

COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 454

(By Senators Prezioso and Facemire)

[Originating in the Committee on Finance;
reported April 1, 2013.]

A BILL 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.

3

[Com. Sub. for Com. Sub. for S. B. No. 454

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 ~~Provided, That~~ Agricultural purposes shall do not include
14 commercial forestry, growing of timber for commercial
15 purposes or ~~any~~ other activity that normally would not be
16 included in subdivision (A), (B) 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 any form of vehicle,
25 machine or mechanical contrivance and includes, but is not
26 limited to, products commonly known as butane, propane,
27 compressed natural gas, liquefied natural gas, liquefied
28 petroleum gas, natural gas hydrocarbons and derivatives,
29 liquid hydrocarbons derived from biomass, P-series fuels and
30 hydrogen. “Alternative fuel” does not include diesel fuel,
31 gasoline, blended fuel, aviation fuel or any special fuel. For
32 purposes of this article electricity is not an alternative fuel.

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

36 (6) “Alternative-fuel commercial refueling infrastructure”
37 means property owned by a commercial establishment and
38 used for storing alternative fuels and for dispensing such

5

[Com. Sub. for Com. Sub. for S. B. No. 454

39 alternative fuels into the fuel tanks of vehicles owned by the
40 same person or entity that owns the alternative-fuel
41 commercial refueling infrastructure or into the fuel tanks of
42 privately owned vehicles or commercial vehicles other than
43 those owned by the same person or entity that owns the
44 alternative fuel commercial refueling infrastructure, or any
45 combination thereof. “Alternative-fuel vehicle commercial
46 refueling infrastructure” includes, but is not limited to,
47 compression equipment, storage tanks and dispensing units
48 for alternative fuel at the point where the fuel is delivered:
49 *Provided*, That the property is not located on a private
50 residence or private home. “Alternative-fuel commercial
51 refueling infrastructure” does not include any building,
52 infrastructure, equipment, apparatus, terminal or connections
53 for servicing, charging or providing electricity to plug-in
54 hybrid electric vehicles or electric vehicles. “Alternative-fuel
55 vehicle commercial refueling infrastructure” includes
56 alternative-fuel vehicle commercial refueling infrastructure
57 property as described in this subdivision which is owned by

58 a lessor or landlord and leased to or rented to a lessee or
59 tenant as part of a residence for such lessee or tenant.

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

7

[Com. Sub. for Com. Sub. for S. B. No. 454

77 ~~(4)~~ (8) “Article” or “this article” means article fourteen-c,
78 chapter eleven of this code.

79 ~~(5)~~ (9) “Assessment” means a written determination by
80 the commissioner of the amount of taxes owed by a taxpayer.

81 ~~(6)~~ (10) “Aviation fuel” means aviation gasoline or
82 aviation jet fuel.

83 ~~(7)~~ (11) “Aviation gasoline” means motor fuel designed
84 for use in the operation of aircraft other than jet aircraft and
85 sold or used for that purpose.

86 ~~(8)~~ (12) “Aviation jet fuel” means motor fuel designed for
87 use in the operation of jet or turbo-prop aircraft and sold or
88 used for that purpose.

89 ~~(9)~~ (13) “Biodiesel fuel” means ~~any~~ motor fuel or mixture
90 of motor fuels that is derived, in whole or in part, from
91 agricultural products or animal fats, or the wastes of such
92 products or fats, and is advertised as, offered for sale as,
93 suitable for use or used as motor fuel in an internal
94 combustion engine.

95 ~~(10)~~ (14) “Blended fuel” means a mixture composed of
96 gasoline or diesel fuel and another liquid including, but not
97 limited to, gasoline blend stocks, gasohol, ethanol, methanol,
98 fuel grade alcohol, diesel fuel enhancers and resulting blends,
99 other than a de minimus amount of a product such as
100 carburetor detergent or oxidation inhibitor, that can be used
101 as a motor fuel in a highway vehicle.

102 ~~(11)~~ (15) “Blender” means a person who produces
103 blended motor fuel outside the bulk transfer/terminal system.

104 ~~(12)~~ (16) “Blending” means the mixing of one or more
105 petroleum products, with or without another product,
106 regardless of the original character of the product blended, if
107 the product obtained by the blending is capable of use in the
108 generation of power for the propulsion of a motor vehicle, an
109 airplane or a marine vessel. Blending does not include
110 mixing that occurs in the process of refining by the original
111 refiner of crude petroleum or the blending of products known
112 as lubricating oil in the production of lubricating oils and
113 greases.

9

[Com. Sub. for Com. Sub. for S. B. No. 454

114 ~~(13)~~ (17) “Bulk plant” means a motor fuel storage and
115 distribution facility that is not a terminal and from which
116 motor fuel may be removed at a rack.

117 ~~(14)~~ (18) “Bulk transfer” means any transfer of motor
118 fuel from one location to another by pipeline tender or
119 marine delivery within a bulk transfer/terminal system,
120 including, but not limited to, all of the following:

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

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

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

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

130 ~~(15)~~ (19) “Bulk user” means a person who maintains
131 storage facilities for motor fuel and uses part or all of the

132 stored motor fuel to operate a motor vehicle, watercraft or
133 aircraft.

134 ~~(16)~~ (20) “Bulk transfer/terminal system” means the
135 motor fuel distribution system consisting of refineries,
136 pipelines, marine vessels and terminals. Motor fuel in a
137 refinery, a pipeline, a terminal or a marine vessel transporting
138 motor fuel to a refinery or terminal is in the bulk
139 transfer/terminal system. Motor fuel in a motor fuel storage
140 facility including, but not limited to, a bulk plant that is not
141 part of a refinery or terminal, in the motor fuel supply tank of
142 ~~any~~ an engine or motor vehicle, in a marine vessel
143 transporting motor fuel to a motor fuel storage facility that is
144 not in the bulk transfer/terminal system, or in ~~any~~ a tank car,
145 rail car, trailer, truck or other equipment suitable for ground
146 transportation is not in the bulk transfer/terminal system.

147 ~~(17)~~ (21) “Carrier” means ~~any~~ an operator of a pipeline
148 or marine vessel engaged in the business of transporting
149 motor fuel above the terminal rack.

11 [Com. Sub. for Com. Sub. for S. B. No. 454

150 ~~(18)~~ (22) “Code” means the Code of West Virginia, 1931,
151 as amended.

152 ~~(19)~~ (23) “Commercial watercraft” means a watercraft
153 employed in the business of commercial fishing, transporting
154 persons or property for compensation or hire or ~~any~~ other
155 trade or business.

156 ~~(20)~~ (24) “Commissioner” or “Tax Commissioner” means
157 the West Virginia State Tax Commissioner or his or her
158 delegate.

159 ~~(21)~~ (25) “Compressed natural gas” means natural gas
160 that has been compressed and dispensed into motor fuel
161 storage containers and is advertised as, offered for sale as,
162 suitable for use as or used as an engine motor fuel.

163 ~~(22)~~ (26) “Corporate or partnership officer” means an
164 officer or director of a corporation, partner of a partnership
165 or member of a limited liability company who as an officer,
166 director, partner or member is under a duty to perform on
167 behalf of the corporation, partnership or limited liability

168 company, the tax collection, accounting or remitting
169 obligations.

