B 4004

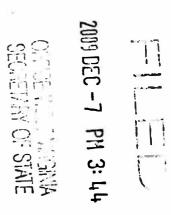
### WEST VIRGINIA LEGISLATURE SEVENTY-NINTH LEGISLATURE FOURTH EXTRAORDINARY SESSION, 2009

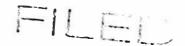
### ENROLLED

## Senate Bill No. 4004

(By Senators Tomblin (Mr. President) AND CARUTH, By Request of the Executive)

[Passed November 20, 2009; in effect from passage.]





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CHARLE WERE VIRGINIA SECRETARY OF STATE

### ENROLLED

### Senate Bill No. 4004

(By Senators Tomblin (Mr. President) and Caruth, By Request of the Executive)

[Passed November 20, 2009; in effect from passage.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18b of said code, all relating to adjusting the minimum values for computations relating to the flat rate and variable rate of the motor fuel excise tax; increasing the annual minimum average wholesale price of motor fuel computation; establishing variable restrictions on the average wholesale price of motor fuel computation; terminating the Motor Fuel Excise Tax Shortfall Reserve Fund; and transferring all moneys remaining in the fund to the State Road Fund for the purpose of reconstructing, renovating, maintaining or repairing secondary roads.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-18b of said code be amended and reenacted, all 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 1 2 composed of a flat rate equal to \$.205 per invoiced gallon 3 plus a variable component comprised of either the tax 4 imposed by section eighteen-b, article fifteen of this 5 chapter or the tax imposed under section thirteen-a, 6 article fifteen-a of this chapter, as applicable: Provided, 7 That the motor fuel excise tax shall take effect January 1, 8 2004: Provided, however, That the variable component 9 shall be equal to five percent of the average wholesale 10 price of the motor fuel: Provided further, That the average 11 wholesale price shall be no less than \$.97 per invoiced 12 gallon and is computed as hereinafter prescribed in this 13 section: And provided further, That on and after January 14 1, 2010, the average wholesale price shall be no less than 15 \$2.34 per invoiced gallon and is computed as hereinafter 16 prescribed in this section.

#### 17 (b) Determination of average wholesale price. -

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

31 (2) The "average wholesale price" means the single, 32 statewide average per gallon wholesale price, rounded to 33 the third decimal (thousandth of a cent), exclusive of state 34 and federal excise taxes on each gallon of motor fuel, as 35 determined by the Tax Commissioner from information 36 furnished by suppliers, importers and distributors of 37 motor fuel in this state, or other information regarding 38 wholesale selling prices as the Tax Commissioner may 39 gather, or a combination of information: Provided, That in 40 no event shall the average wholesale price be determined 41 to be less than \$.97 per gallon of motor fuel: Provided, 42 however, That for calendar year 2009, the average whole-43 sale price of motor fuel shall not exceed the average 44 wholesale price of motor fuel for calendar year 2008 as 45 determined pursuant to the notice filed by the Tax Com-46 missioner with the Secretary of State on November 21, 47 2007, and published in the State Register on November 30, 48 2007: Provided further, That on and after January 1, 2010, 49 in no event shall the average wholesale price be deter-50 mined to be less than \$2.34 per gallon of motor fuel: And 51 provided further, That on and after January 1, 2011, the 52 average wholesale price shall not vary by more than ten 53 percent from the average wholesale price of motor fuel as 54 determined by the Tax Commissioner for the previous 55 calendar year.

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

64 (4) In any administrative or court proceeding brought to
65 challenge the average wholesale price of motor fuel as
66 determined by the Tax Commissioner, his or her determi67 nation is presumed to be correct and shall not be set aside
68 unless it is clearly erroneous.

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

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

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

(B) Report no later than January 31, 2004, the gallons onforms provided by the commissioner; and

89 (C) Remit the tax levied under this section no later than90 June 1, 2004.

