

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

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2015 JUL -8 A 8:30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Interpretive CITE AUTHORITY: W.Va. Code 11-10-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____


IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14C

TITLE OF RULE BEING PROPOSED: Motor Fuel Excise Tax

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 13, 2015 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Legal Division
State Tax Department
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


7-1-15
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 110
INTERPRETIVE RULE
STATE TAX DIVISION**

**SERIES 14C
MOTOR FUEL EXCISE TAX**

**STATEMENT OF CIRCUMSTANCE
THAT REQUIRE THE PROPOSED RULE**

Clarification was necessary to help taxpayers comply with the Motor Fuel Excise Tax requirements set forth by *W.Va. Code* §§11-14C-1 et al, 11-15-18b and 11-15A-13a.

Specifically, this interpretive rule explains and clarifies the Motor Fuel Excise Tax and sets forth the method to calculate the variable component of the Motor Fuel Excise Tax for conventional and alternative motor fuels. This rule also addresses licensure and bonding requirements, reports and payment of tax, floorstock reporting, and refunds.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Motor Fuel Excise Tax

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Tax Department

Address: 1001 Lee Street, East
Charleston, WV 25301

Phone Number: 304-558-5330 Email: Mark.S.Morton@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule sets forth the method to calculate the variable component of the Motor Fuel Excise Tax for conventional and alternative motor fuels. This rule addresses licensure and bonding requirements, reports and payment of the tax, floorstock reporting, and refunds.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Motor Fuel Excise Tax

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There are no costs associated with the Motor Fuel Excise Tax Interpretative Rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

- A. Economic Impact on State Government.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.
- C. Economic Impact on Citizens/Public at Large.

Date: 06/29/2015

Signature of Agency Head or Authorized Representative

T. B. M.

TITLE 110
INTERPRETIVE RULE
STATE TAX DEPARTMENT

SERIES 14C
MOTOR FUEL EXCISE TAX

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§110-14C-1. General.

1.1. Scope. – This interpretive rule explains and clarifies the Motor Fuel Excise Tax, set forth in W. Va. Code §§11-14C-1 *et seq.*, 11-15-18b and 11-15A-13a. The rule sets forth the method to calculate the variable component of the Motor Fuel Excise Tax for conventional and alternative motor fuels. This rule addresses licensure and bonding requirements, reports and payment of the tax, floorstock reporting, and refunds.

1.2. Authority. – W. Va. Code §11-10-5.

1.3. Filing Date. – July 08, 2015

1.4. Effective Date. – October 1, 2015

§110-14C-2. Definitions.

Unless the context in which a term is used clearly requires a different meaning, the definitions contained in W. Va. Code §11-14C-1 *et seq.* (acts 2013) apply to this rule.

§110-14C-3. Motor Fuel Excise Tax

3.1. The motor fuel excise tax is composed of a flat rate of \$.205 per invoiced gallon plus the variable component.

3.1.a. The variable component of the motor fuel excise tax is determined by multiplying the average wholesale price by 5.0 percent (5%).

3.1.b. The average wholesale price is determined using the formula set forth in §110-14C-4.

3.2. The Tax Commissioner determines the gasoline gallon equivalent for alternative fuel used as motor fuel.

3.2.a. The gasoline gallon equivalent is published in the State Register and as an Administrative Notice on the Tax Department's website.

3.2.b. The Tax Commissioner has discretion to redetermine the gasoline gallon equivalent of alternative fuels. Any future redetermination will be published in the State Register and as an Administrative Notice 30 days prior to January 1st.

§110-14C-4. Determination of the average wholesale price of motor fuel.

4.1. An average wholesale price is determined for each of the following type of motor fuel: conventional motor fuel (gasoline, diesel, and kerosene), compressed natural gas (CNG); liquefied natural gas (LNG); liquefied petroleum gas (LPG - propane) and field gas.

4.1.a. The average wholesale price is rounded to the third decimal (thousandth of a cent) and does not include federal or state excise taxes.

4.1.b. The average wholesale price is applicable to each calendar year and is based on data from the preceding July 1 through October 31 review period.

4.1.c. Where price or consumption information for some portion of the July 1 through October 31 review period is not timely available, an average for the three previous years is used for the missing portion. If no relevant consumption information is available, then a unit value of one is used.

4.1.d. The wholesale price of each type of motor fuel is weighted by the consumption of each type of motor fuel.

4.1.e. The average wholesale price of motor fuel for the next calendar year will be published in the State Register and as an Administrative Notice on the Tax Department's website 30 days prior to January 1.

