

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 454**

6 (By Senators Prezioso and Facemire)

7 _____
8 [Originating in the Committee on Finance;
9 reported April 1, 2013.]
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12
13 A BILL to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9,
14 §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West
15 Virginia, 1931, as amended; to amend said code by adding
16 thereto a new section, designated §11-14C-6a; to amend and
17 reenact §11-15-18b of said code; and to amend and reenact
18 §11-15A-13a of said code, all relating to the taxation of
19 alternative fuel; defining terms; requiring the Tax
20 Commissioner to determine the gasoline gallon equivalent for
21 alternative fuels; imposing tax on motor fuel equivalent
22 gallons; specifying the point of imposition of tax on
23 alternative fuels not otherwise taxed at the point of
24 imposition; providing that propane used in a motor vehicle is

1 subject to the tax; requiring alternative-fuel bulk end users,
2 providers of alternative fuels and retailers of alternative
3 fuels to be licensed; establishing bonding requirements for
4 alternative-fuel bulk end users, providers of alternative
5 fuels and retailers of alternative fuels; establishing due
6 dates for returns and payments of tax on alternative fuels;
7 and specifying effective dates for amendments.

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

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

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

16 PART I. GENERAL PROVISIONS.

17 **§11-14C-2. Definitions.**

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

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

21 (A) Cultivating the soil, including the planting and
22 harvesting of crops, for the commercial production of food, fiber
23 and ornamental woodland products;

24 (B) Using land for breeding and management of farm livestock

1 including dairy, apiary, equine or poultry husbandry; and

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

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

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

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

24 (5) "Alternative-fuel bulk end user" means a person who

1 maintains storage facilities for alternative fuel and uses part or
2 all of the stored fuel to operate a motor vehicle.

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

1 for such lessee or tenant.

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

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

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

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

24 ~~(7)~~ ~~(11)~~ "Aviation gasoline" means motor fuel designed for use

1 in the operation of aircraft other than jet aircraft and sold or
2 used for that purpose.

3 ~~(8)~~ (12) "Aviation jet fuel" means motor fuel designed for use
4 in the operation of jet or turbo-prop aircraft and sold or used for
5 that purpose.

6 ~~(9)~~ (13) "Biodiesel fuel" means ~~any~~ motor fuel or mixture of
7 motor fuels that is derived, in whole or in part, from agricultural
8 products or animal fats, or the wastes of such products or fats,
9 and is advertised as, offered for sale as, suitable for use or used
10 as motor fuel in an internal combustion engine.

11 ~~(10)~~ (14) "Blended fuel" means a mixture composed of gasoline
12 or diesel fuel and another liquid including, but not limited to,
13 gasoline blend stocks, gasohol, ethanol, methanol, fuel grade
14 alcohol, diesel fuel enhancers and resulting blends, other than a
15 de minimus amount of a product such as carburetor detergent or
16 oxidation inhibitor, that can be used as a motor fuel in a highway
17 vehicle.

18 ~~(11)~~ (15) "Blender" means a person who produces blended motor
19 fuel outside the bulk transfer/terminal system.

20 ~~(12)~~ (16) "Blending" means the mixing of one or more petroleum
21 products, with or without another product, regardless of the
22 original character of the product blended, if the product obtained
23 by the blending is capable of use in the generation of power for
24 the propulsion of a motor vehicle, an airplane or a marine vessel.

1 Blending does not include mixing that occurs in the process of
2 refining by the original refiner of crude petroleum or the blending
3 of products known as lubricating oil in the production of
4 lubricating oils and greases.

5 ~~(13)~~ (17) "Bulk plant" means a motor fuel storage and
6 distribution facility that is not a terminal and from which motor
7 fuel may be removed at a rack.

8 ~~(14)~~ (18) "Bulk transfer" means any transfer of motor fuel
9 from one location to another by pipeline tender or marine delivery
10 within a bulk transfer/terminal system, including, but not limited
11 to, all of the following:

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

14 (B) Pipeline movements of motor fuel from a refinery or
15 terminal to a terminal;

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

19 (D) Two-party exchange between licensed suppliers or between
20 licensed suppliers and permissive suppliers.

21 ~~(15)~~ (19) "Bulk user" means a person who maintains storage
22 facilities for motor fuel and uses part or all of the stored motor
23 fuel to operate a motor vehicle, watercraft or aircraft.

24 ~~(16)~~ (20) "Bulk transfer/terminal system" means the motor fuel

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

12 ~~(17)~~ (21) "Carrier" means ~~any~~ an operator of a pipeline or
13 marine vessel engaged in the business of transporting motor fuel
14 above the terminal rack.

15 ~~(18)~~ (22) "Code" means the Code of West Virginia, 1931, as
16 amended.

17 ~~(19)~~ (23) "Commercial watercraft" means a watercraft employed
18 in the business of commercial fishing, transporting persons or
19 property for compensation or hire or ~~any~~ other trade or business.

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

22 ~~(21)~~ (25) "Compressed natural gas" means natural gas that has
23 been compressed and dispensed into motor fuel storage containers
24 and is advertised as, offered for sale as, suitable for use as or

1 used as an engine motor fuel.