170 ~~(23)~~ (27) “Dead storage” is the amount of motor fuel that
171 cannot be pumped out of a motor fuel storage tank because
172 the motor fuel is below the mouth of the draw pipe. The
173 amount of motor fuel in dead storage is two hundred gallons
174 for a tank with a capacity of less than ten thousand gallons
175 and four hundred gallons for a tank with a capacity of ten
176 thousand gallons or more.

177 ~~(24)~~ (28) “Denaturants” means and includes gasoline,
178 natural gasoline, gasoline components or toxic or noxious
179 materials added to motor fuel grade ethanol to make it
180 unsuitable for beverage use but not unsuitable for automotive
181 use.

182 ~~(25)~~ (29) “Designated inspection site” means ~~any~~ a state
183 highway inspection station, weigh station, agricultural
184 inspection station, mobile station or other location designated
185 by the commissioner to be used as a motor fuel inspection
186 site.

13 [Com. Sub. for Com. Sub. for S. B. No. 454

187 ~~(26)~~ (30) “Destination state” means the state, territory or
188 foreign country to which motor fuel is directed for delivery
189 into a storage facility, a receptacle, a container or a type of
190 transportation equipment for the purpose of resale or use.
191 The term ~~shall~~ does not include a tribal reservation of ~~any~~ a
192 recognized Native American tribe.

193 ~~(27)~~ (31) “Diesel fuel” means ~~any~~ a liquid that is
194 advertised as, offered for sale as, sold for use as, suitable for
195 use as or used as a motor fuel in a diesel-powered highway
196 vehicle or watercraft. The term includes #1 fuel oil, #2 fuel
197 oil, undyed diesel fuel and kerosene but ~~shall~~ does not
198 include gasoline or aviation fuel.

199 ~~(28)~~ (32) “Distributor” means a person who acquires
200 motor fuel from a licensed supplier, permissive supplier or
201 from another licensed distributor for subsequent sale or use.

202 ~~(29)~~ (33) “Diversion” means transporting motor fuel
203 outside a reasonably direct route from the source to the
204 destination state.

205 ~~(30)~~ (34) “Division” or “State Tax Division” means the
206 Tax Division of the West Virginia Department of Revenue.

207 ~~(31)~~ (35) “Dyed diesel fuel” means diesel fuel that meets
208 the dyeing and marking requirements of section 4082, Title
209 26, United States Code, regardless of how the diesel fuel was
210 dyed.

211 ~~(32)~~ (36) “End seller” means the person who sells motor
212 fuel to the ultimate user of the motor fuel.

213 ~~(33)~~ (37) “Export” means to obtain motor fuel in West
214 Virginia for sale or other distribution in another state,
215 territory or foreign country.

216 ~~(34)~~ (38) “Exporter” means a person that exports motor
217 fuel from this state. The seller is the exporter of motor fuel
218 delivered out-of-state by or for the seller and the purchaser is
219 the exporter of motor fuel delivered out-of-state by or for the
220 purchaser.

221 ~~(35)~~ (39) “Fuel” means motor fuel.

222 ~~(36)~~ “Fuel alcohol” means ~~methanol or motor fuel grade~~
223 ~~ethanol.~~

15 [Com. Sub. for Com. Sub. for S. B. No. 454

224 ~~(37)~~ (40) “Fuel grade ethanol” means the ASTM standard
225 in effect on the effective date of this article as the D-4806
226 specification for denatured motor fuel grade ethanol for
227 blending with gasoline.

228 ~~(38)~~ (41) “Fuel supply tank” means ~~any~~ a receptacle on
229 a motor vehicle from which motor fuel is supplied for the
230 propulsion of the motor vehicle.

231 ~~(39)~~ (42) “Gallon” means a unit of liquid measure as
232 customarily used in the United States containing two hundred
233 thirty-one cubic inches by volume and expresses the volume
234 at 60 degrees Fahrenheit.

235 ~~(40)~~ (43) “Gasohol” means a blended motor fuel
236 composed of gasoline and motor fuel alcohol.

237 ~~(41)~~ (44) “Gasoline” means ~~any~~ a product commonly or
238 commercially known as gasoline, regardless of classification,
239 that is advertised as, offered for sale as, sold for use as,
240 suitable for use as or used as motor fuel in an internal
241 combustion engine, including gasohol, but does not include
242 special fuel as defined in this section.

243 ~~(42)~~ (45) “Gasoline blend stocks” includes any petroleum
244 product component of gasoline, such as naphtha, reformato,
245 or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be
246 blended for use in a motor fuel. ~~However,~~ The term does not
247 include any substance that will be ultimately used for
248 consumer nonmotor fuel use and is sold or removed in drum
249 quantities of fifty-five gallons or less at the time of the
250 removal or sale.

251 (46) “Gallon equivalent” means the amount of an
252 alternative fuel that is considered to be the equivalent of a
253 gallon of gasoline according to the National Institute of
254 Standards and Technology Handbook 130 or pursuant to
255 guidelines issued by the Tax Commissioner.

256 ~~(43)~~ (47) “Gross gallons” means the total measured
257 product, exclusive of any temperature or pressure
258 adjustments, considerations or deductions, in U.S. gallons.

259 ~~(44)~~ (48) “Governmental entity” means this state or ~~any~~
260 a political subdivision thereof or the United States or its
261 commissioners, agencies and instrumentalities.

17 [Com. Sub. for Com. Sub. for S. B. No. 454

262 ~~(45)~~ (49) “Heating oil” means any combustible liquid,
263 including, but not limited to, #1 fuel oil, #2 dyed fuel oil and
264 kerosene that is burned in a boiler, furnace or stove for
265 heating or for industrial processing purposes.

266 ~~(46)~~ (50) “Highway” means every way or place of
267 whatever nature open to the use of the public for purposes of
268 vehicular travel in this state including the streets and alleys
269 in towns and cities.

270 ~~(47)~~ (51) “Highway vehicle” means any self-propelled
271 vehicle, trailer or semitrailer that is designed or used for
272 transporting persons or property over the public highway and
273 includes all vehicles subject to registration under article
274 three, chapter seventeen-a of this code.

275 ~~(48)~~ (52) “Import” means to bring motor fuel into this
276 state by motor vehicle, marine vessel, pipeline or any other
277 means. ~~However,~~ Import does not include bringing motor
278 fuel into this state in the motor fuel supply tank of a motor
279 vehicle if the motor fuel is used to power that motor vehicle.

280 ~~(49)~~ (53) “Importer” means a person that imports motor
281 fuel into this state. The seller is the importer for motor fuel
282 delivered into this state from outside of this state by or for the
283 seller and the purchaser is the importer for motor fuel
284 delivered into this state from outside of this state by or for the
285 purchaser.

286 ~~(50)~~ (54) “Import verification number” means the number
287 assigned by the commissioner ~~with respect~~ to a single
288 transport vehicle delivery into this state from another state
289 upon request for an assigned number by an importer or the
290 transporter carrying taxable motor fuel into this state for the
291 account of an importer.

292 ~~(51)~~ (55) “In this state” means the area within the borders
293 of West Virginia including all territory within the borders of
294 West Virginia that is owned by the United States of America.

