

SB 454

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



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FOR

Senate Bill No. 454

(SENATORS PREZIOSO AND FACEMIRE, *ORIGINAL SPONSORS*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

2013 MAY -3 PM 12:11
SECRETARY OF STATE
FILED

FILED

2013 MAY -3 PM 12: 11

SENATE OF STATE

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(SENATORS PREZIOSO AND FACEMIRE, *original sponsors*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-14C-6a; to amend and reenact §11-15-18b of said code; and to amend and reenact §11-15A-13a of said code, all relating to the taxation of alternative fuel; defining terms; requiring the Tax Commissioner to determine the gasoline gallon equivalent for alternative fuels; imposing tax on motor fuel equivalent gallons; specifying the point of imposition of tax on alternative fuels not otherwise taxed at the point of imposition; providing that propane used in a motor vehicle is subject to the tax; requiring alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels to be licensed; establishing bonding requirements for alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels; establishing due dates for returns and payments of tax on alternative fuels; and specifying effective dates for amendments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART I. GENERAL PROVISIONS.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed
3 herein.

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

5 (A) Cultivating the soil, including the planting and
6 harvesting of crops, for the commercial production of food,
7 fiber and ornamental woodland products;

8 (B) Using land for breeding and management of farm
9 livestock including dairy, apiary, equine or poultry
10 husbandry; and

11 (C) Using land for the practice of horticulture including
12 the growing of Christmas trees, orchards and nursery stock.
13 Agricultural purposes do not include commercial forestry,
14 growing of timber for commercial purposes or other activity
15 that normally would not be included in subdivision (A), (B)
16 or (C) of this definition.

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

18 (3) "Alcohol" means motor fuel grade ethanol or a
19 mixture of motor fuel-grade ethanol and methanol, excluding
20 denaturant and water that is a minimum of ninety-eight
21 percent ethanol or methanol by volume.

22 (4) "Alternative fuel" means a combustible gas or liquid
23 that is used or suitable for use as a motor fuel in an internal
24 combustion engine or motor to propel or operate any form of
25 vehicle, machine or mechanical contrivance and includes, but
26 is not limited to, products commonly known as butane,
27 propane, compressed natural gas, liquefied natural gas,
28 liquefied petroleum gas, natural gas hydrocarbons and
29 derivatives, liquid hydrocarbons derived from biomass,
30 P-series fuels and hydrogen. "Alternative fuel" does not
31 include diesel fuel, gasoline, blended fuel, aviation fuel or
32 any special fuel. For purposes of this article electricity is not
33 an alternative fuel.

34 (5) "Alternative-fuel bulk end user" means a person who
35 maintains storage facilities for alternative fuel and uses part
36 or all of the stored fuel to operate a motor vehicle.

37 (6) "Alternative-fuel commercial refueling infrastructure"
38 means property owned by a commercial establishment and
39 used for storing alternative fuels and for dispensing such
40 alternative fuels into the fuel tanks of vehicles owned by the
41 same person or entity that owns the alternative-fuel
42 commercial refueling infrastructure or into the fuel tanks of
43 privately owned vehicles or commercial vehicles other than
44 those owned by the same person or entity that owns the
45 alternative fuel commercial refueling infrastructure, or any
46 combination thereof. "Alternative-fuel vehicle commercial
47 refueling infrastructure" includes, but is not limited to,
48 compression equipment, storage tanks and dispensing units
49 for alternative fuel at the point where the fuel is delivered:

50 *Provided*, That the property is not located on a private
51 residence or private home. “Alternative-fuel commercial
52 refueling infrastructure” does not include any building,
53 infrastructure, equipment, apparatus, terminal or connections
54 for servicing, charging or providing electricity to plug-in
55 hybrid electric vehicles or electric vehicles. “Alternative-fuel
56 vehicle commercial refueling infrastructure” includes
57 alternative-fuel vehicle commercial refueling infrastructure
58 property as described in this subdivision which is owned by
59 a lessor or landlord and leased to or rented to a lessee or
60 tenant as part of a residence for such lessee or tenant.

61 (7) “Alternative-fuel home refueling infrastructure”
62 means property owned by a private individual for personal
63 use that is located at the individual’s private residence or
64 private home and used for storing and dispensing alternative
65 fuels into fuel tanks of the property owner’s motor vehicles.
66 This includes, but is not limited to, compression equipment,
67 storage tanks and dispensing units for alternative fuel at the
68 point where the fuel is delivered. For purposes of this article,
69 “alternative-fuel home refueling infrastructure” does not
70 include any building, infrastructure, equipment, apparatus,
71 terminal or connections for servicing, charging or providing
72 electricity to plug-in hybrid electric vehicles or electric
73 vehicles. “Alternative-fuel home refueling infrastructure”
74 does not include alternative-fuel vehicle refueling
75 infrastructure property owned by a lessor or landlord which
76 is leased to or rented to a lessee or tenant as part of a
77 residence for such lessee or tenant.

78 (8) “Article” or “this article” means article fourteen-c,
79 chapter eleven of this code.

80 (9) “Assessment” means a written determination by the
81 commissioner of the amount of taxes owed by a taxpayer.

82 (10) "Aviation fuel" means aviation gasoline or aviation
83 jet fuel.

84 (11) "Aviation gasoline" means motor fuel designed for
85 use in the operation of aircraft other than jet aircraft and sold
86 or used for that purpose.

87 (12) "Aviation jet fuel" means motor fuel designed for
88 use in the operation of jet or turbo-prop aircraft and sold or
89 used for that purpose.

90 (13) "Biodiesel fuel" means motor fuel or mixture of
91 motor fuels that is derived, in whole or in part, from
92 agricultural products or animal fats, or the wastes of such
93 products or fats, and is advertised as, offered for sale as,
94 suitable for use or used as motor fuel in an internal
95 combustion engine.

96 (14) "Blended fuel" means a mixture composed of
97 gasoline or diesel fuel and another liquid including, but not
98 limited to, gasoline blend stocks, gasohol, ethanol, methanol,
99 fuel grade alcohol, diesel fuel enhancers and resulting blends,
100 other than a de minimus amount of a product such as
101 carburetor detergent or oxidation inhibitor, that can be used
102 as a motor fuel in a highway vehicle.

103 (15) "Blender" means a person who produces blended
104 motor fuel outside the bulk transfer/terminal system.

105 (16) "Blending" means the mixing of one or more
106 petroleum products, with or without another product,
107 regardless of the original character of the product blended, if
108 the product obtained by the blending is capable of use in the
109 generation of power for the propulsion of a motor vehicle, an
110 airplane or a marine vessel. Blending does not include
111 mixing that occurs in the process of refining by the original
112 refiner of crude petroleum or the blending of products known

113 as lubricating oil in the production of lubricating oils and
114 greases.

115 (17) "Bulk plant" means a motor fuel storage and
116 distribution facility that is not a terminal and from which
117 motor fuel may be removed at a rack.

118 (18) "Bulk transfer" means any transfer of motor fuel
119 from one location to another by pipeline tender or marine
120 delivery within a bulk transfer/terminal system, including, but
121 not limited to, all of the following:

122 (A) Movement of motor fuel from a refinery or terminal
123 to a terminal by a marine vessel;

124 (B) Pipeline movements of motor fuel from a refinery or
125 terminal to a terminal;

126 (C) Book transfer of motor fuel within a terminal between
127 licensed suppliers prior to completion of removal across the
128 rack; and

129 (D) Two-party exchange between licensed suppliers or
130 between licensed suppliers and permissive suppliers.

