

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 260

**FISCAL
NOTE**

BY SENATORS GAUNCH, MULLINS, BOSO AND CLINE

[Introduced February 10, 2017; referred
to the Committee on Transportation and Infrastructure; and
then to the Committee on the Finance]

1 A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating
2 to providing whenever average wholesale price of motor fuel is less than \$2 per gallon the
3 tax on that fuel is increased by 5 cents.

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 \$2.05 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¢ per invoiced gallon and is computed as hereinafter prescribed in this section: *And*
10 *provided further*, That on and after January 1, 2010, the average wholesale price shall be no less
11 than \$2.34 per invoiced gallon and is computed as hereinafter prescribed in this section. However,
12 whenever the average wholesale price of motor fuel, other than alternative fuel, is less than \$2
13 per gallon, the tax on that fuel shall be increased by 5¢; and

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

18 (b) *Determination of average wholesale price.* B

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

27 (2) The "average wholesale price" means the single, statewide average per gallon
28 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal
29 excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as
30 determined by the Tax Commissioner from information furnished by suppliers, importers and
31 distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and
32 retailers of alternative fuel in this state, or other information regarding wholesale selling prices as
33 the Tax Commissioner may gather or a combination of information. In no event shall the average
34 wholesale price be determined to be less than 97¢ per gallon of motor fuel. For calendar year
35 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of
36 motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax
37 Commissioner with the Secretary of State on November 21, 2007, and published in the State
38 Register on November 30, 2007. On and after January 1, 2010, in no event shall the average
39 wholesale price be determined to be less than \$2.34 per gallon of motor fuel. On and after January
40 1, 2011, the average wholesale price shall not vary by more than ten percent from the average
41 wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar
42 year. Any limitation on the average wholesale price of motor fuel contained in this subsection shall
43 not be applicable to alternative fuel.

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

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

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

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

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

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

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

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

69 (3) In the event the tax due is paid to the commissioner after June 1, 2004, the person

70 remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax
71 liability due.

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

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

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

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

87 (e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon
88 equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State
89 Register and by other means that the Tax Commissioner considers reasonable. The Tax
90 Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a
91 notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of
92 January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner
93 may adopt or incorporate by reference provisions of the National Institute of Standards and
94 Technology, United States Department of Commerce, the Internal Revenue Code, United States
95 Treasury Regulations, the Internal Revenue Service publications or guidelines or other

- 96 publications or guidelines which may be useful in determining, setting or describing the gasoline
97 gallon equivalent for each alternative fuel used as motor fuel.

NOTE: The purpose of this bill is to provide whenever the average wholesale price of motor fuel is less than \$2.00 per gallon, the tax on that fuel is increased by an additional 5¢.

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