295 ~~(52)~~ (56) “Invoiced gallons” means the gallons actually
296 billed on an invoice for payment.

297 ~~(53)~~ (57) “Licensee” means ~~any~~ a person licensed by the
298 commissioner pursuant to section ten of this article.

19 [Com. Sub. for Com. Sub. for S. B. No. 454

299 ~~(54)~~ (58) “Liquid” means ~~any~~ a substance that is liquid
300 above its freezing point.

301 ~~(55)~~ (59) “Liquefied natural gas” means natural gas that
302 has been liquefied at -126.1 degrees centigrade and stored in
303 insulated cryogenic tanks for use as an engine motor fuel.

304 ~~(56)~~ (60) “Motor carrier” means ~~any~~ a vehicle used,
305 designated or maintained for the transportation of persons or
306 property and having two axles and a gross vehicle weight
307 exceeding twenty-six thousand pounds or having three or
308 more axles regardless of weight or ~~is~~ used in combination
309 when the weight of the combination exceeds twenty-six
310 thousand pounds or registered gross vehicle weight, and any
311 aircraft, barge or other watercraft or railroad locomotive
312 transporting passengers or freight in or through this state:
313 *Provided*, That the gross vehicle weight rating of the vehicles
314 being towed is in excess of ten thousand pounds. The term
315 motor carrier does not include any type of recreational
316 vehicle.

317 ~~(57)~~ (61) “Motor fuel” means gasoline, blended fuel,
318 aviation fuel, ~~and~~ any special fuel and alternative fuel.

319 ~~(58)~~ (62) “Motor fuel transporter” means a person who
320 transports motor fuel outside the bulk transfer/terminal
321 system by means of a transport vehicle, a railroad tank car or
322 a marine vessel.

323 ~~(59)~~ (63) “Motor vehicle” means automobiles, motor
324 carriers, motor trucks, motorcycles and all other vehicles or
325 equipment, engines or machines which are operated or
326 propelled by combustion of motor fuel.

327 ~~(60)~~ (64) “Net gallons” means the amount of motor fuel
328 measured in gallons when adjusted to a temperature of sixty
329 degrees Fahrenheit and a pressure of fourteen and
330 seven-tenths pounds pressure per square inch.

331 ~~(61)~~ (65) “Permissive supplier” is a person who may not
332 be subject to the taxing jurisdiction of this state but who
333 meets both of the following requirements: (A) Is registered
334 under Section 4101 of the Internal Revenue Code for
335 transactions in motor fuel in the bulk transfer/terminal

21

[Com. Sub. for Com. Sub. for S. B. No. 454

336 system; and (B) a position holder in motor fuel only located
337 in another state or a person who receives motor fuel only in
338 another state pursuant to a two-party exchange: *Provided*,
339 That a person is classified as a supplier if it has or maintains,
340 occupies or uses, within this state, directly or by a subsidiary,
341 an office, distribution house, sales house, warehouse, or other
342 place of business, or any agent or representative (by whatever
343 name called) operating within this state under the authority
344 of the supplier or its subsidiary.

345 ~~(62)~~ (66) “Person” means ~~any~~ an individual, firm,
346 cooperative, association, corporation, limited liability
347 corporation, estate, guardian, executor, administrator, trust,
348 business trust, syndicate, partnership, limited partnership,
349 copartnership, organization, limited liability partnership, joint
350 venture, receiver and trustee in bankruptcy. “Person” also
351 means a club, society or other group or combination acting as
352 a unit, ~~or~~ a public body including, but not limited to, this state
353 and any other state and ~~any~~ an agency, commissioner,
354 institution, political subdivision or instrumentality of this

355 state or any other state and, also, ~~any~~ an officer, employee or
356 member of any of the foregoing who, as an officer, employee
357 or member, is under a duty to perform or is responsible for
358 the performance of an act prescribed by the provisions of this
359 article.

360 ~~(63)~~ (67) “Position holder” means the person who holds
361 the inventory position in motor fuel in a terminal as reflected
362 on the records of the terminal operator. A person holds the
363 inventory position in motor fuel when that person has a
364 contract with the terminal operator for the use of storage
365 facilities and terminaling services for motor fuel at the
366 terminal. The term includes a terminal operator who owns
367 motor fuel in the terminal.

368 ~~(64)~~ (68) “Principal” means:

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

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

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

373 (D) An individual.

23 [Com. Sub. for Com. Sub. for S. B. No. 454

374 (69) “Producer/manufacturer” means a person who
375 produces, refines, blends, distills, manufactures or
376 compounds motor fuel.

377 (70) “Provider of alternative fuel” means a person who
378 does one or more of the following:

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

381 (B) Maintains storage facilities for alternative fuel
382 including alternative-fuel home refueling infrastructures and
383 alternative-fuel commercial refueling infrastructures, part or
384 all of which the person uses or sells to someone other than an
385 alternative-fuel bulk end user or an alternative-fuel retailer to
386 operate a highway vehicle;

387 (C) Sells alternative fuel and uses part of the fuel
388 acquired for sale to operate a highway vehicle by means of a
389 fuel supply line from the cargo tank of the vehicles to the
390 engine of the vehicle;

391 (D) Imports alternative fuel into this state by a means
392 other than the usual tank or receptacle connected with the

393 engine of a highway vehicle for use by that person to operate
394 a highway vehicle.

395 ~~(65)~~ (71) “Rack” means a mechanism for delivering
396 motor fuel from a refinery, terminal, marine vessel or bulk
397 plant into a transport vehicle, railroad tank car or other means
398 of transfer that is outside the bulk transfer/terminal system.

399 ~~(66)~~ (72) “Railroad locomotive” means ~~any~~
400 diesel-powered equipment or machinery that rides on railroad
401 rails and includes a switching engine.

402 ~~(67)~~ (73) “Receive” means ~~any~~ acquisition of ownership
403 or possession of motor fuel.

404 ~~(68)~~ (74) “Refiner” means ~~any~~ a person who owns,
405 operates or otherwise controls a refinery.

406 ~~(69)~~ (75) “Refinery” means a facility for the manufacture
407 or reprocessing of finished or unfinished petroleum products
408 usable as motor fuel and from which motor fuel may be
409 removed by pipeline or marine vessel or at a rack.

410 ~~(70)~~ (76) “Removal” means a physical transfer other than
411 by evaporation, loss or destruction. A physical transfer to a

25 [Com. Sub. for Com. Sub. for S. B. No. 454

412 transport vehicle or other means of conveyance outside the
413 bulk transfer/terminal system is complete upon delivery into
414 the means of conveyance.

415 ~~(71)~~ (77) “Retailer” means a person who sells motor fuel
416 at retail or dispenses motor fuel at a retail location.

417 (78) “Retailer of alternative fuel” means a person who
418 maintains storage facilities, including alternative-fuel vehicle
419 commercial refueling infrastructure, for alternative fuel and
420 who sells the fuel at retail or dispenses the fuel at a retail
421 location to operate a motor vehicle.