131 (19) "Bulk user" means a person who maintains storage
132 facilities for motor fuel and uses part or all of the stored
133 motor fuel to operate a motor vehicle, watercraft or aircraft.

134 (20) "Bulk transfer/terminal system" means the motor
135 fuel distribution system consisting of refineries, pipelines,
136 marine vessels and terminals. Motor fuel in a refinery, a
137 pipeline, a terminal or a marine vessel transporting motor fuel
138 to a refinery or terminal is in the bulk transfer/terminal
139 system. Motor fuel in a motor fuel storage facility including,
140 but not limited to, a bulk plant that is not part of a refinery or
141 terminal, in the motor fuel supply tank of an engine or motor

142 vehicle, in a marine vessel transporting motor fuel to a motor
143 fuel storage facility that is not in the bulk transfer/terminal
144 system, or in a tank car, rail car, trailer, truck or other
145 equipment suitable for ground transportation is not in the
146 bulk transfer/terminal system.

147 (21) "Carrier" means an operator of a pipeline or marine
148 vessel engaged in the business of transporting motor fuel
149 above the terminal rack.

150 (22) "Code" means the Code of West Virginia, 1931, as
151 amended.

152 (23) "Commercial watercraft" means a watercraft
153 employed in the business of commercial fishing, transporting
154 persons or property for compensation or hire or other trade or
155 business.

156 (24) "Commissioner" or "Tax Commissioner" means the
157 West Virginia State Tax Commissioner or his or her delegate.

158 (25) "Compressed natural gas" means natural gas that has
159 been compressed and dispensed into motor fuel storage
160 containers and is advertised as, offered for sale as, suitable
161 for use as or used as an engine motor fuel.

162 (26) "Corporate or partnership officer" means an officer
163 or director of a corporation, partner of a partnership or
164 member of a limited liability company who as an officer,
165 director, partner or member is under a duty to perform on
166 behalf of the corporation, partnership or limited liability
167 company, the tax collection, accounting or remitting
168 obligations.

169 (27) "Dead storage" is the amount of motor fuel that
170 cannot be pumped out of a motor fuel storage tank because
171 the motor fuel is below the mouth of the draw pipe. The

172 amount of motor fuel in dead storage is two hundred gallons
173 for a tank with a capacity of less than ten thousand gallons
174 and four hundred gallons for a tank with a capacity of ten
175 thousand gallons or more.

176 (28) "Denaturants" means and includes gasoline, natural
177 gasolinc, gasoline components or toxic or noxious materials
178 added to motor fuel grade ethanol to make it unsuitable for
179 bevrage use but not unsuitable for automotive use.

180 (29) "Designated inspection site" means a state highway
181 inspection station, weigh station, agricultural inspection
182 station, mobile station or other location designated by the
183 commissioner to be used as a motor fuel inspection site.

184 (30) "Destination state" means the state, territory or
185 foreign country to which motor fuel is directed for delivery
186 into a storage facility, a receptacle, a container or a type of
187 transportation equipment for the purpose of resale or use.
188 The term does not include a tribal reservation of a recognized
189 Native American tribe.

190 (31) "Diesel fuel" means a liquid that is advertised as,
191 offered for sale as, sold for use as, suitable for use as or used
192 as a motor fuel in a diesel-powered highway vehicle or
193 watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed
194 diesel fuel and kerosene but does not include gasoline or
195 aviation fuel.

196 (32) "Distributor" means a person who acquires motor
197 fuel from a licensed supplier, permissive supplier or from
198 another licensed distributor for subsequent sale or use.

199 (33) "Diversion" means transporting motor fuel outside
200 a reasonably direct route from the source to the destination
201 state.

202 (34) "Division" or "State Tax Division" means the Tax
203 Division of the West Virginia Department of Revenue.

204 (35) "Dyed diesel fuel" means diesel fuel that meets the
205 dyeing and marking requirements of section 4082, Title 26,
206 United States Code, regardless of how the diesel fuel was
207 dyed.

208 (36) "End seller" means the person who sells motor fuel
209 to the ultimate user of the motor fuel.

210 (37) "Export" means to obtain motor fuel in West
211 Virginia for sale or other distribution in another state,
212 territory or foreign country.

213 (38) "Exporter" means a person that exports motor fuel
214 from this state. The seller is the exporter of motor fuel
215 delivered out-of-state by or for the seller and the purchaser is
216 the exporter of motor fuel delivered out-of-state by or for the
217 purchaser.

218 (39) "Fuel" means motor fuel.

219 (40) "Fuel grade ethanol" means the ASTM standard in
220 effect on the effective date of this article as the D-4806
221 specification for denatured motor fuel grade ethanol for
222 blending with gasoline.

223 (41) "Fuel supply tank" means a receptacle on a motor
224 vehicle from which motor fuel is supplied for the propulsion
225 of the motor vehicle.

226 (42) "Gallon" means a unit of liquid measure as
227 customarily used in the United States containing two hundred
228 thirty-one cubic inches by volume and expresses the volume
229 at 60 degrees Fahrenheit.

230 (43) "Gasohol" means a blended motor fuel composed of
231 gasoline and motor fuel alcohol.

232 (44) "Gasoline" means a product commonly or
233 commercially known as gasoline, regardless of classification,
234 that is advertised as, offered for sale as, sold for use as,
235 suitable for use as or used as motor fuel in an internal
236 combustion engine, including gasohol, but does not include
237 special fuel as defined in this section.

238 (45) "Gasoline blend stocks" includes any petroleum
239 product component of gasoline, such as naphtha, reformate,
240 or toluene, listed in Treas. Reg. §48.4081-1(c)(3) that can be
241 blended for use in a motor fuel. The term does not include
242 any substance that will be ultimately used for consumer
243 nonmotor fuel use and is sold or removed in drum quantities
244 of fifty-five gallons or less at the time of the removal or sale.

245 (46) "Gallon equivalent" means the amount of an
246 alternative fuel that is considered to be the equivalent of a
247 gallon of gasoline according to the National Institute of
248 Standards and Technology Handbook 130 or pursuant to
249 guidelines issued by the Tax Commissioner.

250 (47) "Gross gallons" means the total measured product,
251 exclusive of any temperature or pressure adjustments,
252 considerations or deductions, in U. S. gallons.

253 (48) "Governmental entity" means this state or a political
254 subdivision thereof or the United States or its commissioners,
255 agencies and instrumentalities.

256 (49) "Heating oil" means any combustible liquid,
257 including, but not limited to, #1 fuel oil, #2 dyed fuel oil and
258 kerosene that is burned in a boiler, furnace or stove for
259 heating or industrial processing purposes.

260 (50) "Highway" means every way or place of whatever
261 nature open to the use of the public for purposes of vehicular
262 travel in this state including the streets and alleys in towns
263 and cities.

264 (51) "Highway vehicle" means any self-propelled
265 vehicle, trailer or semitrailer that is designed or used for
266 transporting persons or property over the public highway and
267 includes all vehicles subject to registration under article three,
268 chapter seventeen-a of this code.

269 (52) "Import" means to bring motor fuel into this state by
270 motor vehicle, marine vessel, pipeline or any other means.
271 Import does not include bringing motor fuel into this state in
272 the motor fuel supply tank of a motor vehicle if the motor
273 fuel is used to power that motor vehicle.

274 (53) "Importer" means a person that imports motor fuel
275 into this state. The seller is the importer for motor fuel
276 delivered into this state from outside of this state by or for the
277 seller and the purchaser is the importer for motor fuel
278 delivered into this state from outside of this state by or for the
279 purchaser.

