

# SENATE BILL 145

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CF 11r0128

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By: **Chair, Budget and Taxation Committee (By Request – Departmental – Comptroller)**

Introduced and read first time: January 24, 2011

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Motor Fuel Tax – Personal Liability – Corporations, Limited Liability**  
3 **Companies, and Limited Liability Partnerships**

4 FOR the purpose of establishing personal liability of certain officers of corporations,  
5 members of limited liability companies, partners of limited liability  
6 partnerships, and other individuals for payment of the motor fuel tax, interest,  
7 and penalties under certain circumstances; and generally relating to liability for  
8 the payment of motor fuel taxes.

9 BY repealing and reenacting, with amendments,  
10 Article – Tax – General  
11 Section 9–314  
12 Annotated Code of Maryland  
13 (2010 Replacement Volume)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Tax – General**

17 9–314.

18 (a) The motor fuel tax on gasoline shall be paid by:

19 (1) the licensed Class B dealer who first receives gasoline imported  
20 into the State;

21 (2) any other dealer who:

22 (i) uses the gasoline; or

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   (ii) first sells the gasoline in this State to a buyer other than a  
2 licensed dealer authorized to acquire gasoline, in accordance with § 9–322 of this  
3 subtitle, without paying the motor fuel tax; or

4                   (3) any other person who acquires gasoline on which the motor fuel  
5 tax has not been paid.

6           (b) The motor fuel tax on special fuel other than turbine fuel shall be paid by:

7                   (1) a special fuel seller who delivers that special fuel into a tank from  
8 which a motor vehicle can be fueled unless the person who uses or resells the special  
9 fuel has an exemption certificate that authorizes the person to acquire special fuel, in  
10 accordance with § 9–322 of this subtitle, without paying the motor fuel tax;

11                   (2) a special fuel user who uses that special fuel in a motor vehicle  
12 that is owned or operated by the special fuel user and registered to operate on a public  
13 highway; or

14                   (3) any other person who acquires that special fuel unless:

15                           (i) the motor fuel tax on that special fuel has been paid; or

16                           (ii) the person has an exemption certificate that authorizes the  
17 person to acquire special fuel, in accordance with § 9–322 of this subtitle, without  
18 paying the motor fuel tax.

19           (c) The motor fuel tax on turbine fuel shall be paid by:

20                   (1) the turbine fuel seller who delivers the turbine fuel into the fuel  
21 supply tank of a turbine–powered aircraft; or

22                   (2) any other person who acquires turbine fuel on which motor fuel tax  
23 has not been paid unless the person has an exemption certificate that authorizes the  
24 person to acquire turbine fuel, in accordance with § 9–322 of this subtitle, without  
25 paying the motor fuel tax.

26           (d) A person required to pay motor fuel tax under this section shall pay it  
27 with the return that covers the period in which the person received, sold, or used the  
28 motor fuel.

29           (e) [If a corporation, other than a nonstock, not for profit corporation, is  
30 required to pay motor fuel tax, personal liability for the tax and interest and penalties  
31 on the tax extends to any officer of the corporation who exercises direct control over its  
32 fiscal management.] **IF A PERSON LIABLE FOR MOTOR FUEL TAX AND FOR THE**  
33 **INTEREST AND PENALTIES OF THE TAX IS A CORPORATION, OTHER THAN A**  
34 **NONSTOCK, NOT–FOR–PROFIT CORPORATION, OR IS A LIMITED LIABILITY**

1 COMPANY OR LIMITED LIABILITY PARTNERSHIP (INCLUDING A LIMITED  
2 PARTNERSHIP REGISTERED AS A LIMITED LIABILITY LIMITED PARTNERSHIP),  
3 PERSONAL LIABILITY FOR THE MOTOR FUEL TAX AND FOR THE INTEREST AND  
4 PENALTIES OF THE TAX EXTENDS TO:

5 (1) IN THE CASE OF A CORPORATION:

6 (I) THE PRESIDENT, VICE PRESIDENT, OR TREASURER OF  
7 THE CORPORATION; AND

8 (II) ANY OFFICER OF THE CORPORATION WHO DIRECTLY OR  
9 INDIRECTLY OWNS MORE THAN 20% OF THE STOCK OF THE CORPORATION; AND

10 (2) IN THE CASE OF A LIMITED LIABILITY COMPANY:

