WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4827

FISCAL NOTE

By Delegates Ellington, Toney, and Statler

[Introduced January 17, 2024; Referred

to the Committee on Technology and Infrastructure

then Finance]

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A BILL to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating
 to the motor fuel excise tax; and removing the variable rate component.

Be it enacted by the Legislature of West Virginia:

	ARTICLE	14C.	MOTOR	FUEL	EXCISE	TAX.
	§11-14C-5.		Taxes		levied;	rate.
	(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to					
2	\$.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent. plus a variable					
5	component compris	sed of:				

4 (1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, 5 article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this 6 chapter, as applicable. The variable component shall be equal to five percent of the average 7 wholesale price of the motor fuel: Provided, That on and after January 1, 2010, the average wholesale price shall be no less than \$2.34 per invoiced gallon and is computed as hereinafter 8 9 prescribed in this section: Provided, however, That on and after July 1, 2017, the average 10 wholesale price of motor fuel may not be determined to be less than \$3.04 per invoiced gallon for 11 all gallons of motor fuel sold during the reporting period notwithstanding any provision of this code 12 to the contrary and on and after July 1, 2017, the tax per gallon may not be less than 15.2 cents per 13 gallon of motor fuel; and

(2) On alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this
chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable.
The variable component of the tax on alternative fuel shall be equal to five percent of the average
wholesale price of the alternative fuel

(b) Determination of average wholesale price. —

(1) To simplify determining the average wholesale price of all motor fuel, the Tax
Commissioner shall, effective with the period beginning the first day of the month of the effective
date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel

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for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least 30 days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by other means as the Tax Commissioner considers reasonable.

27 (2) The "average wholesale price" means the single, statewide average per gallon 28 wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal 29 excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as 30 determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and 31 32 retailers of alternative fuel in this state, or other information regarding wholesale selling prices as 33 the Tax Commissioner may gather or a combination of information. On and after January 1, 2010, 34 in no event shall may the average wholesale price be determined to be less than \$2.34 per gallon 35 of motor fuel: Provided, That on and after July 1, 2017, the average wholesale price may not be 36 determined to be less than \$3.04 per gallon of motor fuel. On and after January 1, 2011, the 37 average wholesale price shall may not vary by more than 10 percent from the average wholesale 38 price of motor fuel as determined by the Tax Commissioner for the previous calendar year: 39 Provided, however, That in no case shall may the average wholesale price of motor fuel be 40 determined to be less than \$3.04 per invoiced gallon. Any limitation on the average wholesale 41 price of motor fuel contained in this subsection shall may not be applicable to alternative fuel.

42 (3) All actions of the Tax Commissioner in acquiring data necessary to establish and 43 determine the average wholesale price of motor fuel, in providing notification of his or her 44 determination prior to the effective date of a change in rate, and in establishing and determining 45 the average wholesale price of motor fuel may be made by the Tax Commissioner without 46 compliance with the provisions of §29A-31 *et seq.* of this code.

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(4) In an administrative or court proceeding brought to challenge the average wholesale

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48 price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed
49 to be correct and shall may not be set aside unless it is clearly erroneous.

50 (c) Every licensee who, on the effective date of any rate change, has in inventory any 51 motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical 52 inventory and file a report thereof with the commissioner, in the format as required by the 53 commissioner, within 30 days after the effective date of the rate change, and shall pay to the 54 commissioner at the time of filing the report any additional tax due under the increased rate.

55 (d) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State 56 57 Register and by other means that the Tax Commissioner considers reasonable. The Tax 58 Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a 59 notice of the gasoline gallon equivalent in the State Register at least 30 days in advance of 60 January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner 61 may adopt or incorporate by reference provisions of the National Institute of Standards and Technology, United States Department of Commerce, the Internal Revenue Code, United States 62 63 Treasury Regulations, the Internal Revenue Service publications or guidelines or other 64 publications or guidelines which may be useful in determining, setting or describing the gasoline 65 gallon equivalent for each alternative fuel used as motor fuel.

(e) Effective date. — The amendments to this section enacted during the first extraordinary
session of 2017 shall take effect on July 1, 2017.

NOTE: The purpose of this bill is to remove the variable gas tax rate.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

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