280 (54) "Import verification number" means the number
281 assigned by the commissioner to a single transport vehicle
282 delivery into this state from another state upon request for an
283 assigned number by an importer or the transporter carrying
284 taxable motor fuel into this state for the account of an
285 importer.

286 (55) "In this state" means the area within the borders of
287 West Virginia including all territory within the borders of
288 West Virginia that is owned by the United States of America.

289 (56) "Invoiced gallons" means the gallons actually billed
290 on an invoice for payment.

291 (57) "Licensee" means a person licensed by the
292 commissioner pursuant to section ten of this article.

293 (58) "Liquid" means a substance that is liquid above its
294 freezing point.

295 (59) "Liquefied natural gas" means natural gas that has
296 been liquefied at -126.1 degrees centigrade and stored in
297 insulated cryogenic tanks for use as an engine motor fuel.

298 (60) "Motor carrier" means a vehicle used, designated or
299 maintained for the transportation of persons or property and
300 having two axles and a gross vehicle weight exceeding
301 twenty-six thousand pounds or having three or more axles
302 regardless of weight or used in combination when the weight
303 of the combination exceeds twenty-six thousand pounds or
304 registered gross vehicle weight, and any aircraft, barge or
305 other watercraft or railroad locomotive transporting
306 passengers or freight in or through this state: *Provided*, That
307 the gross vehicle weight rating of the vehicles being towed is
308 in excess of ten thousand pounds. The term motor carrier
309 does not include any type of recreational vehicle.

310 (61) "Motor fuel" means gasoline, blended fuel, aviation
311 fuel, any special fuel and alternative fuel.

312 (62) "Motor fuel transporter" means a person who
313 transports motor fuel outside the bulk transfer/terminal
314 system by means of a transport vehicle, a railroad tank car or
315 a marine vessel.

316 (63) "Motor vehicle" means automobiles, motor carriers,
317 motor trucks, motorcycles and all other vehicles or
318 equipment, engines or machines which are operated or
319 propelled by combustion of motor fuel.

320 (64) "Net gallons" means the amount of motor fuel
321 measured in gallons when adjusted to a temperature of sixty
322 degrees Fahrenheit and a pressure of fourteen and
323 seven-tenths pounds pressure per square inch.

324 (65) "Permissive supplier" is a person who may not be
325 subject to the taxing jurisdiction of this state but who meets
326 both of the following requirements: (A) Is registered under
327 Section 4101 of the Internal Revenue Code for transactions
328 in motor fuel in the bulk transfer/terminal system; and (B) a
329 position holder in motor fuel only located in another state or
330 a person who receives motor fuel only in another state
331 pursuant to a two-party exchange: *Provided*, That a person is
332 classified as a supplier if it has or maintains, occupies or uses,
333 within this state, directly or by a subsidiary, an office,
334 distribution house, sales house, warehouse, or other place of
335 business, or any agent or representative (by whatever name
336 called) operating within this state under the authority of the
337 supplier or its subsidiary.

338 (66) "Person" means an individual, firm, cooperative,
339 association, corporation, limited liability corporation, estate,
340 guardian, executor, administrator, trust, business trust,
341 syndicate, partnership, limited partnership, copartnership,
342 organization, limited liability partnership, joint venture,
343 receiver and trustee in bankruptcy. "Person" also means a
344 club, society or other group or combination acting as a unit,
345 a public body including, but not limited to, this state and any
346 other state and an agency, commissioner, institution, political
347 subdivision or instrumentality of this state or any other state
348 and, also, an officer, employee or member of any of the
349 foregoing who, as an officer, employee or member, is under
350 a duty to perform or is responsible for the performance of an
351 act prescribed by the provisions of this article.

352 (67) "Position holder" means the person who holds the
353 inventory position in motor fuel in a terminal as reflected on

354 the records of the terminal operator. A person holds the
355 inventory position in motor fuel when that person has a
356 contract with the terminal operator for the use of storage
357 facilities and terminaling services for motor fuel at the
358 terminal. The term includes a terminal operator who owns
359 motor fuel in the terminal.

360 (68) "Principal" means:

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

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

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

365 (D) An individual.

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

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

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

373 (B) Maintains storage facilities for alternative fuel
374 including alternative-fuel home refueling infrastructures and
375 alternative-fuel commercial refueling infrastructures, part or
376 all of which the person uses or sells to someone other than an
377 alternative-fuel bulk end user or an alternative-fuel retailer to
378 operate a highway vehicle;

379 (C) Sells alternative fuel and uses part of the fuel
380 acquired for sale to operate a highway vehicle by means of a

381 fuel supply line from the cargo tank of the vehicles to the
382 engine of the vehicle;

383 (D) Imports alternative fuel into this state by a means
384 other than the usual tank or receptacle connected with the
385 engine of a highway vehicle for use by that person to operate
386 a highway vehicle.

387 (71) "Rack" means a mechanism for delivering motor
388 fuel from a refinery, terminal, marine vessel or bulk plant into
389 a transport vehicle, railroad tank car or other means of
390 transfer that is outside the bulk transfer/terminal system.

391 (72) "Railroad locomotive" means diesel-powered
392 equipment or machinery that rides on railroad rails and
393 includes a switching engine.

394 (73) "Receive" means acquisition of ownership or
395 possession of motor fuel.

396 (74) "Refiner" means a person who owns, operates or
397 otherwise controls a refinery.

398 (75) "Refinery" means a facility for the manufacture or
399 reprocessing of finished or unfinished petroleum products
400 usable as motor fuel and from which motor fuel may be
401 removed by pipeline or marine vessel or at a rack.

402 (76) "Removal" means a physical transfer other than by
403 evaporation, loss or destruction. A physical transfer to a
404 transport vehicle or other means of conveyance outside the
405 bulk transfer/terminal system is complete upon delivery into
406 the means of conveyance.

407 (77) "Retailer" means a person who sells motor fuel at
408 retail or dispenses motor fuel at a retail location.

409 (78) "Retailer of alternative fuel" means a person who
410 maintains storage facilities, including alternative-fuel vehicle
411 commercial refueling infrastructure, for alternative fuel and
412 who sells the fuel at retail or dispenses the fuel at a retail
413 location to operate a motor vehicle.

414 (79) "Special fuel" means a gas or liquid, other than
415 gasoline, used or suitable for use as motor fuel in an internal
416 combustion engine or motor to propel or operate any form of
417 vehicle, machine, or mechanical contrivance and includes
418 products commonly known as natural or casing-head
419 gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel,
420 transmix, methanol, ethanol, methanol fuel, M100, ethanol
421 fuel, E100, ethanol fuel blend, E85 and any fuel mixture that
422 contains eighty-five percent or more alcohol by volume when
423 combined with gasoline or other fuels and liquid fuel derived
424 from coal through the Fischer-Tropsch process. "Special
425 fuel" does not include alternative fuel or any petroleum
426 product or chemical compound such as alcohol, industrial
427 solvent, heavy furnace oil or lubricant, unless blended in or
428 sold for use as motor fuel in an internal combustion engine.

429 (80) "State" or "this state" means the State of West
430 Virginia.

431 (81) "Supplier" means a person that is:

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

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

436 (C) One of the following:

437 (i) A position holder in motor fuel in a terminal or
438 refinery in this state and may concurrently be a position
439 holder in motor fuel in another state; or

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

442 A terminal operator is not a supplier based solely on the
443 fact that the terminal operator handles motor fuel consigned
444 to it within a terminal.