2 ~~(22)~~ (26) "Corporate or partnership officer" means an officer
3 or director of a corporation, partner of a partnership or member of
4 a limited liability company who as an officer, director, partner or
5 member is under a duty to perform on behalf of the corporation,
6 partnership or limited liability company, the tax collection,
7 accounting or remitting obligations.

8 ~~(23)~~ (27) "Dead storage" is the amount of motor fuel that
9 cannot be pumped out of a motor fuel storage tank because the motor
10 fuel is below the mouth of the draw pipe. The amount of motor fuel
11 in dead storage is two hundred gallons for a tank with a capacity
12 of less than ten thousand gallons and four hundred gallons for a
13 tank with a capacity of ten thousand gallons or more.

14 ~~(24)~~ (28) "Denaturants" means and includes gasoline, natural
15 gasoline, gasoline components or toxic or noxious materials added
16 to motor fuel grade ethanol to make it unsuitable for beverage use
17 but not unsuitable for automotive use.

18 ~~(25)~~ (29) "Designated inspection site" means ~~any~~ a state
19 highway inspection station, weigh station, agricultural inspection
20 station, mobile station or other location designated by the
21 commissioner to be used as a motor fuel inspection site.

22 ~~(26)~~ (30) "Destination state" means the state, territory or
23 foreign country to which motor fuel is directed for delivery into
24 a storage facility, a receptacle, a container or a type of

1 transportation equipment for the purpose of resale or use. The
2 term ~~shall~~ does not include a tribal reservation of ~~any~~ a
3 recognized Native American tribe.

4 ~~(27)~~ (31) "Diesel fuel" means ~~any~~ a liquid that is advertised
5 as, offered for sale as, sold for use as, suitable for use as or
6 used as a motor fuel in a diesel-powered highway vehicle or
7 watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed
8 diesel fuel and kerosene but ~~shall~~ does not include gasoline or
9 aviation fuel.

10 ~~(28)~~ (32) "Distributor" means a person who acquires motor fuel
11 from a licensed supplier, permissive supplier or from another
12 licensed distributor for subsequent sale or use.

13 ~~(29)~~ (33) "Diversion" means transporting motor fuel outside a
14 reasonably direct route from the source to the destination state.

15 ~~(30)~~ (34) "Division" or "State Tax Division" means the Tax
16 Division of the West Virginia Department of Revenue.

17 ~~(31)~~ (35) "Dyed diesel fuel" means diesel fuel that meets the
18 dyeing and marking requirements of section 4082, Title 26, United
19 States Code, regardless of how the diesel fuel was dyed.

20 ~~(32)~~ (36) "End seller" means the person who sells motor fuel
21 to the ultimate user of the motor fuel.

22 ~~(33)~~ (37) "Export" means to obtain motor fuel in West Virginia
23 for sale or other distribution in another state, territory or
24 foreign country.

1 ~~(34)~~ (38) "Exporter" means a person that exports motor fuel
2 from this state. The seller is the exporter of motor fuel
3 delivered out-of-state by or for the seller and the purchaser is
4 the exporter of motor fuel delivered out-of-state by or for the
5 purchaser.

6 ~~(35)~~ (39) "Fuel" means motor fuel.

7 ~~(36)~~ "~~Fuel alcohol~~" means ~~methanol or motor fuel grade~~
8 ~~ethanol~~.

9 ~~(37)~~ (40) "Fuel grade ethanol" means the ASTM standard in
10 effect on the effective date of this article as the D-4806
11 specification for denatured motor fuel grade ethanol for blending
12 with gasoline.

13 ~~(38)~~ (41) "Fuel supply tank" means ~~any~~ a receptacle on a motor
14 vehicle from which motor fuel is supplied for the propulsion of the
15 motor vehicle.

16 ~~(39)~~ (42) "Gallon" means a unit of liquid measure as
17 customarily used in the United States containing two hundred
18 thirty-one cubic inches by volume and expresses the volume at 60
19 degrees Fahrenheit.

20 ~~(40)~~ (43) "Gasohol" means a blended motor fuel composed of
21 gasoline and motor fuel alcohol.

22 ~~(41)~~ (44) "Gasoline" means ~~any~~ a product commonly or
23 commercially known as gasoline, regardless of classification, that
24 is advertised as, offered for sale as, sold for use as, suitable

1 for use as or used as motor fuel in an internal combustion engine,
2 including gasohol, but does not include special fuel as defined in
3 this section.

4 ~~(42)~~ (45) "Gasoline blend stocks" includes any petroleum
5 product component of gasoline, such as naphtha, reformat, or
6 toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be
7 blended for use in a motor fuel. ~~However,~~ The term does not
8 include any substance that will be ultimately used for consumer
9 nonmotor fuel use and is sold or removed in drum quantities of
10 fifty-five gallons or less at the time of the removal or sale.

11 (46) "Gallon equivalent" means the amount of an alternative
12 fuel that is considered to be the equivalent of a gallon of
13 gasoline according to the National Institute of Standards and
14 Technology Handbook 130 or pursuant to guidelines issued by the Tax
15 Commissioner.

16 ~~(43)~~ (47) "Gross gallons" means the total measured product,
17 exclusive of any temperature or pressure adjustments,
18 considerations or deductions, in U.S. gallons.

