

Chapter 31

(Senate Bill 145)

AN ACT concerning

Motor Fuel Tax – Personal Liability – ~~Corporations,~~ Limited Liability Companies, and Limited Liability Partnerships

FOR the purpose of establishing personal liability of certain ~~officers of corporations, members~~ persons who exercise certain control over the fiscal management of limited liability companies, ~~partners of~~ and limited liability partnerships, ~~and other individuals~~ for payment of the motor fuel tax, interest, and penalties under certain circumstances; and generally relating to liability for the payment of motor fuel taxes.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 9–314

Annotated Code of Maryland

(2010 Replacement Volume)

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

Article – Tax – General

9–314.

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

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

(2) any other dealer who:

(i) uses the gasoline; or

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

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

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

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

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

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

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

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

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

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

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

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

(e) ~~¶If a corporation, other than a nonstock, not for profit corporation, is required to pay motor fuel tax, personal liability for the tax and interest and penalties on the tax extends to any officer of the corporation who exercises direct control over its fiscal management.] IF A PERSON LIABLE FOR MOTOR FUEL TAX AND FOR THE INTEREST AND PENALTIES OF THE TAX IS A CORPORATION, OTHER THAN A NONSTOCK, NOT FOR PROFIT CORPORATION, OR IS A LIMITED LIABILITY COMPANY OR LIMITED LIABILITY PARTNERSHIP (INCLUDING A LIMITED PARTNERSHIP REGISTERED AS A LIMITED LIABILITY LIMITED PARTNERSHIP), PERSONAL LIABILITY FOR THE MOTOR FUEL TAX AND FOR THE INTEREST AND PENALTIES OF THE TAX EXTENDS TO:~~

~~(1) IN THE CASE OF A CORPORATION:~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(I) THE APPROVAL OR DISAPPROVAL OF AMENDMENTS TO THE OPERATING AGREEMENT;~~

~~(II) THE TERMINATION AND WINDING UP OF THE LIMITED LIABILITY COMPANY;~~

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

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

~~(V) A CHANGE IN THE NATURE OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY;~~

~~(VI) THE EXPULSION OR ADMISSION OF A MEMBER;~~

~~(VII) THE APPOINTMENT OR DISCHARGE OF A MANAGER;~~

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

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

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

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

(F) IF A LIMITED LIABILITY COMPANY, OR LIMITED LIABILITY PARTNERSHIP, INCLUDING A LIMITED PARTNERSHIP REGISTERED AS A LIMITED LIABILITY LIMITED PARTNERSHIP, IS REQUIRED TO PAY THE MOTOR FUEL TAX AND INTEREST AND PENALTIES ON THE TAX, PERSONAL LIABILITY FOR THE TAX AND INTEREST AND PENALTIES ON THE TAX EXTENDS TO ANY PERSON WHO EXERCISES DIRECT CONTROL OVER THE FISCAL MANAGEMENT OF THE LIMITED LIABILITY COMPANY OR LIMITED LIABILITY PARTNERSHIP.

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

Approved by the Governor, April 12, 2011.