445 (82) "Tax" or "this tax" is the motor fuel excise tax
446 imposed by this article and includes within its meaning
447 interest and additions to tax and penalties unless the context
448 requires a more limited meaning.

449 (83) "Taxpayer" means a person required to file a return
450 for the tax imposed by this article or a person liable for
451 payment of the tax imposed by this article.

452 (84) "Terminal" means a motor fuel storage and
453 distribution facility to which a terminal control number has
454 been assigned by the Internal Revenue Service, to which
455 motor fuel is supplied by pipeline or marine vessel and from
456 which motor fuel may be removed at a rack.

457 (85) "Terminal operator" means a person who owns,
458 operates or otherwise controls a terminal.

459 (86) "Transmix" means: (A) The buffer or interface
460 between two different products in a pipeline shipment; or (B)
461 a mix of two different products within a refinery or terminal
462 that results in an off-grade mixture.

463 (87) "Transport vehicle" means a vehicle designed or
464 used to carry motor fuel over the highway and includes a
465 straight truck, a straight truck/trailer combination and a
466 semitrailer combination rig.

467 (88) "Trustee" means a person who is licensed as a
468 supplier or a permissive supplier and receives tax payments

469 from and on behalf of another pursuant to section twenty-four
470 of this article.

471 (89) "Two-party exchange" means a transaction in which
472 motor fuel is transferred from one licensed supplier or
473 permissive supplier to another licensed supplier or permissive
474 supplier pursuant to an exchange agreement; and

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

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

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

484 (90) "Use" means the actual consumption or receipt of
485 motor fuel by a person into a motor vehicle, aircraft or
486 watercraft.

487 (91) "Watercraft" means any vehicle used on waterways.

§11-14C-5. Taxes levied; rate.

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

5 (1) On motor fuel other than alternative fuel, either the
6 tax imposed by section eightcen-b, article fifteen of this
7 chapter or the tax imposed under section thirteen-a, article
8 fifteen-a of this chapter, as applicable: *Provided*, That the

9 motor fuel excise tax shall take effect January 1, 2004:
10 *Provided, however,* That the variable component shall be
11 equal to five percent of the average wholesale price of the
12 motor fuel: *Provided further,* That the average wholesale
13 price shall be no less than \$.97 per invoiced gallon and is
14 computed as hereinafter prescribed in this section: *And*
15 *provided further,* That on and after January 1, 2010, the
16 average wholesale price shall be no less than \$2.34 per
17 invoiced gallon and is computed as hereinafter prescribed in
18 this section; and

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

25 (b) *Determination of average wholesale price. –*

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

38 (2) The “average wholesale price” means the single,
39 statewide average per gallon wholesale price, rounded to the
40 third decimal (thousandth of a cent), exclusive of state and
41 federal excise taxes on each gallon of motor fuel or on each

42 gallon equivalent of alternative fuel as determined by the Tax
43 Commissioner from information furnished by suppliers,
44 importers and distributors of motor fuel and alternative-fuel
45 providers, alternative-fuel bulk end users and retailers of
46 alternative fuel in this state, or other information regarding
47 wholesale selling prices as the Tax Commissioner may gather
48 or a combination of information. In no event shall the
49 average wholesale price be determined to be less than \$.97
50 per gallon of motor fuel. For calendar year 2009, the average
51 wholesale price of motor fuel shall not exceed the average
52 wholesale price of motor fuel for calendar year 2008 as
53 determined pursuant to the notice filed by the Tax
54 Commissioner with the Secretary of State on November 21,
55 2007, and published in the State Register on November 30,
56 2007. On and after January 1, 2010, in no event shall the
57 average wholesale price be determined to be less than \$2.34
58 per gallon of motor fuel. On and after January 1, 2011, the
59 average wholesale price shall not vary by more than ten
60 percent from the average wholesale price of motor fuel as
61 determined by the Tax Commissioner for the previous
62 calendar year. Any limitation on the average wholesale price
63 of motor fuel contained in this subsection shall not be
64 applicable to alternative fuel.

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

73 (4) In an administrative or court proceeding brought to
74 challenge the average wholesale price of motor fuel as
75 determined by the Tax Commissioner, his or her

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76 determination is presumed to be correct and shall not be set
77 aside unless it is clearly erroneous.

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

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

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

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

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

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

104 (3) In the event the tax due is paid to the commissioner
105 after June 1, 2004, the person remitting the tax shall pay, in

106 addition to the tax, a penalty in the amount of five percent of
107 the tax liability due.

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

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

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

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

131 (e) The Tax Commissioner shall determine by January 1,
132 2014, the gasoline gallon equivalent for each alternative fuel
133 by filing a notice of the gasoline gallon equivalent in the
134 State Register and by other means that the Tax Commissioner
135 considers reasonable. The Tax Commissioner may
136 redetermine the gasoline gallon equivalent for each
137 alternative fuel by filing a notice of the gasoline gallon

138 equivalent in the State Register at least thirty days in advance
139 of January 1 for the next succeeding tax year. For purposes
140 of this notice, the Tax Commissioner may adopt or
141 incorporate by reference provisions of the National Institute
142 of Standards and Technology, United States Department of
143 Commerce, the Internal Revenue Code, United States
144 Treasury Regulations, the Internal Revenue Service
145 publications or guidelines or other publications or guidelines
146 which may be useful in determining, setting or describing the
147 gasoline gallon equivalent for each alternative fuel used as
148 motor fuel.

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

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

6 (b) The tax levied pursuant to section five of this article
7 is imposed on alternative fuel that is not otherwise taxed at
8 the point of imposition prescribed under section six of this
9 article at the following points of imposition in the following
10 order:

11 (1) At the time alternative fuel is withdrawn from the
12 storage facility including alternative-fuel home refueling
13 infrastructures and alternative-fuel commercial refueling
14 infrastructures;

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

18 (3) If not taxed at the point of imposition described in
19 subdivision (1) or at the point of imposition described in
20 subdivision (2) of this subsection, then at the time alternative
21 fuel is used in a highway vehicle.

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

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

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

13 (2) Sales of aviation fuel;

14 (3) Sales of dyed special fuel; and

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

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

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

25 due on the motor fuel transported to that state or nation. This
26 exemption does not apply to motor fuel which is transported
27 and delivered outside this state in the motor fuel supply tank
28 of a highway vehicle.