19 ~~(44)~~ (48) "Governmental entity" means this state or ~~any a~~
20 political subdivision thereof or the United States or its
21 commissioners, agencies and instrumentalities.

22 ~~(45)~~ (49) "Heating oil" means any combustible liquid,
23 including, but not limited to, #1 fuel oil, #2 dyed fuel oil and
24 kerosene that is burned in a boiler, furnace or stove for heating

1 or ~~for~~ industrial processing purposes.

2 ~~(46)~~ (50) "Highway" means every way or place of whatever
3 nature open to the use of the public for purposes of vehicular
4 travel in this state including the streets and alleys in towns and
5 cities.

6 ~~(47)~~ (51) "Highway vehicle" means any self-propelled vehicle,
7 trailer or semitrailer that is designed or used for transporting
8 persons or property over the public highway and includes all
9 vehicles subject to registration under article three, chapter
10 seventeen-a of this code.

11 ~~(48)~~ (52) "Import" means to bring motor fuel into this state
12 by motor vehicle, marine vessel, pipeline or any other means.
13 ~~However,~~ Import does not include bringing motor fuel into this
14 state in the motor fuel supply tank of a motor vehicle if the motor
15 fuel is used to power that motor vehicle.

16 ~~(49)~~ (53) "Importer" means a person that imports motor fuel
17 into this state. The seller is the importer for motor fuel
18 delivered into this state from outside of this state by or for the
19 seller and the purchaser is the importer for motor fuel delivered
20 into this state from outside of this state by or for the purchaser.

21 ~~(50)~~ (54) "Import verification number" means the number
22 assigned by the commissioner ~~with respect~~ to a single transport
23 vehicle delivery into this state from another state upon request
24 for an assigned number by an importer or the transporter carrying

1 taxable motor fuel into this state for the account of an importer.

2 ~~(51)~~ (55) "In this state" means the area within the borders of
3 West Virginia including all territory within the borders of West
4 Virginia that is owned by the United States of America.

5 ~~(52)~~ (56) "Invoiced gallons" means the gallons actually billed
6 on an invoice for payment.

7 ~~(53)~~ (57) "Licensee" means ~~any~~ a person licensed by the
8 commissioner pursuant to section ten of this article.

9 ~~(54)~~ (58) "Liquid" means ~~any~~ a substance that is liquid above
10 its freezing point.

11 ~~(55)~~ (59) "Liquefied natural gas" means natural gas that has
12 been liquefied at -126.1 degrees centigrade and stored in insulated
13 cryogenic tanks for use as an engine motor fuel.

14 ~~(56)~~ (60) "Motor carrier" means ~~any~~ a vehicle used, designated
15 or maintained for the transportation of persons or property and
16 having two axles and a gross vehicle weight exceeding twenty-six
17 thousand pounds or having three or more axles regardless of weight
18 or ~~is~~ used in combination when the weight of the combination
19 exceeds twenty-six thousand pounds or registered gross vehicle
20 weight, and any aircraft, barge or other watercraft or railroad
21 locomotive transporting passengers or freight in or through this
22 state: *Provided*, That the gross vehicle weight rating of the
23 vehicles being towed is in excess of ten thousand pounds. The term
24 motor carrier does not include any type of recreational vehicle.

1 ~~(57)~~ (61) "Motor fuel" means gasoline, blended fuel, aviation
2 fuel, ~~and~~ any special fuel and alternative fuel.

3 ~~(58)~~ (62) "Motor fuel transporter" means a person who
4 transports motor fuel outside the bulk transfer/terminal system by
5 means of a transport vehicle, a railroad tank car or a marine
6 vessel.

7 ~~(59)~~ (63) "Motor vehicle" means automobiles, motor carriers,
8 motor trucks, motorcycles and all other vehicles or equipment,
9 engines or machines which are operated or propelled by combustion
10 of motor fuel.

11 ~~(60)~~ (64) "Net gallons" means the amount of motor fuel
12 measured in gallons when adjusted to a temperature of sixty degrees
13 Fahrenheit and a pressure of fourteen and seven-tenths pounds
14 pressure per square inch.

15 ~~(61)~~ (65) "Permissive supplier" is a person who may not be
16 subject to the taxing jurisdiction of this state but who meets both
17 of the following requirements: (A) Is registered under Section
18 4101 of the Internal Revenue Code for transactions in motor fuel in
19 the bulk transfer/terminal system; and (B) a position holder in
20 motor fuel only located in another state or a person who receives
21 motor fuel only in another state pursuant to a two-party exchange:
22 *Provided*, That a person is classified as a supplier if it has or
23 maintains, occupies or uses, within this state, directly or by a
24 subsidiary, an office, distribution house, sales house, warehouse,

1 or other place of business, or any agent or representative (by
2 whatever name called) operating within this state under the
3 authority of the supplier or its subsidiary.

