Standards and  
102 Technology, United States Department of Commerce, the Internal Revenue Code, United States  
103 Treasury Regulations, the Internal Revenue Service publications or guidelines or other  
104 publications or guidelines which may be useful in determining, setting or describing the gasoline  
105 gallon equivalent for each alternative fuel used as motor fuel.