29 (c) *Refundable exemptions from flat rate component of*
30 *tax.* – A person having a right or claim to any of the
31 following exemptions from the flat rate component of the tax
32 levied by section five of this article shall first pay the tax
33 levied by this article and then apply to the Tax Commissioner
34 for a refund:

35 (1) The United States or agency thereof: *Provided*, That
36 if the United States government, or agency or instrumentality
37 thereof, does not pay the seller the tax imposed by section
38 five of this article on a purchase of motor fuel, the person
39 selling tax previously paid motor fuel to the United States
40 government, or its agencies or instrumentalities, may claim a
41 refund of the flat rate component of tax imposed by section
42 five of this article on those sales;

43 (2) A county government or unit or agency thereof;

44 (3) A municipal government or any agency thereof;

45 (4) A county board of education;

46 (5) An urban mass transportation authority created
47 pursuant to the provisions of article twenty-seven, chapter
48 eight of this code;

49 (6) A municipal, county, state or federal civil defense or
50 emergency service program pursuant to a government
51 contract for use in conjunction therewith or to a person who
52 is required to maintain an inventory of motor fuel for the
53 purpose of the program: *Provided*, That motor fueling
54 facilities used for these purposes are not capable of fueling

55 motor vehicles and the person in charge of the program has
56 in his or her possession a letter of authority from the Tax
57 Commissioner certifying his or her right to the exemption. In
58 order for this exemption to apply, motor fuel sold under this
59 subdivision and subdivisions (1) through (5), inclusive, of
60 this subsection shall be used in vehicles or equipment owned
61 and operated by the respective government entity or
62 government agency or authority;

63 (7) All invoiced gallons of motor fuel purchased by a
64 licensed exporter and subsequently exported from this state
65 to any other state or nation: *Provided*, That the exporter has
66 paid the applicable motor fuel tax to the destination state or
67 nation prior to claiming this refund or the exporter has
68 reported to the destination state or nation that the motor fuel
69 was sold in a transaction not subject to tax in that state or
70 nation. A refund may not be granted on motor fuel which is
71 transported and delivered outside this state in the motor fuel
72 supply tank of a highway vehicle;

73 (8) All gallons of motor fuel used and consumed in
74 stationary off-highway turbine engines;

75 (9) All gallons of fuel used for heating any public or
76 private dwelling, building or other premises;

77 (10) All gallons of fuel used for boilers;

78 (11) All gallons of motor fuel used as a dry cleaning
79 solvent or commercial or industrial solvent;

80 (12) All gallons of motor fuel used as lubricants,
81 ingredients or components of a manufactured product or
82 compound;

83 (13) All gallons of motor fuel sold for use or used as a
84 motor fuel for commercial watercraft;

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85 (14) All gallons of motor fuel sold for use or consumed
86 in railroad diesel locomotives;

87 (15) All gallons of motor fuel purchased in quantities of
88 twenty-five gallons or more for use as a motor fuel for
89 internal combustion engines not operated upon highways of
90 this state;

91 (16) All gallons of motor fuel purchased in quantities of
92 twenty-five gallons or more and used to power a power
93 take-off unit on a motor vehicle. When a motor vehicle with
94 auxiliary equipment uses motor fuel and there is no auxiliary
95 motor for the equipment or separate tank for a motor, the
96 person claiming the refund may present to the Tax
97 Commissioner a statement of his or her claim and is allowed
98 a refund for motor fuel used in operating a power take-off
99 unit on a cement mixer truck or garbage truck equal to
100 twenty-five percent of the tax levied by this article paid on all
101 motor fuel used in such a truck;

102 (17) Motor fuel used by a person regularly operating a
103 vehicle under a certificate of public convenience and
104 necessity or under a contract carrier permit for transportation
105 of persons when purchased in an amount of twenty-five
106 gallons or more: *Provided*, That the amount refunded is equal
107 to \$0.6 per gallon: *Provided, however*, That the gallons of
108 motor fuel have been consumed in the operation of urban and
109 suburban bus lines and the majority of passengers use the bus
110 for traveling a distance not exceeding forty miles, measured
111 one way, on the same day between their places of abode and
112 their places of work, shopping areas or schools; and

113 (18) All gallons of motor fuel that are not otherwise
114 exempt under subdivisions (1) through (6), inclusive, of this
115 subsection and that are purchased and used by any bona fide
116 volunteer fire department, nonprofit ambulance service or
117 emergency rescue service that has been certified by the

118 municipality or county wherein the bona fide volunteer fire
119 department, nonprofit ambulance service or emergency
120 rescue service is located.

121 (d) *Refundable exemptions from variable rate component*
122 *of tax.* – Any of the following persons may claim an
123 exemption from the variable rate component of the tax levied
124 by section five of this article on the purchase and use of
125 motor fuel by first paying the tax levied by this article and
126 then applying to the Tax Commissioner for a refund.

127 (1) The United States or agency thereof: *Provided*, That
128 if the United States government, or agency or instrumentality
129 thereof, does not pay the seller the tax imposed by section
130 five of this article on any purchase of motor fuel, the person
131 selling tax previously paid motor fuel to the United States
132 government, or its agencies or instrumentalities, may claim a
133 refund of the variable rate of tax imposed by section five of
134 this article on those sales.

135 (2) This state and its institutions;

136 (3) A county government or unit or agency thereof;

137 (4) A municipal government or agency thereof;

138 (5) A county board of education;

139 (6) An urban mass transportation authority created
140 pursuant to the provisions of article twenty-seven, chapter
141 eight of this code;

142 (7) A municipal, county, state or federal civil defense or
143 emergency service program pursuant to a government
144 contract for use in conjunction therewith, or to a person who
145 is required to maintain an inventory of motor fuel for the
146 purpose of the program: *Provided*, That fueling facilities used

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147 for these purposes are not capable of fueling motor vehicles
148 and the person in charge of the program has in his or her
149 possession a letter of authority from the Tax Commissioner
150 certifying his or her right to the exemption;

151 (8) A bona fide volunteer fire department, nonprofit
152 ambulance service or emergency rescue service that has been
153 certified by the municipality or county where the bona fide
154 volunteer fire department, nonprofit ambulance service or
155 emergency rescue service is located; or

156 (9) All invoiced gallons of motor fuel purchased by a
157 licensed exporter and subsequently exported from this state
158 to any other state or nation: *Provided*, That the exporter has
159 paid the applicable motor fuel tax to the destination state or
160 nation prior to claiming this refund. A refund may not be
161 granted on motor fuel which is transported and delivered
162 outside this state in the motor fuel supply tank of a highway
163 vehicle.

164 (c) The provision in subdivision (9), subsection (a),
165 section nine, article fifteen of this chapter that exempts as a
166 sale for resale those sales of gasoline and special fuel by a
167 distributor or importer to another distributor does not apply
168 to sales of motor fuel under this article.

PART 3. MOTOR FUEL LICENSING.

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

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

4 (1) A supplier which includes a refiner;

5 (2) A permissive supplier;

- 6 (3) An importer;
- 7 (4) An exporter;
- 8 (5) A terminal operator;
- 9 (6) A blender;
- 10 (7) A motor fuel transporter;
- 11 (8) A distributor;
- 12 (9) A producer/manufacturee;
- 13 (10) An alternative-fuel bulk end user;
- 14 (11) A provider of alternative fuel; or
- 15 (12) A retailer of alternative fuel.
- 16 (b) A person who is engaged in more than one activity for
17 which a license is required shall have a separate license for
18 each activity, except as otherwise determined by the
19 commissioner.

§11-14C-13. Bond requirements.