4.1.f. The determination of the wholesale price of motor fuel by the Tax Commissioner is presumed to be correct in any administrative proceeding.

4.2. Sources of information used in determining the average wholesale price are at the discretion of the Tax Commissioner.

4.2.a. Price information used in the determination of the average wholesale price is at the discretion of the Tax Commissioner. The source of the price will be published in the Administrative Notice which sets the average wholesale price.

4.2.b. Consumption information, where available, is obtained from motor fuel excise tax returns or other sources at the discretion of the Tax Commissioner.

4.2.b.1. Gasoline consumption information by grade (regular, midgrade, and premium) is obtained from the U.S. Energy Information Administration (EIA).

4.3. Average wholesale price calculation.

4.3.a. The consumption of motor fuel is calculated as follows:

4.3.a.1. This paragraph applies only to gasoline. The consumption of gasoline by month is calculated for each grade of gasoline by multiplying monthly gasoline consumption from motor fuel excise tax returns by the gasoline grade ratio obtained from EIA information. Algebraically,

$$GGR_{gg,m} = EIA_{gg,m} / (EIAR_m + EIAM_m + EIAP_m)$$

$$C_{gg,m} = MFTG_m \times GGR_{gg,m}$$

Where:

gg = gasoline grade (regular, midgrade, premium)

m = month (July, August, September, October)

$GGR_{gg,m}$ = Gasoline Ratio for gasoline grade (gg) and month (m)

$EIA_{gg,m}$ = Energy Information Administration consumption for gasoline grade (gg) and month (m)

$EIAR_m$ = Energy Information Administration consumption for regular gasoline

$EIAM_m$ = Energy Information Administration consumption for midgrade gasoline

$EIAP_m$ = Energy Information Administration consumption for premium gasoline

$C_{gg,m}$ = Consumption of gasoline by gasoline grade (gg) and month (m)

$MFTG_m$ = Gasoline consumption from motor fuel excise tax return by month (m)

4.3.a.2. The consumption of motor fuels other than gasoline by month is determined from motor fuel excise tax returns, if available, or from other sources, if applicable. Algebraically,

$$C_{omf,m} = MFTOMF_m$$

Where:

omf = other motor fuel (other conventional motor fuels, compressed natural gas, liquefied natural gas, liquefied petroleum gas, field gas)

m = month (July, August, September, October)

$C_{omf,m}$ = Consumption of other motor fuel (omf) and month (m)

$MFTOMF_m$ = Reported consumption of other motor fuels by month (m) from motor fuel excise tax returns, or other sources.

4.3.b. The value of consumed motor fuel by motor fuel type and month is the product of the consumed motor fuel by type and month (as in §4.3.a.) and the price of the motor fuel by type and month. Algebraically,

$$V_{mft,m} = C_{mft,m} \times P_{mft,m}$$

Where:

mft = motor fuel type (conventional motor fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, field gas)

m = month (July, August, September, October)

V = Value of motor fuel

C = Motor fuel consumed

P = Price of motor fuel

4.3.c. The total motor fuel consumed in the July through October review period by motor fuel type (as in §4.1) is the sum of the consumed motor fuel of included motor fuel types by month (as in §4.3.a.). Algebraically,

$$TC_{mft} = \sum C_{mft,m}$$

Where:

mft = motor fuel type (conventional motor fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, field gas)

m = month (July, August, September, October)

TC = Total motor fuel consumed

C = Motor fuel consumed

Σ = The sum of what follows

4.3.d. The total value of consumed motor fuel in the July through October review period by motor fuel type (as in §4.1) is the sum of the value of consumed motor fuel of included motor fuel types by month (as in §4.3.b.). Algebraically,

$$TV_{mft} = \sum V_{mft,m}$$

Where:

mft = motor fuel type (conventional motor fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas)

m = month (July, August, September, October)

TV = Total value of motor fuel consumed

V = Value of motor fuel

Σ = The sum of what follows

4.3.e. For each type of motor fuel (as in §4.1.), the average wholesale price is calculated as total value of consumed motor fuel (as in §4.3.d.) divided by the total motor fuel consumed (as in §4.3.c.). Algebraically,

$$AWP_{mft} = TV_{mft} / TC_{mft}$$

Where:

mft = motor fuel type (conventional motor fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, field gas)

AWP = Average wholesale price

TV = Total value of motor fuel consumed

TC = Total motor fuel consumed

§110-14C-5. Licensure; Bond.