4 ~~(62)~~ (66) "Person" means ~~any~~ an individual, firm, cooperative,
5 association, corporation, limited liability corporation, estate,
6 guardian, executor, administrator, trust, business trust,
7 syndicate, partnership, limited partnership, copartnership,
8 organization, limited liability partnership, joint venture,
9 receiver and trustee in bankruptcy. "Person" also means a club,
10 society or other group or combination acting as a unit, ~~or a~~ a public
11 body including, but not limited to, this state and any other state
12 and ~~any~~ an agency, commissioner, institution, political subdivision
13 or instrumentality of this state or any other state and, also, ~~any~~
14 an officer, employee or member of any of the foregoing who, as an
15 officer, employee or member, is under a duty to perform or is
16 responsible for the performance of an act prescribed by the
17 provisions of this article.

18 ~~(63)~~ (67) "Position holder" means the person who holds the
19 inventory position in motor fuel in a terminal as reflected on the
20 records of the terminal operator. A person holds the inventory
21 position in motor fuel when that person has a contract with the
22 terminal operator for the use of storage facilities and terminaling
23 services for motor fuel at the terminal. The term includes a
24 terminal operator who owns motor fuel in the terminal.

1 ~~(64)~~ (68) "Principal" means:

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

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

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

6 (D) An individual.

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

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

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

13 (B) Maintains storage facilities for alternative fuel
14 including alternative-fuel home refueling infrastructures and
15 alternative-fuel commercial refueling infrastructures, part or all
16 of which the person uses or sells to someone other than an
17 alternative-fuel bulk end user or an alternative-fuel retailer to
18 operate a highway vehicle;

19 (C) Sells alternative fuel and uses part of the fuel acquired
20 for sale to operate a highway vehicle by means of a fuel supply
21 line from the cargo tank of the vehicles to the engine of the
22 vehicle;

23 (D) Imports alternative fuel into this state by a means other
24 than the usual tank or receptacle connected with the engine of a

1 highway vehicle for use by that person to operate a highway
2 vehicle.

3 ~~(65)~~ (71) "Rack" means a mechanism for delivering motor fuel
4 from a refinery, terminal, marine vessel or bulk plant into a
5 transport vehicle, railroad tank car or other means of transfer
6 that is outside the bulk transfer/terminal system.

7 ~~(66)~~ (72) "Railroad locomotive" means ~~any~~ diesel-powered
8 equipment or machinery that rides on railroad rails and includes a
9 switching engine.

10 ~~(67)~~ (73) "Receive" means ~~any~~ acquisition of ownership or
11 possession of motor fuel.

12 ~~(68)~~ (74) "Refiner" means ~~any~~ a person who owns, operates or
13 otherwise controls a refinery.

14 ~~(69)~~ (75) "Refinery" means a facility for the manufacture or
15 reprocessing of finished or unfinished petroleum products usable as
16 motor fuel and from which motor fuel may be removed by pipeline or
17 marine vessel or at a rack.

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

23 ~~(71)~~ (77) "Retailer" means a person who sells motor fuel at
24 retail or dispenses motor fuel at a retail location.

1 (78) "Retailer of alternative fuel" means a person who
2 maintains storage facilities, including alternative-fuel vehicle
3 commercial refueling infrastructure, for alternative fuel and who
4 sells the fuel at retail or dispenses the fuel at a retail location
5 to operate a motor vehicle.

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

24 ~~(73)~~ (80) "State" or "this state" means the State of West

1 Virginia.

2 ~~(74)~~ (81) "Supplier" means a person that is:

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

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

7 (C) One of the following:

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

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

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

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

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

23 ~~(77)~~ (84) "Terminal" means a motor fuel storage and
24 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

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

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

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

7 ~~(83)~~ (90) "Use" means the actual consumption or receipt of
8 motor fuel by ~~any~~ a person into a motor vehicle, aircraft or
9 watercraft.

10 ~~(84)~~ (91) "Watercraft" means any vehicle used on waterways.

11 **§11-14C-5. Taxes levied; rate.**

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

16 (1) On motor fuel other than alternative fuel, either the tax
17 imposed by section eighteen-b, article fifteen of this chapter or
18 the tax imposed under section thirteen-a, article fifteen-a of this
19 chapter, as applicable: *Provided,* That the motor fuel excise tax
20 shall take effect January 1, 2004: *Provided, however,* That the
21 variable component shall be equal to five percent of the average
22 wholesale price of the motor fuel: *Provided further,* That the
23 average wholesale price shall be no less than \$.97 per invoiced
24 gallon and is computed as hereinafter prescribed in this section:

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

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

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

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

23 (2) The "average wholesale price" means the single, statewide
24 average per gallon wholesale price, rounded to the third decimal

1 (thousandth of a cent), exclusive of state and federal excise taxes
2 on each gallon of motor fuel or on each gallon equivalent of
3 alternative fuel as determined by the Tax Commissioner from
4 information furnished by suppliers, importers and distributors of
5 motor fuel and alternative-fuel providers, alternative-fuel bulk
6 end users and retailers of alternative fuel in this state, or other
7 information regarding wholesale selling prices as the Tax
8 Commissioner may gather or a combination of information. ~~Provided,~~
9 ~~That~~ In no event shall the average wholesale price be determined to
10 be less than \$.97 per gallon of motor fuel. ~~Provided, however,~~
11 ~~That~~ For calendar year 2009, the average wholesale price of motor
12 fuel shall not exceed the average wholesale price of motor fuel for
13 calendar year 2008 as determined pursuant to the notice filed by
14 the Tax Commissioner with the Secretary of State on November 21,
15 2007, and published in the State Register on November 30, 2007.
16 ~~Provided further, That~~ On and after January 1, 2010, in no event
17 shall the average wholesale price be determined to be less than
18 \$2.34 per gallon of motor fuel. ~~And provided further, That~~ On and
19 after January 1, 2011, the average wholesale price shall not vary
20 by more than ten percent from the average wholesale price of motor
21 fuel as determined by the Tax Commissioner for the previous
22 calendar year. Any limitation on the average wholesale price of
23 motor fuel contained in this subsection shall not be applicable to
24 alternative fuel.

