

SB 4004

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

ENROLLED

Senate Bill No. 4004

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

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

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

2009 DEC -7 PM 3:44

FILED

FILED

2009 DEC -7 PM 3:45

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Senate Bill No. 4004

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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[Passed November 20, 2009; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 and §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-18b of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.**§11-14C-5. Taxes levied; rate.**

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 plus a variable component comprised of either the tax
4 imposed by section eighteen-b, article fifteen of this
5 chapter or the tax imposed under section thirteen-a,
6 article fifteen-a of this chapter, as applicable: *Provided*,
7 That the motor fuel excise tax shall take effect January 1,
8 2004: *Provided, however*, That the variable component
9 shall be equal to five percent of the average wholesale
10 price of the motor fuel: *Provided further*, That the average
11 wholesale price shall be no less than \$.97 per invoiced
12 gallon and is computed as hereinafter prescribed in this
13 section: *And provided further*, That on and after January
14 1, 2010, the average wholesale price shall be no less than
15 \$2.34 per invoiced gallon and is computed as hereinafter
16 prescribed in this section.

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

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

31 (2) The “average wholesale price” means the single,
32 statewide average per gallon wholesale price, rounded to

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

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

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

69 (c) There is hereby levied a floorstocks tax on motor fuel
70 held in storage outside the bulk transfer/terminal system
71 as of the close of the business day preceding January 1,
72 2004, and upon which the tax levied by this section has not
73 been paid. For the purposes of this section, "close of the
74 business day" means the time at which the last transaction
75 has occurred for that day. The floorstocks tax is payable
76 by the person in possession of the motor fuel on January 1,
77 2004. The amount of the floorstocks tax on motor fuel is
78 equal to the sum of the tax rate specified in subsection (a)
79 of this section multiplied by the gallons in storage as of the
80 close of the business day preceding January 1, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

1 There is hereby created in the State Treasury a special
2 fund to be known and designated as the Motor Fuel Excise
3 Tax Shortfall Reserve Fund to be administered by the Tax
4 Commissioner for the purposes provided by this section.
5 The fund shall consist of moneys transferred to the
6 General Revenue Fund pursuant to appropriation of the
7 Legislature. At the end of each fiscal year, during the
8 fund's existence, the moneys in the fund shall not expire to
9 the General Fund, but shall remain available for expendi-
10 ture during the ensuing fiscal year. The fund shall termi-

11 nate on December 1, 2009. Any moneys remaining in the
12 fund on that termination date shall be transferred to the
13 State Road Fund and used only for the purpose of recon-
14 struction, renovation, maintenance and repair of second-
15 ary roads.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

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

28 article, in no case shall the average wholesale price be
29 determined to be less than \$2.34 per gallon of motor fuel
30 for all gallons of motor fuel sold during the reporting
31 period, notwithstanding any provision of this article to the
32 contrary.

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

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

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

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

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

82 (h) *Effective date.* — The provisions of this section take
83 effect on January 1, 2004. The provisions of this section
84 enacted during the 2007 legislative session take effect on
85 January 1, 2008.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

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

[Signature]
.....
President of the Senate

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

The within *is approved* this the *Th*
Day of *December* , 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DEC 2 2009

Time 4:20 pm