422 ~~(72)~~ (79) “Special fuel” means ~~any a~~ a gas or liquid, other
423 than gasoline, used or suitable for use as motor fuel in an
424 internal combustion engine or motor to propel any form of
425 vehicle, machine, or mechanical contrivance and includes
426 products commonly known as natural or casing-head
427 gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel,
428 transmix, ~~and all forms of motor fuel commonly or~~
429 ~~commercially known or sold as butane, propane, liquefied~~

430 ~~natural gas, liquefied petroleum gas, compressed natural gas~~
431 ~~product or a combination of liquefied petroleum gas and a~~
432 ~~compressed natural gas product.~~ methanol, ethanol, methanol
433 fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and
434 any fuel mixture that contains eighty-five percent or more
435 alcohol by volume when combined with gasoline or other
436 fuels and liquid fuel derived from coal through the
437 Fischer-Tropsch process. “Special fuel” does not include
438 alternative fuel or any petroleum product or chemical
439 compound such as alcohol, industrial solvent, heavy furnace
440 oil or lubricant, unless blended in or sold for use as motor
441 fuel in an internal combustion engine.

442 ~~(73)~~ (80) “State” or “this state” means the State of West
443 Virginia.

444 ~~(74)~~ (81) “Supplier” means a person that is:

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

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

27

[Com. Sub. for Com. Sub. for S. B. No. 454

449 (C) One of the following:

450 (i) A position holder in motor fuel in a terminal or
451 refinery in this state and may concurrently also be a position
452 holder in motor fuel in another state; or

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

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

458 ~~(75)~~ (82) “Tax” or “this tax” is the motor fuel excise tax
459 imposed by this article and includes within its meaning
460 interest and additions to tax and penalties unless the context
461 requires a more limited meaning.

462 ~~(76)~~ (83) “Taxpayer” means ~~any~~ a person required to file
463 a return for the tax imposed by this article or ~~any~~ a person
464 liable for payment of the tax imposed by this article.

465 ~~(77)~~ (84) “Terminal” means a motor fuel storage and
466 distribution facility to which a terminal control number has
467 been assigned by the Internal Revenue Service, to which

468 motor fuel is supplied by pipeline or marine vessel and from
469 which motor fuel may be removed at a rack.

470 ~~(78)~~ (85) “Terminal operator” means a person who owns,
471 operates or otherwise controls a terminal.

472 ~~(79)~~ (86) “Transmix” means: (A) The buffer or interface
473 between two different products in a pipeline shipment; or (B)
474 a mix of two different products within a refinery or terminal
475 that results in an off-grade mixture.

476 ~~(80)~~ (87) “Transport vehicle” means a vehicle designed
477 or used to carry motor fuel over the highway and includes a
478 straight truck, a straight truck/trailer combination and a
479 semitrailer combination rig.

480 ~~(81)~~ (88) “Trustee” means a person who is licensed as a
481 supplier or a permissive supplier and receives tax payments
482 from and on behalf of another pursuant to section twenty-four
483 of this article.

484 ~~(82)~~ (89) “Two-party exchange” means a transaction in
485 which motor fuel is transferred from one licensed supplier or

29 [Com. Sub. for Com. Sub. for S. B. No. 454

486 permissive supplier to another licensed supplier or permissive
487 supplier pursuant to an exchange agreement; and

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

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

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

497 ~~(83)~~ (90) "Use" means the actual consumption or receipt
498 of motor fuel by ~~any~~ a person into a motor vehicle, aircraft or
499 watercraft.

500 ~~(84)~~ (91) "Watercraft" means any vehicle used on
501 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 eighteen-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

31 [Com. Sub. for Com. Sub. for S. B. No. 454
22 applicable. The tax on alternative fuel takes effect on January
23 1, 2014, with a variable component equal to five percent of
24 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 ~~any~~ 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. *Provided, That* In no event
49 shall the average wholesale price be determined to be less
50 than \$.97 per gallon of motor fuel. *Provided, however, That*
51 For calendar year 2009, the average wholesale price of motor
52 fuel shall not exceed the average wholesale price of motor
53 fuel for calendar year 2008 as determined pursuant to the
54 notice filed by the Tax Commissioner with the Secretary of
55 State on November 21, 2007, and published in the State
56 Register on November 30, 2007. *Provided further, That* On
57 and after January 1, 2010, in no event shall the average
58 wholesale price be determined to be less than \$2.34 per
59 gallon of motor fuel. *And provided further, That* On and after

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[Com. Sub. for Com. Sub. for S. B. No. 454

60 January 1, 2011, the average wholesale price shall not vary
61 by more than ten percent from the average wholesale price of
62 motor fuel as determined by the Tax Commissioner for the
63 previous calendar year. Any limitation on the average
64 wholesale price of motor fuel contained in this subsection
65 shall not be applicable to alternative fuel.

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

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

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

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

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

35 [Com. Sub. for Com. Sub. for S. B. No. 454

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

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

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

105 (3) In the event the tax due is paid to the commissioner
106 after June 1, 2004, the person remitting the tax shall pay, in
107 addition to the tax, a penalty in the amount of five percent of
108 the tax liability due.

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

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

116 gallons or more, the amount of motor fuel in dead storage is
117 four hundred gallons; or

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

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

132 (e) The Tax Commissioner shall determine by January 1,
133 2014, the gasoline gallon equivalent for each alternative fuel
134 by filing a notice of the gasoline gallon equivalent in the

37 [Com. Sub. for Com. Sub. for S. B. No. 454
135 State Register and by other means that the Tax Commissioner
136 considers reasonable. The Tax Commissioner may
137 redetermine the gasoline gallon equivalent for each
138 alternative fuel by filing a notice of the gasoline gallon
139 equivalent in the State Register at least thirty days in advance
140 of January 1 for the next succeeding tax year. For purposes
141 of this notice, the Tax Commissioner may adopt or
142 incorporate by reference provisions of the National Institute
143 of Standards and Technology, United States Department of
144 Commerce, the Internal Revenue Code, United States
145 Treasury Regulations, the Internal Revenue Service
146 publications or guidelines or other publications or guidelines
147 which may be useful in determining, setting or describing the
148 gasoline gallon equivalent for each alternative fuel used as
149 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. ~~*Provided, however, That*~~ This exemption does not
11 apply to any motor fuel which is transported and delivered
12 outside this state in the motor fuel supply tank of a highway
13 vehicle;

14 (2) Sales of aviation fuel;

15 (3) Sales of dyed special fuel; and

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

18 (b) *Per se exemptions from variable component of tax. –*

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

23 All motor fuel exported from this state to any other state
24 or nation: *Provided*, That the supplier collects and remits to
25 the destination state or nation the appropriate amount of tax
26 due on the motor fuel transported to that state or nation.
27 ~~*Provided, however, That*~~ This exemption does not apply to
28 any motor fuel which is transported and delivered outside this
29 state in the motor fuel supply tank of a highway vehicle.

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

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[Com. Sub. for Com. Sub. for S. B. No. 454

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(1) The United States or ~~any~~ agency thereof: *Provided,*

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That if the United States government, or ~~any~~ agency or

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instrumentality thereof, does not pay the seller the tax

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imposed by section five of this article on ~~any~~ a purchase of

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motor fuel, the person selling tax previously paid motor fuel

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to the United States government, or its agencies or

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instrumentalities, may ~~then~~ claim a refund of the flat rate

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component of tax imposed by ~~said~~ section five of this article

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on those sales;

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

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

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

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(5) ~~Any~~ An urban mass transportation authority created

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pursuant to the provisions of article twenty-seven, chapter

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eight of this code;

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(6) ~~Any~~ A municipal, county, state or federal civil

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defense or emergency service program pursuant to a

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government contract for use in conjunction therewith or to

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~~any person on whom is imposed a requirement~~ a person who

55 is required to maintain an inventory of motor fuel for the
56 purpose of the program: *Provided*, That motor fueling
57 facilities used for these purposes are not capable of fueling
58 motor vehicles and the person in charge of the program has
59 in his or her possession a letter of authority from the Tax
60 Commissioner certifying his or her right to the exemption.