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

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

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

24 (1) Persons in possession of taxable motor fuel in storage

1 outside the bulk transfer/terminal system as of the close of the
2 business day preceding January 1, 2004, shall:

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

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

8 (C) Remit the tax levied under this section no later than June
9 1, 2004.

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

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

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

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

1 gallons; or

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

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

15 (e) The Tax Commissioner shall determine by January 1, 2014,
16 the gasoline gallon equivalent for each alternative fuel by filing
17 a notice of the gasoline gallon equivalent in the State Register
18 and by other means that the Tax Commissioner considers reasonable.
19 The Tax Commissioner may redetermine the gasoline gallon equivalent
20 for each alternative fuel by filing a notice of the gasoline gallon
21 equivalent in the State Register at least thirty days in advance of
22 January 1 for the next succeeding tax year. For purposes of this
23 notice, the Tax Commissioner may adopt or incorporate by reference
24 provisions of the National Institute of Standards and Technology,

1 United States Department of Commerce, the Internal Revenue Code,
2 United States Treasury Regulations, the Internal Revenue Service
3 publications or guidelines or other publications or guidelines
4 which may be useful in determining, setting or describing the
5 gasoline gallon equivalent for each alternative fuel used as motor
6 fuel.

7 **§11-14C-6a. Point of imposition of motor fuels tax on alternative**
8 **fuel.**

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

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

17 (1) At the time alternative fuel is withdrawn from the storage
18 facility including alternative-fuel home refueling infrastructures
19 and alternative-fuel commercial refueling infrastructures;

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

23 (3) If not taxed at the point of imposition described in
24 subdivision (1) or at the point of imposition described in

1 subdivision (2) of this subsection, then at the time alternative
2 fuel is used in a highway vehicle.

3 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

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

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

16 (2) Sales of aviation fuel;

17 (3) Sales of dyed special fuel; and

18 (4) Sales of propane unless sold for use in a motor vehicle.

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

23 All motor fuel exported from this state to any other state or
24 nation: *Provided*, That the supplier collects and remits to the

1 destination state or nation the appropriate amount of tax due on
2 the motor fuel transported to that state or nation. ~~Provided,~~
3 ~~however, That~~ This exemption does not apply to ~~any~~ motor fuel
4 which is transported and delivered outside this state in the motor
5 fuel supply tank of a highway vehicle.

6 (c) *Refundable exemptions from flat rate component of tax. -*

7 ~~Any~~ A person having a right or claim to any of the following
8 exemptions from the flat rate component of the tax levied by
9 section five of this article shall first pay the tax levied by this
10 article and then apply to the Tax Commissioner for a refund:

11 (1) The United States or ~~any~~ agency thereof: *Provided, That*
12 if the United States government, or ~~any~~ agency or instrumentality
13 thereof, does not pay the seller the tax imposed by section five of
14 this article on ~~any~~ a purchase of motor fuel, the person selling
15 tax previously paid motor fuel to the United States government, or
16 its agencies or instrumentalities, may ~~then~~ claim a refund of the
17 flat rate component of tax imposed by ~~said~~ section five of this
18 article on those sales;

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

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

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

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

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

15 (7) All invoiced gallons of motor fuel purchased by a licensed
16 exporter and subsequently exported from this state to any other
17 state or nation: *Provided*, That the exporter has paid the
18 applicable motor fuel tax to the destination state or nation prior
19 to claiming this refund or the exporter has reported to the
20 destination state or nation that the motor fuel was sold in a
21 transaction not subject to tax in that state or nation. ~~Provided,~~
22 ~~however, That~~ A refund may not be granted on ~~any~~ motor fuel which
23 is transported and delivered outside this state in the motor fuel
24 supply tank of a highway vehicle;

- 1 (8) All gallons of motor fuel used and consumed in stationary
2 off-highway turbine engines;
- 3 (9) All gallons of ~~special~~ fuel used for heating any public or
4 private dwelling, building or other premises;
- 5 (10) All gallons of ~~special~~ fuel used for boilers;
- 6 (11) All gallons of motor fuel used as a dry cleaning solvent
7 or commercial or industrial solvent;
- 8 (12) All gallons of motor fuel used as lubricants, ingredients
9 or components of ~~any~~ a manufactured product or compound;
- 10 (13) All gallons of motor fuel sold for use or used as a motor
11 fuel for commercial watercraft;
- 12 (14) All gallons of ~~special~~ motor fuel sold for use or
13 consumed in railroad diesel locomotives;
- 14 (15) All gallons of motor fuel purchased in quantities of
15 twenty-five gallons or more for use as a motor fuel for internal
16 combustion engines not operated upon highways of this state;
- 17 (16) All gallons of motor fuel purchased in quantities of
18 twenty-five gallons or more and used to power a power take-off unit
19 on a motor vehicle. When a motor vehicle with auxiliary equipment
20 uses motor fuel and there is no auxiliary motor for the equipment
21 or separate tank for a motor, the person claiming the refund may
22 present to the Tax Commissioner a statement of his or her claim and
23 is allowed a refund for motor fuel used in operating a power
24 take-off unit on a cement mixer truck or garbage truck equal to