5.1. Licensure is required for a producer or manufacturer, an alternative-fuel bulk end user, a provider of alternative fuel, a retailer of alternative fuel as well as a supplier including a refiner, a permissive supplier, an importer, an exporter, a terminal operator, a blender, a motor fuel transporter, or a distributor.

5.1.a. A person must have the applicable license for each of the above activities prior to beginning the activity in this state.

5.1.b. A person engaged in more than one of the above activities, must have a separate license for each activity, unless determined otherwise by the Tax Commissioner.

5.2. The requirements for cash bonds, continuous surety bonds and proof of financial responsibility acceptable to the Tax Commissioner are set forth in W. Va. Code §11-14C-13.

5.2.a. The Tax Commissioner may require a taxpayer to file an additional amount where a bond is initially required or to file a bond where no initial bond is required. The taxpayer must comply within 30 days of the Tax Commissioner's notice.

5.2.b. Bond is not initially required in order to obtain a license as a producer or manufacturer, an alternative-fuel bulk end user, a provider of alternative fuel or a retailer of alternative fuel. If a taxpayer fails to file a return, fails to timely remit all the tax due, or fails to comply with W. Va. Code §11-14C-1 *et seq.* the Tax Commissioner may require a bond in an amount to be determined by the Tax Commissioner. The taxpayer has 30 days to comply with the Tax Commissioner's notification.

§11-14C-6. Reports and Payment of Tax.

6.1. All tax payments due to this state which are received by a motor fuel taxpayer shall be held by the taxpayer as trustee in trust for this state. The taxpayer has a fiduciary duty to remit to the Tax Commissioner the total amount of tax received. A motor fuel taxpayer is liable for all taxes collected.

6.2. Returns and payment are due on the same date.

6.2.a. Where no tax is due, the return must be timely filed, complete and signed. Where a tax is due, payment is to accompany the timely filed, complete and signed return.

6.2.b. The Tax Commissioner may require all or certain taxpayers to file tax returns and payments electronically.

6.2.c. The Tax Commissioner may, upon notice, require more information from a taxpayer, require more frequent filing or both. The taxpayer has 30 days from the receipt of notice to comply with the Tax Commissioner's request.

6.3. Monthly returns are filed on or before the last day of a calendar month for the previous month by those persons liable for the motor fuel excise tax levied at the point of imposition prescribed in W. Va. Code §11-14C-6 including the following:

A terminal operator,
A supplier or refiner,
An importer,
A blender,
A person incurring liability for the backup tax,
A permissive supplier,
A motor fuel transporter, and
An exporter and
A producer/manufacturer.

6.3.a. The Tax Commissioner will accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service in lieu of the state terminal operator report.

6.4. A monthly report is required by the Tax Commissioner for those licensees whose average monthly tax liability is \$10,000 or more a month.

6.5. Alternative fuel that is not required to report monthly, as in §§6.3. and 6.4 above, must file an annual return. This includes reports by an alternative-fuel bulk end user, a provider of alternative fuel, a retailer of alternative fuel and by those persons liable for the motor fuel excise tax levied at the point of imposition prescribed in W. Va. Code §11-14C-6a.

6.5.a. Beginning January 1, 2014, and continuing thereafter, an annual return and payment is due on or before January 31 for the previous calendar year. For example, the return and payment for calendar year 2014 is due on or before January 31, 2015. Field gas reporting is addressed in a separate rule.

§110-14C-7. Floorstocks.

7.1. On the effective date of any motor fuel rate change, every licensee, who has in inventory motor fuel upon which the tax has been previously paid, shall take a physical inventory.

7.2. The licensee must file a report within 30 days of the effective date of the rate change.

7.2.a. In addition to the physical inventory, the report will include evidence of the last floorstocks report made and evidence of the tax actually paid.

7.3. In the case of a motor fuel tax increase, the additional tax due under the rate increase shall be submitted with the report.

7.4. In the case of a motor fuel tax decrease, a supplier, distributor or producer, retail dealer, exporter or importer may receive a refund of the flat rate under W. Va. Code §11-14C-30(d).

7.4.a. The refund is upon the motor fuel on hand and in inventory on the effective date of the rate change.

7.4.b. The taxpayer must show that the motor fuel has been included in the previous floorstocks or other applicable report.

§110-14C-8. Refunds.

8.1. Any refund amount cannot exceed the amount of the tax actually paid.

8.2. A request for a refund must be filed timely, with the form properly completed, include evidence of the tax paid, and be signed by the taxpayer.