61 ~~*Provided, however, That*~~ In order for this exemption to apply,
62 motor fuel sold under this subdivision and subdivisions (1)
63 through (5), inclusive, of this subsection shall be used in
64 vehicles or equipment owned and operated by the respective
65 government entity or government agency or authority;

66 (7) All invoiced gallons of motor fuel purchased by a
67 licensed exporter and subsequently exported from this state
68 to any other state or nation: *Provided*, That the exporter has
69 paid the applicable motor fuel tax to the destination state or
70 nation prior to claiming this refund or the exporter has
71 reported to the destination state or nation that the motor fuel
72 was sold in a transaction not subject to tax in that state or
73 nation. ~~*Provided, however, That*~~ A refund may not be

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[Com. Sub. for Com. Sub. for S. B. No. 454

74 granted on ~~any~~ motor fuel which is transported and delivered
75 outside this state in the motor fuel supply tank of a highway
76 vehicle;

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

79 (9) All gallons of ~~special~~ fuel used for heating any public
80 or private dwelling, building or other premises;

81 (10) All gallons of ~~special~~ fuel used for boilers;

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

84 (12) All gallons of motor fuel used as lubricants,
85 ingredients or components of ~~any~~ a manufactured product or
86 compound;

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

89 (14) All gallons of ~~special~~ motor fuel sold for use or
90 consumed in railroad diesel locomotives;

91 (15) All gallons of motor fuel purchased in quantities of
92 twenty-five gallons or more for use as a motor fuel for

93 internal combustion engines not operated upon highways of
94 this state;

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

106 (17) Motor fuel used by ~~any~~ a person regularly operating
107 ~~any~~ a vehicle under a certificate of public convenience and
108 necessity or under a contract carrier permit for transportation
109 of persons when purchased in an amount of twenty-five
110 gallons or more: *Provided*, That the amount refunded is
111 equal to \$0.6 per gallon: *Provided, however*, That the

45 [Com. Sub. for Com. Sub. for S. B. No. 454

112 gallons of motor fuel have been consumed in the operation of
113 urban and suburban bus lines and the majority of passengers
114 use the bus for traveling a distance not exceeding forty miles,
115 measured one way, on the same day between their places of
116 abode and their places of work, shopping areas or schools;
117 and

118 (18) All gallons of motor fuel that are not otherwise
119 exempt under subdivisions (1) through (6), inclusive, of this
120 subsection and that are purchased and used by any bona fide
121 volunteer fire department, nonprofit ambulance service or
122 emergency rescue service that has been certified by the
123 municipality or county wherein the bona fide volunteer fire
124 department, nonprofit ambulance service or emergency
125 rescue service is located.

126 (d) *Refundable exemptions from variable rate component*
127 *of tax.* – Any of the following persons may claim an
128 exemption from the variable rate component of the tax levied
129 by section five of this article on the purchase and use of

130 motor fuel by first paying the tax levied by this article and
131 then applying to the Tax Commissioner for a refund.

132 (1) The United States or ~~any~~ agency thereof: *Provided,*
133 That if the United States government, or ~~any~~ agency or
134 instrumentality thereof, does not pay the seller the tax
135 imposed by section five of this article on any purchase of
136 motor fuel, the person selling tax previously paid motor fuel
137 to the United States government, or its agencies or
138 instrumentalities, may ~~then~~ claim a refund of the variable rate
139 of tax imposed by ~~said~~ section five of this article on those
140 sales.

141 (2) This state and its institutions;

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

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

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

145 (6) ~~Any~~ An urban mass transportation authority created

146 pursuant to the provisions of article twenty-seven, chapter

147 eight of this code;

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[Com. Sub. for Com. Sub. for S. B. No. 454

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(7) ~~Any~~ A municipal, county, state or federal civil

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defense or emergency service program pursuant to a

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government contract for use in conjunction therewith, or to

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~~any person on whom is imposed a requirement~~ a person who

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is required to maintain an inventory of motor fuel for the

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purpose of the program: *Provided*, That fueling facilities

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used for these purposes are not capable of fueling motor

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vehicles and the person in charge of the program has in his or

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her possession a letter of authority from the Tax

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Commissioner certifying his or her right to the exemption;

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(8) ~~Any~~ A bona fide volunteer fire department, nonprofit

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ambulance service or emergency rescue service that has been

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certified by the municipality or county ~~wherein~~ where the

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bona fide volunteer fire department, nonprofit ambulance

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service or emergency rescue service is located; or

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(9) All invoiced gallons of motor fuel purchased by a

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licensed exporter and subsequently exported from this state

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to any other state or nation: *Provided*, That the exporter has

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paid the applicable motor fuel tax to the destination state or

167 nation prior to claiming this refund. ~~Provided, however, That~~
168 A refund may not be granted on any motor fuel which is
169 transported and delivered outside this state in the motor fuel
170 supply tank of a highway vehicle.

171 (e) The provision in subdivision (9), subsection (a),
172 section nine, article fifteen of this chapter that exempts as a
173 sale for resale those sales of gasoline and special fuel by a
174 distributor or importer to another distributor does not apply
175 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;

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[Com. Sub. for Com. Sub. for S. B. No. 454

9 (6) A blender;

10 (7) A motor fuel transporter; ~~or~~

11 (8) A distributor;

12 (9) A producer/manufacturer;

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) ~~There shall be filed with~~ Along with an application for
2 a license required by section eleven of this article, either a
3 cash bond or a continuous surety bond in the amount or
4 amounts specified in this section shall be filed. ~~Provided,~~
5 ~~That~~ If a person has filed applications for licenses for more
6 than one activity, the commissioner may combine the amount
7 of the cash bond or continuous surety bond required for each

8 licensed activity into one amount that shall be no less than
9 the largest amount required for any of those activities for
10 which the license applications are filed. *Provided, however,*
11 ~~That~~ If a continuous surety bond is filed, an annual notice of
12 renewal shall be filed thereafter. *Provided further,* ~~That~~ If
13 the continuous surety bond includes the requirements that the
14 commissioner is to be notified of cancellation at least sixty
15 days prior to the continuous surety bond being canceled, an
16 annual notice of renewal is not required. The bond, whether
17 a cash bond or a continuous surety bond, ~~shall be~~ is
18 conditioned upon compliance with the requirements of this
19 article, ~~be~~ payable to this state and ~~be~~ in the form required by
20 the commissioner. The amount of the bond is as follows:

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

51 [Com. Sub. for Com. Sub. for S. B. No. 454

27 comply with the commissioner's notification within thirty
28 days after receiving that notification;

29 (2) For a permissive supplier license, the amount shall be
30 a minimum of \$100,000 or an amount equal to three months'
31 tax liability, whichever is greater, *Provided, That the amount*
32 but shall not exceed \$2 million. *Provided, however, That*