1 twenty-five percent of the tax levied by this article paid on all
2 motor fuel used in such a truck;

3 (17) Motor fuel used by ~~any~~ a person regularly operating ~~any~~
4 a vehicle under a certificate of public convenience and necessity
5 or under a contract carrier permit for transportation of persons
6 when purchased in an amount of twenty-five gallons or more:
7 *Provided*, That the amount refunded is equal to \$0.6 per gallon:
8 *Provided, however*, That the gallons of motor fuel have been
9 consumed in the operation of urban and suburban bus lines and the
10 majority of passengers use the bus for traveling a distance not
11 exceeding forty miles, measured one way, on the same day between
12 their places of abode and their places of work, shopping areas or
13 schools; and

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

21 (d) *Refundable exemptions from variable rate component of tax.*
22 - Any of the following persons may claim an exemption from the
23 variable rate component of the tax levied by section five of this
24 article on the purchase and use of motor fuel by first paying the

1 tax levied by this article and then applying to the Tax
2 Commissioner for a refund.

3 (1) The United States or ~~any~~ agency thereof: *Provided*, That
4 if the United States government, or ~~any~~ agency or instrumentality
5 thereof, does not pay the seller the tax imposed by section five of
6 this article on any purchase of motor fuel, the person selling tax
7 previously paid motor fuel to the United States government, or its
8 agencies or instrumentalities, may ~~then~~ claim a refund of the
9 variable rate of tax imposed by ~~said~~ section five of this article
10 on those sales.

11 (2) This state and its institutions;

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

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

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

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

18 (7) ~~Any~~ A municipal, county, state or federal civil defense or
19 emergency service program pursuant to a government contract for use
20 in conjunction therewith, or to ~~any person on whom is imposed a~~
21 ~~requirement~~ a person who is required to maintain an inventory of
22 motor fuel for the purpose of the program: *Provided*, That fueling
23 facilities used for these purposes are not capable of fueling motor
24 vehicles and the person in charge of the program has in his or her

1 possession a letter of authority from the Tax Commissioner
2 certifying his or her right to the exemption;

3 (8) ~~Any~~ A bona fide volunteer fire department, nonprofit
4 ambulance service or emergency rescue service that has been
5 certified by the municipality or county ~~wherein~~ where the bona fide
6 volunteer fire department, nonprofit ambulance service or emergency
7 rescue service is located; or

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

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

21 PART 3. MOTOR FUEL LICENSING.

22 **§11-14C-10. Persons required to be licensed.**

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

- 1 (1) A supplier which includes a refiner;
- 2 (2) A permissive supplier;
- 3 (3) An importer;
- 4 (4) An exporter;
- 5 (5) A terminal operator;
- 6 (6) A blender;
- 7 (7) A motor fuel transporter; ~~or~~
- 8 (8) A distributor;
- 9 (9) A producer/manufacturer;
- 10 (10) An alternative-fuel bulk end user;
- 11 (11) A provider of alternative fuel; or
- 12 (12) A retailer of alternative fuel.

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

16 **§11-14C-13. Bond requirements.**

17 (a) ~~There shall be filed with~~ Along with an application for a
18 license required by section eleven of this article, either a cash
19 bond or a continuous surety bond in the amount or amounts specified
20 in this section shall be filed. ~~Provided, That~~ If a person has
21 filed applications for licenses for more than one activity, the
22 commissioner may combine the amount of the cash bond or continuous
23 surety bond required for each licensed activity into one amount
24 that shall be no less than the largest amount required for any of

1 those activities for which the license applications are filed.
2 ~~Provided, however, That~~ If a continuous surety bond is filed, an
3 annual notice of renewal shall be filed thereafter. ~~Provided~~
4 ~~further, That~~ If the continuous surety bond includes the
5 requirements that the commissioner is to be notified of
6 cancellation at least sixty days prior to the continuous surety
7 bond being canceled, an annual notice of renewal is not required.
8 The bond, whether a cash bond or a continuous surety bond, ~~shall be~~
9 is conditioned upon compliance with the requirements of this
10 article, ~~be~~ payable to this state and ~~be~~ in the form required by
11 the commissioner. The amount of the bond is as follows:

12 (1) For a supplier license, the amount shall be a minimum of
13 \$100,000 or an amount equal to three months' tax liability,
14 whichever is greater, ~~Provided, That the amount~~ but shall not
15 exceed \$2 million: ~~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 (2) For a permissive supplier license, the amount shall be a
21 minimum of \$100,000 or an amount equal to three months' tax
22 liability, whichever is greater, ~~Provided, That the amount~~ but
23 shall not exceed \$2 million. ~~Provided, however, That~~ When required
24 by the commissioner to file a cash bond or a continuous surety bond

