WEST VIRGINIA CODE: §11-14-5A

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

(a) In general. -- There shall be exempt from the taxes imposed by this article and by article fifteen of this code all gallons of gasoline or special fuel sold by a distributor to an interstate motor carrier having fuel storage tanks in this state which are used solely for the purpose of fueling motor carriers owned, leased or operated by the motor carrier, when the purchase is delivered in bulk quantities of one thousand gallons or more into such fuel storage tanks and is purchased for the motor carrier's exclusive use: Provided, That this exemption shall not relieve the person owning or operating a motor carrier from payment of any taxes imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel used or consumed in this state by the motor carrier.

(b) Surety bond; release of surety; new bond. -- The commissioner may in his discretion require an interstate motor carrier having fuel storage tanks in this state to file a continuous surety bond in an amount to be fixed by the commissioner, except that the amount thereof shall not be less than $1,000. Upon completion of the filing of such surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. This bond shall be conditioned upon the motor carrier's faithful compliance with the provisions of this article and articles fourteen-a and fifteen-a of this chapter with respect to such gasoline or special fuel, including the filing of the returns and payment of all tax due with respect to such gasoline or special fuel. Such bond shall be approved by the commissioner as to sufficiency and by the Attorney General as to form, and shall indemnify the state against any loss arising from the failure of the taxpayer for whatever reason to pay any tax imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel purchased as provided in this section which was used or consumed in operation of the motor carrier in this state: Provided, That a noninterest bearing cash deposit may be accepted by the commissioner in lieu of such bond. The cash deposit shall be in an amount to be fixed by the commissioner, except the amount thereof may not be less than $1,000.

(c) Revocation of suspension of exemption.

(1) The Tax Commissioner may revoke or suspend application of this exemption to a motor carrier if:

(A) The motor carrier filed a false or fraudulent return for the tax imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel it used or consumed in this state.

(B) The motor carrier willfully refused or willfully neglected to file a tax return or willfully failed to report information required by the Tax Commissioner, concerning gasoline or special fuel which it used or consumed in this state, on or before the date specified for filing

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the return or report.

(C) The motor carrier willfully refused or willfully neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, with respect to gasoline or special fuel used or consumed in this state when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(2) Before cancelling or suspending this exemption, the Tax Commissioner shall give written notice to the motor carrier of his intent to suspend or cancel this exemption, the reason for the suspension or cancellation, the effective date of the suspension or cancellation, and the date, time and place where the taxpayer may appear at an informal hearing and show cause why this exemption should not be suspended or canceled. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the date of such informal hearing. The taxpayer may appeal suspension or cancellation of its exemption under this section in the same manner as a notice of assessment is appealed under article ten of this chapter: Provided, That the filing of a petition for appeal shall not stay the effective date of the suspension or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the motor carrier, upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his discretion and upon such terms as he may specify, agree to stay the effective date of the suspension or cancellation until another date certain.

(3) The Tax Commissioner shall promptly give notice to distributors in this state of the name and mailing address of every motor carrier whose exemption under this section is suspended or cancelled. The effective date of such suspension or cancellation shall be included, and if this exemption is suspended, the date the suspension expires shall also be provided. The affected motor carrier shall promptly give similar written notice to all distributors from whom he purchases gasoline or special fuel exempt from tax as provided in subsection (a) of this section.

(4) A motor carrier whose exemption under this section is cancelled may, after the cancellation has been in effect for twelve months, petition the Tax Commissioner for reinstatement of exemption under this section. The Tax Commissioner may, in his discretion, and upon such terms as he may require reinstate this exemption, but only if he reasonably believes that the motor carrier will fully and timely comply with this article and the provisions of articles fourteen-a and fifteen-a of this chapter. Upon reinstatement, the motor carrier shall provide his distributor with a true copy of the Tax Commissioner's order reinstating the exemption.

(d) Effective date. -- The provisions of this section shall apply to gasoline or special fuel delivered after March 31, 1989.

WV Legislature