33 When required by the commissioner to file a cash bond or a
34 continuous surety bond in an additional amount, the licensee
35 shall comply with the commissioner's notification within
36 thirty days after receiving that notification;

37 (3) For a terminal operator license, the amount shall be a
38 minimum of \$100,000 or an amount equal to three months'
39 tax liability, whichever is greater, *Provided, That the amount*
40 but shall not exceed \$2 million. *Provided, however, That*

41 When required by the commissioner to file a cash bond or a
42 continuous surety bond in an additional amount, the licensee
43 shall comply with the commissioner's notification within
44 thirty days after receiving that notification;

45 (4) For an importer license for a person, other than a
46 supplier, that imports by transport vehicle or another means
47 of transfer outside the bulk transfer/terminal system motor
48 fuel removed from a terminal located in another state in
49 which: (A) The state from which the motor fuel is imported
50 does not require the seller of the motor fuel to collect a motor
51 fuel excise tax on the removal either at that state's rate or the
52 rate of the destination state; and (B) the seller of the motor
53 fuel is not a permissive supplier, the amount shall be a
54 minimum of \$100,000 or an amount equal to three months'
55 tax liability, whichever is greater, ~~Provided, That the amount~~
56 but shall not exceed \$2 million. ~~Provided, however, That~~
57 When required by the commissioner to file a cash bond or a
58 continuous surety bond in an additional amount, the licensee
59 shall comply with the commissioner's notification within
60 thirty days after receiving that notification;

61 (5) For an importer license for a person that imports by
62 transport vehicle or another means outside the bulk
63 transfer/terminal system motor fuel removed from a terminal

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[Com. Sub. for Com. Sub. for S. B. No. 454

64 located in another state in which: (A) The state from which
65 the motor fuel is imported requires the seller of the motor
66 fuel to collect a motor fuel excise tax on the removal either
67 at that state's rate or the rate of the destination state; or (B)
68 the seller of the motor fuel is a permissive supplier, the
69 amount shall be a minimum of \$2,000 or an amount equal to
70 three months' tax liability, whichever is greater, *Provided*,
71 ~~That the amount~~ but shall not exceed \$300,000. *Provided*,
72 ~~however, That~~ When required by the commissioner to file a
73 cash bond or a continuous surety bond in an additional
74 amount, the licensee shall comply with the commissioner's
75 notification within thirty days after receiving that
76 notification;

77 (6) For a license as both a distributor and an importer as
78 described in subdivision (4) of this subsection, the amount
79 shall be a minimum of \$100,000 or an amount equal to three
80 months' tax liability, whichever is greater, *Provided*, ~~That the~~
81 ~~amount~~ but shall not exceed \$2 million. *Provided*, ~~however~~,
82 ~~That~~ When required by the commissioner to file a cash bond

83 or a continuous surety bond in an additional amount, the
84 licensee shall comply with the commissioner's notification
85 within thirty days after receiving that notification;

86 (7) For a license as both a distributor and an importer as
87 described in subdivision (5) of this subsection, the amount
88 shall be a minimum of \$2,000 or an amount equal to three
89 months' tax liability, whichever is greater, *Provided, That the*
90 ~~amount~~ but shall not exceed \$300,000. *Provided, however,*
91 ~~That~~ When required by the commissioner to file a cash bond
92 or a continuous surety bond in an additional amount, the
93 licensee shall comply with the commissioner's notification
94 within thirty days after receiving that notification;

95 (8) For an exporter license, the amount shall be a
96 minimum of \$2,000 or an amount equal to three months' tax
97 liability, whichever is greater, *Provided, That the amount* but
98 shall not exceed \$300,000. *Provided, however, That* When
99 required by the commissioner to file a cash bond or a
100 continuous surety bond in an additional amount, the licensee

55 [Com. Sub. for Com. Sub. for S. B. No. 454

101 shall comply with the commissioner's notification within
102 thirty days after receiving that notification;

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

111 (10) For a distributor license, the amount shall be a
112 minimum of \$2,000 or an amount equal to three months' tax
113 liability, whichever is greater, *Provided, That the amount but*
114 shall not exceed \$300,000. *Provided, however, That* When
115 required by the commissioner to file a cash bond or a
116 continuous surety bond in an additional amount, the licensee
117 shall comply with the commissioner's notification within
118 thirty days after receiving that notification;

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

121 (12) For a producer/manufacturer license, there is no
122 bond. If the taxpayer fails to file a return or remit tax due
123 under this article, the commissioner may require a cash bond
124 or a continuous surety bond in an amount to be determined
125 by the commissioner. When required by the commissioner to
126 file a cash bond or a continuous surety bond, the licensee
127 shall comply with the commissioner's notification within
128 thirty days after receiving that notification;

129 (13) For an alternative-fuel bulk end user, a provider of
130 alternative fuel and a retailer of alternative fuel, there is no
131 bond. If the taxpayer fails to file a return or remit tax due
132 under this article, the commissioner may require a cash bond
133 or a continuous surety bond in an amount to be determined
134 by the commissioner. When required by the commissioner
135 to file a cash bond or a continuous surety bond, the licensee
136 shall comply with the commissioner's notification within
137 thirty days after receiving that notification; and

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[Com. Sub. for Com. Sub. for S. B. No. 454

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~~(12)~~ (14) An applicant for a licensed activity listed under

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subdivisions (1) through (10), inclusive, of this subsection

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may, in lieu of posting either the cash bond or continuous

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surety bond required by this subsection, provide proof of

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financial responsibility acceptable to the commissioner.

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~~Provided, That~~ The proof of financial responsibility ~~shall~~

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must demonstrate the absence of circumstances indicating

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risk with the collection of taxes from the applicant.

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~~Provided, however, That the following shall constitute~~ The

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following constitutes proof of financial responsibility:

148

(A) Proof of \$5 million net worth ~~shall constitute~~

149

constitutes evidence of financial responsibility in lieu of

150

posting the required bond;

151

(B) Proof of \$2,500,000 net worth constitutes financial

152

responsibility in lieu of posting fifty percent of the required

153

bond; and

154

(C) Proof of \$1,250,000 net worth constitutes financial

155

responsibility in lieu of posting twenty-five percent of the

156 required bond. Net worth is calculated on a business, not
157 individual basis.

158 ~~(13)~~ (15) In lieu of providing either cash bond, a
159 continuance surety bond or proof of financial responsibility
160 acceptable to the commissioner, an applicant for a licensed
161 activity listed under this subsection that has established with
162 the state tax division a good filing record that is accurate,
163 complete and timely for the preceding eighteen months shall
164 be granted a waiver of the requirement to file either a cash
165 bond or continuance surety bond. ~~Provided, That~~ When a
166 licensee that has been granted a waiver of the requirement to
167 file a bond violates a provision of this article, the licensee
168 shall file the applicable bond as stated in this subsection.