1 in an additional amount, the licensee shall comply with the
2 commissioner's notification within thirty days after receiving that
3 notification;

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

1 the licensee shall comply with the commissioner's notification
2 within thirty days after receiving that notification;

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

18 (6) For a license as both a distributor and an importer as
19 described in subdivision (4) of this subsection, the amount shall
20 be a minimum of \$100,000 or an amount equal to three months' tax
21 liability, whichever is greater, ~~Provided, That the amount~~ but
22 shall not exceed \$2 million. ~~Provided, however, That~~ When required
23 by the commissioner to file a cash bond or a continuous surety bond
24 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
24 commissioner to file a cash bond or a continuous surety bond in an

1 additional amount, the licensee shall comply with the
2 commissioner's notification within thirty days after receiving that
3 notification;

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

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

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

21 (13) For an alternative-fuel bulk end user, a provider of
22 alternative fuel and a retailer of alternative fuel, there is no
23 bond. If the taxpayer fails to file a return or remit tax due under
24 this article, the commissioner may require a cash bond or a

1 continuous surety bond in an amount to be determined by the
2 commissioner. When required by the commissioner to file a cash
3 bond or a continuous surety bond, the licensee shall comply with
4 the commissioner's notification within thirty days after receiving
5 that notification; and

6 ~~(12)~~ (14) An applicant for a licensed activity listed under
7 subdivisions (1) through (10), inclusive, of this subsection may,
8 in lieu of posting either the cash bond or continuous surety bond
9 required by this subsection, provide proof of financial
10 responsibility acceptable to the commissioner. ~~Provided, That~~ The
11 proof of financial responsibility ~~shall~~ must demonstrate the
12 absence of circumstances indicating risk with the collection of
13 taxes from the applicant. ~~Provided, however, That the following~~
14 ~~shall constitute~~ The following constitutes proof of financial
15 responsibility:

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

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

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

1 individual basis.

2 ~~(13)~~ (15) In lieu of providing either cash bond, a continuance
3 surety bond or proof of financial responsibility acceptable to the
4 commissioner, an applicant for a licensed activity listed under
5 this subsection that has established with the state tax division a
6 good filing record that is accurate, complete and timely for the
7 preceding eighteen months shall be granted a waiver of the
8 requirement to file either a cash bond or continuance surety bond.
9 ~~Provided, That~~ When a licensee that has been granted a waiver of
10 the requirement to file a bond violates a provision of this
11 article, the licensee shall file the applicable bond as stated in
12 this subsection.

13 ~~(14)~~ (16) ~~Any~~ A licensee who disagrees with the commissioner's
14 decision requiring new or additional security may seek a hearing by
15 filing a petition with the Office of Tax Appeals in accordance with
16 the provisions of section nine, article ten-a of this chapter.
17 ~~Provided, That~~ The hearing shall be provided within thirty days
18 after receipt by the office of tax appeals of the petition. ~~for the~~
19 ~~hearing.~~

20 (b) The surety must be authorized under article nineteen,
21 chapter thirty-three of this code to engage in business of
22 transacting surety insurance within this state. The cash bond and
23 the continuous surety bond are conditioned upon faithful compliance
24 with the provisions of this article, including the filing of the

1 returns and payment of all tax prescribed by this article. The
2 cash bond and the continuous surety bond shall be approved by the
3 commissioner as to sufficiency and form and shall indemnify the
4 state against ~~any~~ loss arising from the failure of the taxpayer to
5 pay, for any cause whatever, the motor fuel excise tax levied by
6 this article.

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

22 (d) ~~Any~~ A taxpayer that has furnished a cash bond hereunder
23 ~~shall be~~ is relieved, released and discharged from all liability
24 accruing on the cash bond after the expiration of sixty days from

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

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

18 **§11-14C-19. When tax return and payment are due.**

19 (a) The tax levied by this article shall be paid by each
20 taxpayer on or before the last day of the calendar month by check,
21 bank draft or money order payable to the commissioner for the
22 amount of tax due, if any, for the preceding month. ~~Provided, That~~
23 The commissioner may require all or certain taxpayers to file tax
24 returns and payments electronically. The return required by the

1 commissioner shall accompany the payment of tax. ~~Provided,~~
2 ~~however, That~~ If no tax is due, the return required by the
3 commissioner shall be completed and filed before the last day of
4 the calendar month for the preceding month.

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

7 (1) A terminal operator;

8 (2) A supplier;

9 (3) An importer;

10 (4) A blender;

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

13 (6) A permissive supplier;

14 (7) A motor fuel transporter; ~~and~~

15 (8) An exporter; and

16 (9) A producer/manufacturer.

17 (c) (1) For the calendar years beginning January 1, 2014, the
18 tax levied by this article on alternative fuel that is subject to
19 tax at the point of imposition prescribed in section six-a of this
20 article, shall be paid by the alternative-fuel bulk end user,
21 provider of alternative fuel or retailer of alternative fuel on or
22 before January 31 of every year, unless determined by the
23 commissioner that payment must be made more frequently, by check,
24 bank draft or money order payable to the commissioner for the

1 amount of tax due. The commissioner may require all or certain
2 taxpayers to file tax returns and payments electronically. The
3 return required by the commissioner shall accompany the payment of
4 tax. If no tax is due, the return required by the commissioner
5 shall be completed and filed before January 31.