11 (I) IF THE LIMITED LIABILITY COMPANY DOES NOT HAVE  
12 AN OPERATING AGREEMENT, ALL MEMBERS; OR

13 (II) IF THE LIMITED LIABILITY COMPANY HAS AN  
14 OPERATING AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE BUSINESS  
15 AND AFFAIRS OF THE LIMITED LIABILITY COMPANY; AND

16 (3) IN THE CASE OF A LIMITED LIABILITY PARTNERSHIP:

17 (I) IF THE LIMITED LIABILITY PARTNERSHIP DOES NOT  
18 HAVE A WRITTEN PARTNERSHIP AGREEMENT, ALL GENERAL PARTNERS; OR

19 (II) IF THE LIMITED LIABILITY PARTNERSHIP HAS A  
20 WRITTEN PARTNERSHIP AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE  
21 BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY PARTNERSHIP.

22 (F) A MEMBER OF A LIMITED LIABILITY COMPANY DOES NOT MANAGE  
23 THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY UNDER  
24 SUBSECTION (E) OF THIS SECTION SOLELY BY DOING ONE OR MORE OF THE  
25 FOLLOWING:

26 (1) CONSULTING WITH OR ADVISING THE INDIVIDUALS WHO  
27 MANAGE THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY;

28 (2) DIRECTING THE MANAGEMENT OF THE LIMITED LIABILITY  
29 COMPANY IN THE SAME MANNER AS A DIRECTOR OF A CORPORATION DIRECTS  
30 THE MANAGEMENT OF A CORPORATION; OR

1           **(3) VOTING ON ANY MATTER REQUIRED TO BE VOTED ON BY THE**  
2 **MEMBERS OF THE LIMITED LIABILITY COMPANY, INCLUDING, BUT NOT LIMITED**  
3 **TO:**

4                   **(I) THE APPROVAL OR DISAPPROVAL OF AMENDMENTS TO**  
5 **THE OPERATING AGREEMENT;**

6                   **(II) THE TERMINATION AND WINDING UP OF THE LIMITED**  
7 **LIABILITY COMPANY;**

8                   **(III) THE SALE, EXCHANGE, LEASE, MORTGAGE, PLEDGE, OR**  
9 **OTHER TRANSFER OF A MATERIAL PORTION OF THE ASSETS OF THE LIMITED**  
10 **LIABILITY COMPANY;**

11                   **(IV) THE INCURRENCE OF INDEBTEDNESS BY THE LIMITED**  
12 **LIABILITY COMPANY OTHER THAN IN THE ORDINARY COURSE OF ITS BUSINESS;**

13                   **(V) A CHANGE IN THE NATURE OF THE BUSINESS OF THE**  
14 **LIMITED LIABILITY COMPANY;**

15                   **(VI) THE EXPULSION OR ADMISSION OF A MEMBER;**

16                   **(VII) THE APPOINTMENT OR DISCHARGE OF A MANAGER;**

17                   **(VIII) THE MERGER OF THE LIMITED LIABILITY COMPANY**  
18 **WITH OR INTO ANY OTHER ENTITY; OR**

19                   **(IX) ANY MATTER RELATED TO THE BUSINESS OF THE**  
20 **LIMITED LIABILITY COMPANY NOT OTHERWISE ENUMERATED IN THIS SECTION**  
21 **THAT THE OPERATING AGREEMENT STATES MAY BE SUBJECT TO THE APPROVAL**  
22 **OR DISAPPROVAL OF THE MEMBERS.**

23           **(G) THE POSSESSION OR EXERCISE OF POWERS OTHER THAN THOSE**  
24 **CONTAINED IN SUBSECTION (F) OF THIS SECTION BY A MEMBER DOES NOT**  
25 **NECESSARILY CONSTITUTE MANAGEMENT BY THE MEMBER OF THE BUSINESS**  
26 **OR AFFAIRS OF THE LIMITED LIABILITY COMPANY.**

27           **(H) THE SAME RULES AND EXCEPTIONS APPLICABLE TO A MEMBER OF A**  
28 **LIMITED LIABILITY COMPANY SET FORTH IN SUBSECTIONS (F) AND (G) OF THIS**  
29 **SECTION SHALL BE APPLICABLE TO INDIVIDUALS AND MEMBERS OF LIMITED**  
30 **LIABILITY PARTNERSHIPS.**

31           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2011.