169 ~~(14)~~ (16) Any A licensee who disagrees with the
170 commissioner's decision requiring new or additional security
171 may seek a hearing by filing a petition with the Office of Tax
172 Appeals in accordance with the provisions of section nine,
173 article ten-a of this chapter. ~~Provided, That~~ The hearing shall

59

[Com. Sub. for Com. Sub. for S. B. No. 454

174 be provided within thirty days after receipt by the office of
175 tax appeals of the petition. ~~for the hearing.~~

176 (b) The surety must be authorized under article nineteen,
177 chapter thirty-three of this code to engage in business of
178 transacting surety insurance within this state. The cash bond
179 and the continuous surety bond are conditioned upon faithful
180 compliance with the provisions of this article, including the
181 filing of the returns and payment of all tax prescribed by this
182 article. The cash bond and the continuous surety bond shall
183 be approved by the commissioner as to sufficiency and form
184 and shall indemnify the state against ~~any~~ loss arising from the
185 failure of the taxpayer to pay, for any cause whatever, the
186 motor fuel excise tax levied by this article.

187 (c) ~~Any~~ Surety on a continuous surety bond furnished
188 hereunder ~~shall be~~ is relieved, released and discharged from
189 all liability accruing on the bond after the expiration of sixty
190 days from the date the surety shall have lodged, by certified
191 mail, with the commissioner, a written request to be
192 discharged. Discharge from the continuous surety bond ~~shall~~

193 does not relieve, release or discharge the surety from liability
194 already accrued or which ~~shall~~ will accrue before the
195 expiration of the sixty-day period. Whenever ~~any~~ a surety
196 seeks discharge as herein provided, it is the duty of the
197 principal of the bond to supply the commissioner with
198 another continuous surety bond or a cash bond prior to the
199 expiration of the original bond. Failure to provide a new
200 continuous surety bond or a cash bond shall result in the
201 commissioner canceling each license and registration
202 previously issued to the person.

203 (d) ~~Any~~ A taxpayer that has furnished a cash bond
204 hereunder ~~shall be~~ is relieved, released and discharged from
205 all liability accruing on the cash bond after the expiration of
206 sixty days from the date the taxpayer shall have lodged, by
207 certified mail, with the commissioner, a written request to be
208 discharged and the amount of the cash bond refunded.
209 ~~Provided, That~~ The commissioner may retain all or part of
210 the cash bond until ~~such time as the commissioner may~~
211 ~~perform~~ the commissioner performs an audit of the

61 [Com. Sub. for Com. Sub. for S. B. No. 454
212 taxpayer's business or three years, whichever first occurs.
213 Discharge from the cash bond shall not relieve, release or
214 discharge the taxpayer from liability already accrued or
215 which ~~shall~~ will accrue before the expiration of the sixty-day
216 period. Whenever ~~any~~ a taxpayer seeks discharge as herein
217 provided, it is the duty of the taxpayer to provide the
218 commissioner with another cash bond or a continuous surety
219 bond prior to the expiration of the original cash bond.
220 Failure to provide either a new cash bond or a continuous
221 surety bond shall result in the commissioner canceling each
222 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. ~~Provided, That~~ The commissioner may

6 require all or certain taxpayers to file tax returns and
7 payments electronically. The return required by the
8 commissioner shall accompany the payment of tax.
9 ~~Provided, however, That~~ If no tax is due, the return required
10 by the commissioner shall be completed and filed before the
11 last day of the calendar month for the preceding 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; ~~and~~

22 (8) An exporter; and

23 (9) A producer/manufacturer.

63

[Com. Sub. for Com. Sub. for S. B. No. 454

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

ARTICLE 15. CONSUMER 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 and alternative fuel subject to the flat rate of the
3 tax imposed by section five, article fourteen-c of this chapter,
4 are subject to the tax imposed by this article ~~which shall~~

5 ~~comprise~~ and comprises the variable component of the tax
6 imposed by ~~said~~ section five, article fourteen-c of this chapter
7 and ~~be~~ is collected and remitted at the time the tax imposed
8 by said section is remitted. Sales of motor fuel and
9 alternative fuel upon which the tax imposed by this article
10 has been paid ~~shall not thereafter be~~ is not again taxed under
11 the provisions of this article. This section ~~is construed so~~
12 means that all gallons of motor fuel and equivalent gallons of
13 alternative fuel sold and delivered or delivered in this state
14 are taxed one time.

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

17 On sales of motor fuel, ~~is~~ the average wholesale price as
18 defined and determined in section five, article fourteen-c of
19 this chapter. For purposes of maintaining revenue for
20 highways, and recognizing that the tax imposed by this
21 article is generally imposed on gross proceeds from sales to
22 ultimate consumers, whereas the tax on motor fuel herein is
23 imposed on the average wholesale price of the motor fuel; in

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[Com. Sub. for Com. Sub. for S. B. No. 454

24 no case, for the purposes of taxation under this article, ~~shall~~
25 may the average wholesale price be determined to be less
26 than \$.97 per gallon of motor fuel for all gallons of motor
27 fuel sold during the reporting period, notwithstanding any
28 provision of this article to the contrary. ~~Provided, That~~ On
29 and after January 1, 2010, for the purpose of taxation under
30 this article, in no case ~~shall~~ may the average wholesale price
31 be determined to be less than \$2.34 per gallon of motor fuel
32 for all gallons of motor fuel sold during the reporting period
33 notwithstanding any provision of this article to the contrary.
34 Any limitation on the average wholesale price of motor fuel
35 contained in this subsection shall not be applicable to
36 alternative fuel.

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

40 (c) *Definitions.* – For purposes of this article, the terms
41 “gasoline” and “special fuel” and “alternative fuel” are
42 defined as provided in section two, article fourteen-c of this

43 chapter. Other terms used in this section have the same
44 meaning as when used in a similar context in said article.

45 (d) *Tax return and tax due.* –

46 (1) The tax imposed by this article on sales of motor fuel
47 shall be paid by each taxpayer on or before the last day of the
48 calendar month by check, bank draft, certified check or
49 money order payable to the Tax Commissioner for the
50 amount of tax due for the preceding month notwithstanding
51 any provision of this article to the contrary. ~~Provided, That~~
52 The commissioner may require all or certain taxpayers to file
53 tax returns and payments electronically. The return required
54 by the commissioner shall accompany the payment of tax.
55 ~~Provided, however, That~~ If no tax is due, the return required
56 by the commissioner shall be completed and filed on or
57 before the last day of the month.

58 (2)(A) For the calendar years beginning January 1, 2014,
59 through and including the calendar year ending December
60 31, 2020, the tax imposed by this article on sales of
61 alternative fuel subject to tax at the point of imposition

67 [Com. Sub. for Com. Sub. for S. B. No. 454
62 prescribed in section six-a, article fourteen-c, of this chapter,
63 shall be paid by each taxpayer annually on or before January
64 31 of every year by check, bank draft, certified check or
65 money order payable to the Tax Commissioner for the
66 amount of tax due for the preceding calendar year
67 notwithstanding any provision of this article to the contrary.
68 The commissioner may require all or certain taxpayers to file
69 tax returns and payments electronically. The return required
70 by the commissioner shall accompany the payment of tax. If
71 no tax is due, the return required by the commissioner shall
72 be completed and filed on or before January 31.