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

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

99 (4) In determining the amount of floorstocks tax due 100 under this section, the amount of motor fuel in dead

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101 storage may be excluded. There are two methods for102 calculating the amount of motor fuel in dead storage:

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

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

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

## §11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund support payment.

1 There is hereby created in the State Treasury a special

2 fund to be known and designated as the Motor Fuel Excise

3 Tax Shortfall Reserve Fund to be administered by the Tax

4 Commissioner for the purposes provided by this section.

5 The fund shall consist of moneys transferred to the

6 General Revenue Fund pursuant to appropriation of the

7 Legislature. At the end of each fiscal year, during the

8 fund's existence, the moneys in the fund shall not expire to

9 the General Fund, but shall remain available for expendi-

10 ture during the ensuing fiscal year. The fund shall termi-

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11 nate on December 1, 2009. Any moneys remaining in the

12 fund on that termination date shall be transferred to the

13 State Road Fund and used only for the purpose of recon-

14 struction, renovation, maintenance and repair of second-

15 ary roads.

#### ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

1 (a) General. — Effective January 1, 2004, all sales of 2 motor fuel subject to the flat rate of the tax imposed by 3 section five, article fourteen-c of this chapter are subject 4 to the tax imposed by this article which shall comprise the 5 variable component of the tax imposed by said section and 6 be collected and remitted at the time the tax imposed by 7 said section is remitted. Sales of motor fuel upon which 8 the tax imposed by this article has been paid shall not 9 thereafter be again taxed under the provisions of this 10 article. This section is construed so that all gallons of 11 motor fuel sold and delivered, or delivered, in this state 12 are taxed one time.

(b) Measure of tax. - The measure of tax imposed by 13 14 this article on sales of motor fuel is the average wholesale 15 price as defined and determined in section five, article 16 fourteen-c of this chapter. For purposes of maintaining 17 revenue for highways, and recognizing that the tax 18 imposed by this article is generally imposed on gross 19 proceeds from sales to ultimate consumers, whereas the 20 tax on motor fuel herein is imposed on the average whole-21 sale price of the motor fuel; in no case, for the purposes of 22 taxation under this article, shall the average wholesale 23 price be determined to be less than \$.97 per gallon of 24 motor fuel for all gallons of motor fuel sold during the 25 reporting period, notwithstanding any provision of this 26 article to the contrary: Provided, That on and after 27 January 1, 2010, for the purpose of taxation under this article, in no case shall the average wholesale price be
determined to be less than \$2.34 per gallon of motor fuel
for all gallons of motor fuel sold during the reporting
period, notwithstanding any provision of this article to the
contrary.

33 (c) Definitions. - For purposes of this article, the terms
34 "gasoline" and "special fuel" are defined as provided in
35 section two, article fourteen-c of this chapter. Other terms
36 used in this section have the same meaning as when used
37 in a similar context in said article.

(d) Tax return and tax due. — The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary: *Provided*, That the commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax: *Provided*, however, That if no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(e) *Compliance.* — To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under said article is the last day of each month, notwithstanding any provision in said article to the contrary.

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(f) Dedication of tax. - All tax collected under the 63 64 provisions of this section, after deducting the amount of 65 any refunds lawfully paid, shall be deposited in the Road 66 Fund in the State Treasurer's office and used only for the 67 purpose of construction, reconstruction, maintenance and 68 repair of highways and payment of principal and interest 69 on state bonds issued for highway purposes: Provided, 70 That notwithstanding any provision to the contrary, any 71 tax collected on the sale of aviation fuel after deducting 72 the amount of any refunds lawfully paid shall be deposited 73 in the State Treasurer's office and transferred to the State 74 Aeronautical Commission to be used for the purpose of 75 matching federal funds available for the reconstruction, 76 maintenance and repair of public airports and airport 77 runways.

78 (g) Construction. - This section is not construed as
79 taxing any sale of motor fuel which this state is prohibited
80 from taxing under the constitution of this state or the
81 constitution or laws of the United States.

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

[Enr. S. B. No. 4004 The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled. Chairman Senate Committee

Well

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

om President of the Senate

.....

Speaker House of Delegates

UNEL ...... this the ... The within 12 rec m Day of ..... .,2009. Governor

@ GCIU 326-C

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PRESENTED TO THE GOVERNOR DEC 2 2009 = 4:20 pm Time\_

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