- 1 (a) Along with an application for a license required by
2 section eleven of this article, either a cash bond or a
3 continuous surety bond in the amount or amounts specified
4 in this section shall be filed. If a person has filed applications
5 for licenses for more than one activity, the commissioner may
6 combine the amount of the cash bond or continuous surety
7 bond required for each licensed activity into one amount that
8 shall be no less than the largest amount required for any of
9 those activities for which the license applications are filed.
10 If a continuous surety bond is filed, an annual notice of

11 renewal shall be filed thereafter. If the continuous surety
12 bond includes the requirements that the commissioner is to be
13 notified of cancellation at least sixty days prior to the
14 continuous surety bond being canceled, an annual notice of
15 renewal is not required. The bond, whether a cash bond or a
16 continuous surety bond, is conditioned upon compliance with
17 the requirements of this article, payable to this state and in the
18 form required by the commissioner. The amount of the bond
19 is as follows:

20 (1) For a supplier license, the amount shall be a minimum
21 of \$100,000 or an amount equal to three months' tax liability,
22 whichever is greater, but shall not exceed \$2 million. When
23 required by the commissioner to file a cash bond or a
24 continuous surety bond in an additional amount, the licensee
25 shall comply with the commissioner's notification within
26 thirty days after receiving that notification;

27 (2) For a permissive supplier license, the amount shall be
28 a minimum of \$100,000 or an amount equal to three months'
29 tax liability, whichever is greater, but shall not exceed \$2
30 million. When required by the commissioner to file a cash
31 bond or a continuous surety bond in an additional amount, the
32 licensee shall comply with the commissioner's notification
33 within thirty days after receiving that notification;

34 (3) For a terminal operator license, the amount shall be a
35 minimum of \$100,000 or an amount equal to three months'
36 tax liability, whichever is greater, but shall not exceed \$2
37 million. When required by the commissioner to file a cash
38 bond or a continuous surety bond in an additional amount, the
39 licensee shall comply with the commissioner's notification
40 within thirty days after receiving that notification;

41 (4) For an importer license for a person, other than a
42 supplier, that imports by transport vehicle or another means
43 of transfer outside the bulk transfer/terminal system motor

44 fuel removed from a terminal located in another state in
45 which: (A) The state from which the motor fuel is imported
46 does not require the seller of the motor fuel to collect a motor
47 fuel excise tax on the removal either at that state's rate or the
48 rate of the destination state; and (B) the seller of the motor
49 fuel is not a permissive supplier, the amount shall be a
50 minimum of \$100,000 or an amount equal to three months'
51 tax liability, whichever is greater, but shall not exceed \$2
52 million. When required by the commissioner to file a cash
53 bond or a continuous surety bond in an additional amount, the
54 licensee shall comply with the commissioner's notification
55 within thirty days after receiving that notification;

56 (5) For an importer license for a person that imports by
57 transport vehicle or another means outside the bulk
58 transfer/terminal system motor fuel removed from a terminal
59 located in another state in which: (A) The state from which
60 the motor fuel is imported requires the seller of the motor fuel
61 to collect a motor fuel excise tax on the removal either at that
62 state's rate or the rate of the destination state; or (B) the seller
63 of the motor fuel is a permissive supplier, the amount shall be
64 a minimum of \$2,000 or an amount equal to three months'
65 tax liability, whichever is greater, but shall not exceed
66 \$300,000. When required by the commissioner to file a cash
67 bond or a continuous surety bond in an additional amount, the
68 licensee shall comply with the commissioner's notification
69 within thirty days after receiving that notification;

70 (6) For a license as both a distributor and an importer as
71 described in subdivision (4) of this subsection, the amount
72 shall be a minimum of \$100,000 or an amount equal to three
73 months' tax liability, whichever is greater, but shall not
74 exceed \$2 million. When required by the commissioner to
75 file a cash bond or a continuous surety bond in an additional
76 amount, the licensee shall comply with the commissioner's
77 notification within thirty days after receiving that
78 notification;

79 (7) For a license as both a distributor and an importer as
80 described in subdivision (5) of this subsection, the amount
81 shall be a minimum of \$2,000 or an amount equal to three
82 months' tax liability, whichever is greater, but shall not
83 exceed \$300,000. When required by the commissioner to file
84 a cash bond or a continuous surety bond in an additional
85 amount, the licensee shall comply with the commissioner's
86 notification within thirty days after receiving that
87 notification;

88 (8) For an exporter license, the amount shall be a
89 minimum of \$2,000 or an amount equal to three months' tax
90 liability, whichever is greater, but shall not exceed \$300,000.
91 When required by the commissioner to file a cash bond or a
92 continuous surety bond in an additional amount, the licensee
93 shall comply with the commissioner's notification within
94 thirty days after receiving that notification;

95 (9) For a blender license, the amount shall be a minimum
96 of \$2,000 or an amount equal to three months' tax liability,
97 whichever is greater, but shall not exceed \$300,000. When
98 required by the commissioner to file a cash bond or a
99 continuous surety bond in an additional amount, the licensee
100 shall comply with the commissioner's notification within
101 thirty days after receiving that notification;

102 (10) For a distributor license, the amount shall be a
103 minimum of \$2,000 or an amount equal to three months' tax
104 liability, whichever is greater, but shall not exceed \$300,000.
105 When required by the commissioner to file a cash bond or a
106 continuous surety bond in an additional amount, the licensee
107 shall comply with the commissioner's notification within
108 thirty days after receiving that notification;

109 (11) For a motor fuel transporter license, there is no bond;

110 (12) For a producer/manufacturer license, there is no
111 bond. If the taxpayer fails to file a return or remit tax due
112 under this article, the commissioner may require a cash bond
113 or a continuous surety bond in an amount to be determined by
114 the commissioner. When required by the commissioner to
115 file a cash bond or a continuous surety bond, the licensee
116 shall comply with the commissioner's notification within
117 thirty days after receiving that notification;

118 (13) For an alternative-fuel bulk end user, a provider of
119 alternative fuel and a retailer of alternative fuel, there is no
120 bond. If the taxpayer fails to file a return or remit tax due
121 under this article, the commissioner may require a cash bond
122 or a continuous surety bond in an amount to be determined by
123 the commissioner. When required by the commissioner to
124 file a cash bond or a continuous surety bond, the licensee
125 shall comply with the commissioner's notification within
126 thirty days after receiving that notification; and

127 (14) An applicant for a licensed activity listed under
128 subdivisions (1) through (10), inclusive, of this subsection
129 may, in lieu of posting either the cash bond or continuous
130 surety bond required by this subsection, provide proof of
131 financial responsibility acceptable to the commissioner. The
132 proof of financial responsibility must demonstrate the
133 absence of circumstances indicating risk with the collection
134 of taxes from the applicant. The following constitutes proof
135 of financial responsibility:

136 (A) Proof of \$5 million net worth constitutes evidence of
137 financial responsibility in lieu of posting the required bond;

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

141 (C) Proof of \$1,250,000 net worth constitutes financial
142 responsibility in lieu of posting twenty-five percent of the
143 required bond. Net worth is calculated on a business, not
144 individual basis.

145 (15) In lieu of providing either cash bond, a continuance
146 surety bond or proof of financial responsibility acceptable to
147 the commissioner, an applicant for a licensed activity listed
148 under this subsection that has established with the state tax
149 division a good filing record that is accurate, complete and
150 timely for the preceding eighteen months shall be granted a
151 waiver of the requirement to file either a cash bond or
152 continuance surety bond. When a licensee that has been
153 granted a waiver of the requirement to file a bond violates a
154 provision of this article, the licensee shall file the applicable
155 bond as stated in this subsection.

156 (16) A licensee who disagrees with the commissioner's
157 decision requiring new or additional security may seek a
158 hearing by filing a petition with the Office of Tax Appeals in
159 accordance with the provisions of section nine, article ten-a
160 of this chapter. The hearing shall be provided within thirty
161 days after receipt by the office of tax appeals of the petition.

162 (b) The surety must be authorized under article nineteen,
163 chapter thirty-three of this code to engage in business of
164 transacting surety insurance within this state. The cash bond
165 and the continuous surety bond are conditioned upon faithful
166 compliance with the provisions of this article, including the
167 filing of the returns and payment of all tax prescribed by this
168 article. The cash bond and the continuous surety bond shall
169 be approved by the commissioner as to sufficiency and form
170 and shall indemnify the state against loss arising from the
171 failure of the taxpayer to pay, for any cause whatever, the
172 motor fuel excise tax levied by this article.