73 (B) For the calendar year beginning January 1, 2021, and
74 thereafter, the tax imposed by this article on sales of
75 alternative fuel subject to tax at the point of imposition
76 prescribed in section six-a, article fourteen-c, of this chapter,
77 shall be paid by each taxpayer annually on or before January
78 31 of every year by check, bank draft, or money order
79 payable to the commissioner for the amount of tax due. The
80 commissioner may require all or certain taxpayers to file tax

81 returns and payments electronically. The return required by
82 the commissioner shall accompany the payment of tax. If no
83 tax is due, the return required by the commissioner shall be
84 completed and filed on or before January 31.

85 (e) *Compliance.* – To facilitate ease of administration and
86 compliance by taxpayers, the Tax Commissioner shall require
87 persons liable for the tax imposed by this article on sales of
88 motor fuel to file a combined return and make a combined
89 payment of the tax due under this article on sales of motor
90 fuel and the tax due under article fourteen-c of this chapter
91 on motor fuel. In order to encourage use of a combined
92 return each month and the making of a single payment each
93 month for both taxes, the due date of the return and tax due
94 under ~~said~~ article fourteen-c of this chapter is the last day of
95 each month notwithstanding any provision in said article to
96 the contrary. The Tax Commissioner may prescribe
97 reporting and payment requirements for tax due under this
98 article on alternative fuel which accommodate the due dates
99 and requirements prescribed in this article and article

69

[Com. Sub. for Com. Sub. for S. B. No. 454

100 fourteen-c of this chapter, either under a separate return and
101 payment or a combined return and payment, within the
102 discretion of the Tax Commissioner.

103 (f) *Dedication of tax.* – All tax collected under the
104 provisions of this section, after deducting the amount of ~~any~~
105 refunds lawfully paid, shall be deposited in the road fund in
106 the State Treasurer’s office and used only for the purpose of
107 construction, reconstruction, maintenance and repair of
108 highways and payment of principal and interest on state
109 bonds issued for highway purposes. *Provided,* ~~That~~
110 Notwithstanding any provision to the contrary, ~~any~~ tax
111 collected on the sale of aviation fuel after deducting the
112 amount of ~~any~~ refunds lawfully paid shall be deposited in the
113 State Treasurer’s office and transferred to the State
114 Aeronautical Commission to be used for the purpose of
115 matching federal funds available for the reconstruction,
116 maintenance and repair of public airports and airport
117 runways.

118 (g) *Construction.* – This section is ~~not construed as taxing~~
119 ~~any~~ does not tax a sale of motor fuel which this state is
120 prohibited from taxing under the constitution of this state or
121 the constitution or laws of the United States.

122 (h) *Effective date.* – The provisions of this section take
123 effect on January 1, 2004. The provisions of this section
124 enacted during the 2007 legislative session take effect on
125 January 1, 2008.

126 The provisions of this section enacted during the 2013
127 regular legislative session take effect on 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, ~~all~~ 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 ~~shall comprise~~ comprises the
7 variable component of the tax imposed by ~~the said~~ section

71

[Com. Sub. for Com. Sub. for S. B. No. 454

8 five, article fourteen-c, and shall be collected and remitted at
9 the time the tax imposed by ~~the said~~ section five, article
10 fourteen-c is remitted. *Provided, That* The amount of tax due
11 under this article shall ~~in no event~~ not be less than five
12 percent of the average wholesale price of motor fuel as
13 determined in accordance with said section five, article
14 fourteen-c.

15 (2) *On purchases out-of-state subject to motor fuel tax. –*

16 Effective January 1, 2004, an excise tax is ~~hereby~~ imposed on
17 the importation into this state of motor fuel purchased outside
18 this state when the purchase is subject to the flat rate of the
19 tax imposed by section five, article fourteen-c of this chapter.

20 *Provided, That* The rate of the tax due under this article shall
21 ~~in no event~~ not be less than five percent of the average
22 wholesale price of the motor fuel, as determined in
23 accordance with said section five, article fourteen-c.

24 *Provided, however, That* The motor fuel subject to the tax
25 imposed by this article ~~shall comprise~~ comprises the variable
26 component of the tax imposed by ~~the said~~ section five, article

27 fourteen-c, and shall be collected and remitted by the seller
28 at the time the seller remits the tax imposed by the said
29 section five, article fourteen-c.

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

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

73 [Com. Sub. for Com. Sub. for S. B. No. 454
46 fuel is subject to the tax imposed by this article and
47 comprises the variable component of the tax imposed by the
48 section five, article fourteen-c of this chapter and shall be
49 collected and remitted at the time the tax imposed by section
50 five, article fourteen-c of this chapter is remitted. The
51 amount of tax due under this article shall not be less than five
52 percent of the average wholesale price of alternative fuel as
53 determined in accordance with section five, article fourteen-c
54 of this chapter.

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

60 (c) *Computation of tax due from motor carriers.* – Every
61 person who operates or causes to be operated a motor carrier
62 in this state shall pay the tax imposed by this section on the
63 average wholesale price of all gallons or equivalent gallons

64 of motor fuel used in the operation of ~~any~~ a motor carrier
65 within this state, under the following rules:

66 (1) The total amount of motor fuel used in the operation
67 of the motor carrier within this state is that proportion of the
68 total amount of motor fuel used in ~~any~~ a motor carrier's
69 operations within and without this state, that the total number
70 of miles traveled within this state bears to the total number of
71 miles traveled within and without this state.

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

79 (3) Next, the taxpayer shall determine the total tax paid
80 under article fifteen of this chapter on all motor fuel
81 purchased in this state for use in the operation of the motor
82 carrier.

75

[Com. Sub. for Com. Sub. for S. B. No. 454

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

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

102 Commissioner requires. The tax due under this article
103 comprising the variable component of the tax due under
104 article fourteen-c of this chapter on alternative fuel, is due
105 and shall be collected and remitted at the time the tax
106 imposed by section five, article fourteen-c of this chapter is
107 due, collected and remitted.

108 (e) *Compliance.* -- To facilitate ease of administration
109 and compliance by taxpayers, the Tax Commissioner shall
110 require motor carriers liable for the taxes imposed by this
111 article on the use of motor fuel in the operation of motor
112 carriers within this state, and the tax imposed by article
113 fourteen-a of this chapter on such gallons of motor fuel, to
114 file a combined return and make a combined payment of the
115 tax due under this article and article fourteen-a of this chapter
116 on the fuel. In order to encourage use of a combined return
117 and the making of a single payment each quarter for both
118 taxes, the due date of the return and tax due under article
119 fourteen-a of this chapter is the last day of January, April,
120 July and October of each calendar year: Provided, That the

77

[Com. Sub. for Com. Sub. for S. B. No. 454

121 Tax Commissioner may prescribe reporting and payment
122 requirements for tax due under this article on alternative fuel
123 which accommodate the due dates and requirements
124 prescribed in this article and article fourteen-c of this chapter,
125 either under a separate return and payment or a combined
126 return and payment, within the discretion of the Tax
127 Commissioner.

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

135 (g) *Construction.* – The tax imposed by this article on the
136 use of motor fuel in this state ~~is not construed as taxing any~~
137 does not tax motor fuel which the state is prohibited from
138 taxing under the Constitution of this state or the Constitution
139 or laws of the United States.

140 (h) *Effective date.* – The provisions of this section take
141 effect January 1, 2004. The provisions of this section
142 enacted during the 2013 legislative session take effect on
143 January 1, 2014.