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

7 **§11-15-18b. Tax on motor fuel effective January 1, 2004.**

8 (a) *General.* - Effective January 1, 2004, all sales of motor
9 fuel and alternative fuel subject to the flat rate of the tax
10 imposed by section five, article fourteen-c of this chapter, are
11 subject to the tax imposed by this article ~~which shall comprise and~~
12 comprises the variable component of the tax imposed by ~~said~~ section
13 five, article fourteen-c of this chapter and ~~be~~ is collected and
14 remitted at the time the tax imposed by said section is remitted.
15 Sales of motor fuel and alternative fuel upon which the tax imposed
16 by this article has been paid ~~shall not thereafter be~~ is not again
17 taxed under the provisions of this article. This section ~~is~~
18 ~~construed so~~ means that all gallons of motor fuel and equivalent
19 gallons of alternative fuel sold and delivered or delivered in this
20 state are taxed one time.

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

23 On sales of motor fuel, ~~is~~ the average wholesale price as
24 defined and determined in section five, article fourteen-c of this

1 chapter. For purposes of maintaining revenue for highways, and
2 recognizing that the tax imposed by this article is generally
3 imposed on gross proceeds from sales to ultimate consumers, whereas
4 the tax on motor fuel herein is imposed on the average wholesale
5 price of the motor fuel; in no case, for the purposes of taxation
6 under this article, ~~shall~~ may the average wholesale price be
7 determined to be less than \$.97 per gallon of motor fuel for all
8 gallons of motor fuel sold during the reporting period,
9 notwithstanding any provision of this article to the contrary.
10 ~~Provided, That~~ On and after January 1, 2010, for the purpose of
11 taxation under this article, in no case ~~shall~~ may the average
12 wholesale price be determined to be less than \$2.34 per gallon of
13 motor fuel for all gallons of motor fuel sold during the reporting
14 period notwithstanding any provision of this article to the
15 contrary. Any limitation on the average wholesale price of motor
16 fuel contained in this subsection shall not be applicable to
17 alternative fuel.

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

21 (c) *Definitions.* - For purposes of this article, the terms
22 "gasoline" and "special fuel" and "alternative fuel" are defined as
23 provided in section two, article fourteen-c of this chapter. Other
24 terms used in this section have the same meaning as when used in a

1 similar context in said article.

2 (d) *Tax return and tax due.* -

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

14 (2) (A) For the calendar years beginning January 1, 2014,
15 through and including the calendar year ending December 31, 2020,
16 the tax imposed by this article on sales of alternative fuel
17 subject to tax at the point of imposition prescribed in section
18 six-a, article fourteen-c, of this chapter, shall be paid by each
19 taxpayer annually on or before January 31 of every year by check,
20 bank draft, certified check or money order payable to the Tax
21 Commissioner for the amount of tax due for the preceding calendar
22 year notwithstanding any provision of this article to the contrary.
23 The commissioner may require all or certain taxpayers to file tax
24 returns and payments electronically. The return required by the

1 commissioner shall accompany the payment of tax. If no tax is due,
2 the return required by the commissioner shall be completed and
3 filed on or before January 31.

4 (B) For the calendar year beginning January 1, 2021, and
5 thereafter, the tax imposed by this article on sales of alternative
6 fuel subject to tax at the point of imposition prescribed in
7 section six-a, article fourteen-c, of this chapter, shall be paid
8 by each taxpayer annually on or before January 31 of every year by
9 check, bank draft, or money order payable to the commissioner for
10 the amount of tax due. The commissioner may require all or certain
11 taxpayers to file tax returns and payments electronically. The
12 return required by the commissioner shall accompany the payment of
13 tax. If no tax is due, the return required by the commissioner
14 shall be completed and filed on or before January 31.

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

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

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

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

1 (h) *Effective date.* - The provisions of this section take
2 effect on January 1, 2004. The provisions of this section enacted
3 during the 2007 legislative session take effect on January 1, 2008.
4 The provisions of this section enacted during the 2013 regular
5 legislative session take effect on January 1, 2014.

6 **ARTICLE 15A. USE TAX.**

7 **§11-15A-13a. Tax on motor fuel effective January 1, 2004.**

8 (a) *Imposition of tax.* -

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

21 (2) *On purchases out-of-state subject to motor fuel tax.* -
22 Effective January 1, 2004, an excise tax is ~~hereby~~ imposed on the
23 importation into this state of motor fuel purchased outside this
24 state when the purchase is subject to the flat rate of the tax

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

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

23 (4) On use of alternative fuel - Effective January 1, 2014, an
24 excise tax is imposed on alternative fuel used within this state

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

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

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

22 (1) The total amount of motor fuel used in the operation of
23 the motor carrier within this state is that proportion of the total
24 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
24 money order, payable to the Tax Commissioner, for the amount of tax

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

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

1 which accommodate the due dates and requirements prescribed in this
2 article and article fourteen-c of this chapter, either under a
3 separate return and payment or a combined return and payment,
4 within the discretion of the Tax Commissioner.

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

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

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