173 (c) Surety on a continuous surety bond furnished
174 hereunder is relieved, released and discharged from all
175 liability accruing on the bond after the expiration of sixty
176 days from the date the surety shall have lodged, by certified
177 mail, with the commissioner, a written request to be
178 discharged. Discharge from the continuous surety bond does
179 not relieve, release or discharge the surety from liability
180 already accrued or which will accrue before the expiration of
181 the sixty-day period. Whenever a surety seeks discharge as
182 herein provided, it is the duty of the principal of the bond to
183 supply the commissioner with another continuous surety
184 bond or a cash bond prior to the expiration of the original
185 bond. Failure to provide a new continuous surety bond or a
186 cash bond shall result in the commissioner canceling each
187 license and registration previously issued to the person.

188 (d) A taxpayer that has furnished a cash bond hereunder
189 is relieved, released and discharged from all liability accruing
190 on the cash bond after the expiration of sixty days from the
191 date the taxpayer shall have lodged, by certified mail, with
192 the commissioner, a written request to be discharged and the
193 amount of the cash bond refunded. The commissioner may
194 retain all or part of the cash bond until the commissioner
195 performs an audit of the taxpayer's business or three years,
196 whichever first occurs. Discharge from the cash bond shall
197 not relieve, release or discharge the taxpayer from liability
198 already accrued or which will accrue before the expiration of
199 the sixty-day period. Whenever a taxpayer seeks discharge
200 as herein provided, it is the duty of the taxpayer to provide
201 the commissioner with another cash bond or a continuous
202 surety bond prior to the expiration of the original cash bond.
203 Failure to provide either a new cash bond or a continuous
204 surety bond shall result in the commissioner canceling each
205 license and registration previously issued to the taxpayer.

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

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

1 (a) The tax levied by this article shall be paid by each
2 taxpayer on or before the last day of the calendar month by
3 check, bank draft or money order payable to the
4 commissioner for the amount of tax due, if any, for the
5 preceding month. The commissioner may require all or
6 certain taxpayers to file tax returns and payments
7 electronically. The return required by the commissioner shall
8 accompany the payment of tax. If no tax is due, the return
9 required by the commissioner shall be completed and filed
10 before the last day of the calendar month for the preceding
11 month.

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

14 (1) A terminal operator;

15 (2) A supplier;

16 (3) An importer;

17 (4) A blender;

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

20 (6) A permissive supplier;

21 (7) A motor fuel transporter;

22 (8) An exporter; and

23 (9) A producer/manufacturer.

24 (c) For the calendar years beginning on or after January
25 1, 2014, the tax levied by this article on alternative fuel that
26 is subject to tax at the point of imposition prescribed in
27 section six-a of this article shall be paid by the alternative-
28 fuel bulk end user, provider of alternative fuel or retailer of
29 alternative fuel on or before January 31 of every year, unless
30 determined by the Tax Commissioner that payment must be
31 made more frequently, by check, bank draft or money order
32 payable to the Tax Commissioner for the amount of tax due.
33 The Tax Commissioner may require all or certain taxpayers
34 to file tax returns and payments electronically. The return
35 required by the Tax Commissioner shall accompany the
36 payment of tax. If no tax is due, the return required by the
37 Tax Commissioner shall be completed and filed on or before
38 January 31.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-18b. Tax on motor fuel.

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

13 (b) *Measure of tax.* – The measure of tax imposed by this
14 article is as follows:

15 On sales of motor fuel, the average wholesale price as
16 defined and determined in section five, article fourteen-c of

17 this chapter. For purposes of maintaining revenue for
18 highways, and recognizing that the tax imposed by this article
19 is generally imposed on gross proceeds from sales to ultimate
20 consumers, whereas the tax on motor fuel herein is imposed
21 on the average wholesale price of the motor fuel; in no case,
22 for the purposes of taxation under this article, may the
23 average wholesale price be determined to be less than \$.97
24 per gallon of motor fuel for all gallons of motor fuel sold
25 during the reporting period, notwithstanding any provision of
26 this article to the contrary. On and after January 1, 2010, for
27 the purpose of taxation under this article, in no case may the
28 average wholesale price be determined to be less than \$2.34
29 per gallon of motor fuel for all gallons of motor fuel sold
30 during the reporting period notwithstanding any provision of
31 this article to the contrary. Any limitation on the average
32 wholesale price of motor fuel contained in this subsection
33 shall not be applicable to alternative fuel.

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

37 (c) *Definitions.* - For purposes of this article, the terms
38 "gasoline" and "special fuel" and "alternative fuel" are
39 defined as provided in section two, article fourteen-c of this
40 chapter. Other terms used in this section have the same
41 meaning as when used in a similar context in said article.

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

43 (1) The tax imposed by this article on sales of motor fuel
44 shall be paid by each taxpayer on or before the last day of the
45 calendar month by check, bank draft, certified check or
46 money order payable to the Tax Commissioner for the
47 amount of tax due for the preceding month notwithstanding
48 any provision of this article to the contrary. The
49 commissioner may require all or certain taxpayers to file tax

50 returns and payments electronically. The return required by
51 the commissioner shall accompany the payment of tax. If no
52 tax is due, the return required by the commissioner shall be
53 completed and filed on or before the last day of the month.

54 (2) The tax due under this article comprising the variable
55 component of the tax due under article fourteen-c of this
56 chapter on alternative fuel, is due and shall be collected and
57 remitted at the time the tax imposed by section five, article
58 fourteen-c of this chapter is due, collected and remitted.

59 (c) *Compliance.* – To facilitate ease of administration and
60 compliance by taxpayers, the Tax Commissioner shall require
61 persons liable for the tax imposed by this article on sales of
62 motor fuel to file a combined return and make a combined
63 payment of the tax due under this article on sales of motor
64 fuel and the tax due under article fourteen-c of this chapter on
65 motor fuel. In order to encourage use of a combined return
66 each month and the making of a single payment each month
67 for both taxes, the due date of the return and tax due under
68 article fourteen-c of this chapter is the last day of each month
69 notwithstanding any provision in said article to the contrary.
70 The Tax Commissioner may prescribe reporting and payment
71 requirements for tax due under this article on alternative fuel
72 which accommodate the due dates and requirements
73 prescribed in this article and article fourteen-c of this chapter,
74 either under a separate return and payment or a combined
75 return and payment, within the discretion of the Tax
76 Commissioner.

77 (f) *Dedication of tax.* – All tax collected under the
78 provisions of this section, after deducting the amount of
79 refunds lawfully paid, shall be deposited in the road fund in
80 the State Treasurer's office and used only for the purpose of
81 construction, reconstruction, maintenance and repair of
82 highways and payment of principal and interest on state
83 bonds issued for highway purposes. Notwithstanding any

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84 provision to the contrary, tax collected on the sale of aviation
85 fuel after deducting the amount of refunds lawfully paid shall
86 be deposited in the State Treasurer's office and transferred to
87 the State Aeronautical Commission to be used for the purpose
88 of matching federal funds available for the reconstruction,
89 maintenance and repair of public airports and airport
90 runways.

91 (g) *Construction.* – This section does not tax a sale of
92 motor fuel which this state is prohibited from taxing under
93 the constitution of this state or the constitution or laws of the
94 United States.

95 (h) *Effective date.* – The provisions of this section take
96 effect on January 1, 2004. The provisions of this section
97 enacted during the 2007 legislative session take effect on
98 January 1, 2008. The provisions of this section enacted
99 during the 2013 regular legislative session take effect on
100 January 1, 2014.

ARTICLE 15A. USE TAX.

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

1 (a) *Imposition of tax.* –

2 (1) *On deliveries in this state.* – Effective January 1,
3 2004, motor fuel furnished or delivered within this state
4 which is subject to the flat rate of the tax imposed by section
5 five, article fourteen-c of this chapter is subject to the tax
6 imposed by this article which comprises the variable
7 component of the tax imposed by section five, article
8 fourteen-c, and shall be collected and remitted at the time the
9 tax imposed by section five, article fourteen-c is remitted.
10 The amount of tax due under this article shall not be less than
11 five percent of the average wholesale price of motor fuel as

12 determined in accordance with said section five, article
13 fourteen-c.

14 **(2) *On purchases out-of-state subject to motor fuel tax.* –**
15 Effective January 1, 2004, an excise tax is imposed on the
16 importation into this state of motor fuel purchased outside
17 this state when the purchase is subject to the flat rate of the
18 tax imposed by section five, article fourteen-c of this chapter.
19 The rate of the tax due under this article shall not be less than
20 five percent of the average wholesale price of the motor fuel,
21 as determined in accordance with said section five, article
22 fourteen-c. The motor fuel subject to the tax imposed by this
23 article comprises the variable component of the tax imposed
24 by section five, article fourteen-c, and shall be collected and
25 remitted by the seller at the time the seller remits the tax
26 imposed by the said section five, article fourteen-c.

27 **(3) *On other purchases out-of-state.* –** An excise tax is
28 imposed on the use or consumption in this state of motor fuel
29 purchased outside this state at the rate of five percent of the
30 average wholesale price of the motor fuel, as determined in
31 accordance with section five, article fourteen-c of this
32 chapter. Motor fuel contained in the fuel supply tank of a
33 motor vehicle that is not a motor carrier is not taxable except
34 that motor fuel imported in the fuel supply tank or auxiliary
35 tank of construction equipment, mining equipment, track
36 maintenance equipment or other similar equipment, is taxed
37 in the same manner as that in the fuel supply tank of a motor
38 carrier.

39 **(4) *On use of alternative fuel* –** Effective January 1, 2014,
40 an excise tax is imposed on alternative fuel used within this
41 state which is subject to the flat rate of the tax imposed by
42 section five, article fourteen-c of this chapter. Alternative
43 fuel is subject to the tax imposed by this article and
44 comprises the variable component of the tax imposed by
45 section five, article fourteen-c of this chapter and shall be

46 collected and remitted at the time the tax imposed by section
47 five, article fourteen-c of this chapter is remitted. The
48 amount of tax due under this article shall not be less than five
49 percent of the average wholesale price of alternative fuel as
50 determined in accordance with section five, article fourteen-c
51 of this chapter.

52 (b) *Definitions.* – For purposes of this article, the terms
53 “gasoline” and “special fuel” are defined as provided in
54 section two, article fourteen-c of this chapter. Other terms
55 used in this section have the same meaning as when used in
56 a similar context in article fourteen-c of this chapter.

57 (c) *Computation of tax due from motor carriers.* – Every
58 person who operates or causes to be operated a motor carrier
59 in this state shall pay the tax imposed by this section on the
60 average wholesale price of all gallons or equivalent gallons
61 of motor fuel used in the operation of a motor carrier within
62 this state, under the following rules:

63 (1) The total amount of motor fuel used in the operation
64 of the motor carrier within this state is that proportion of the
65 total amount of motor fuel used in a motor carrier’s
66 operations within and without this state, that the total number
67 of miles traveled within this state bears to the total number of
68 miles traveled within and without this state.

69 (2) A motor carrier shall first determine the gross amount
70 of tax due under this section on the average wholesale value,
71 determined under section five, article fourteen-c of this
72 chapter, of motor fuel used in the operation of the motor
73 carrier within this state during the preceding quarter, as if all
74 gasoline and special fuel had been purchased outside this
75 state.

76 (3) Next, the taxpayer shall determine the total tax paid
77 under article fifteen of this chapter on all motor fuel

78 purchased in this state for use in the operation of the motor
79 carrier.

80 (4) The difference between (2) and (3) is the amount of
81 tax due under this article when (2) is greater than (3), or the
82 amount to be refunded or credited to the motor carrier when
83 (3) is greater than (2), which refund or credit is allowed in the
84 same manner and under the same conditions as a refund or
85 credit is allowed for the tax imposed by article fourteen-a of
86 this chapter.

87 (d) *Return and payment of tax.* – Tax due under this
88 article on the uses or consumption in this state of motor fuel
89 shall be paid by each taxpayer on or before January 25, April
90 25, July 25 and October 25 of each year, notwithstanding any
91 provision of this article to the contrary, by check, bank draft,
92 certified check or money order, payable to the Tax
93 Commissioner, for the amount of tax due for the preceding
94 quarter. The tax due under this article comprising the
95 variable component of the tax due under article fourteen-c of
96 this chapter is due on the last day of the month. Every
97 taxpayer shall make and file with his or her remittance, a
98 return showing the information the Tax Commissioner
99 requires. The tax due under this article comprising the
100 variable component of the tax due under article fourteen-c of
101 this chapter on alternative fuel, is due and shall be collected
102 and remitted at the time the tax imposed by section five,
103 article fourteen-c of this chapter is due, collected and
104 remitted.

105 (e) *Compliance.* – To facilitate ease of administration and
106 compliance by taxpayers, the Tax Commissioner shall require
107 motor carriers liable for the taxes imposed by this article on
108 the use of motor fuel in the operation of motor carriers within
109 this state, and the tax imposed by article fourteen-a of this
110 chapter on such gallons of motor fuel, to file a combined
111 return and make a combined payment of the tax due under

112 this article and article fourteen-a of this chapter on the fuel.
113 In order to encourage use of a combined return and the
114 making of a single payment each quarter for both taxes, the
115 due date of the return and tax due under article fourteen-a of
116 this chapter is the last day of January, April, July and October
117 of each calendar year: *Provided*, That the Tax Commissioner
118 may prescribe reporting and payment requirements for tax
119 due under this article on alternative fuel which accommodate
120 the due dates and requirements prescribed in this article and
121 article fourteen-c of this chapter, either under a separate
122 return and payment or a combined return and payment, within
123 the discretion of the Tax Commissioner.

124 (f) *Dedication of tax to highways.* – Tax collected under
125 the provisions of this section, after deducting the amount of
126 refunds lawfully paid, shall be deposited in the “road fund”
127 in the State Treasurer’s office and used only for the purpose
128 of construction, reconstruction, maintenance and repair of
129 highways and payment of principal and interest on state
130 bonds issued for highway purposes.

131 (g) *Construction.* – The tax imposed by this article on the
132 use of motor fuel in this state does not tax motor fuel which
133 the state is prohibited from taxing under the Constitution of
134 this state or the Constitution or laws of the United States.

135 (h) *Effective date.* – The provisions of this section take
136 effect January 1, 2004. The provisions of this section enacted
137 during the 2013 legislative session take effect on January 1,
138 2014.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rocky Ferguson
.....
Member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Mansueti
.....
Clerk of the Senate

Steph M. S.
.....
Clerk of the House of Delegates

Jeffery K.
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

2013 MAY -3 PM 12: 11
SECRETARY OF STATE

The within *was approved* this the *3rd*
Day of *May*, 2013.

Carl Roy Lombardi
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm