
WEST VIRGINIA CODE CHAPTER 11
ARTICLE 14

WV Legislature

§11-14-1. Short title; arrangement of sections or portions of article.

This article shall be known and may be cited as the "Gasoline and Special Fuel Excise Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or portion of this article.

WV Legislature

§11-14-2. Definitions.

For purposes of this article:

- (1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products, including, but not limited to, tank or barge strappings and other graduated lineal devices.
- (2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.
- (3) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her duly authorized agent.
- (4) "Distributor" or "producer" means and includes every person:
 - (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;
 - (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or
 - (c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.
- (5) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.
- (6) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section.
- (7) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit of this state or the federal government or any of its agencies.
- (8) "Importer" means every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle, or a person paying the motor carrier road tax as provided for in article fourteen-a of this chapter.
- (9) "Motor carrier" means any passenger vehicle which has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more than two axles which is operated or caused to be operated by any person on any

highway in this state.

(10) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(11) "Person" means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(12) "Petroleum carrier" means any person who hauls or transports gasoline or special fuel within this state or on any navigable rivers which are within the jurisdiction of this state.

(13) "Purchase" means and includes any acquisition of ownership of property or of a security interest for a consideration.

(14) "Receive" means any acquisition of ownership or possession of gasoline or special fuel.

(15) "Retail dealer" means any person not a distributor or producer who sells gasoline or special fuel from a fixed location in this state to users.

(16) "Sale" means any transfer, exchange, gift, barter or other disposition of any property or security interest for a consideration.

(17) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" includes products commonly known as natural or casinghead gasoline, but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(18) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under United States environmental protection agency rules for high sulphur diesel fuel or is dyed under internal revenue service rules for low sulphur fuel or pursuant to any other requirements subsequently set by the United States environmental protection agency or internal revenue service including any invisible marker requirements that is sold for the exclusive use or consumption in off-highway equipment and is exempt from excise taxation under federal law.

(19) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind from which gasoline or special fuel is

supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

(20) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

(21) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(22) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(23) "User" means any person who purchases gasoline or special fuel for use as fuel and uses the fuel in an internal combustion engine owned or operated by that person.

§11-14-3. Imposition of tax.

There is hereby levied an excise tax of fifteen and one-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as prescribed in this article: Provided, That beginning May 1, 1993, the tax levied by this article is twenty and one-half cents per gallon: Provided, however, That on and after August 1, 2007, the tax levied by this article is fifteen and one-half cents per gallon.

WV Legislature

§11-14-3a. Applicability of rate increase to gasoline or special fuel on hand or in inventory.

It is hereby declared to be the intent of the Legislature that one rate of excise tax shall be applicable to all quantities of gasoline or special fuel in this state on and after the effective date of any increase in the rate of such tax. Any gasoline or special fuel on hand or in inventory on the effective date of any rate increase is hereby deemed to have been purchased or received on such date.

Every distributor, retail dealer or importer subject to the tax imposed under this article, who, on the effective date of any rate increase, has on hand or in inventory any gasoline or special fuel upon which tax or any portion thereof has been previously accrued or paid, shall, within thirty days after such effective date, take a physical inventory and file a report thereof with the commissioner, in the form prescribed by him and shall pay to the commissioner at the time of filing such report any additional tax due under an increased rate.

§11-14-4. Computation of tax.

(a) Measure of tax.

(1) A distributor or producer shall use as the measure of tax all actual metered gallons of gasoline and all actual metered gallons of special fuel withdrawn from storage within this state

for use, or for the sale for use, as fuel in an internal combustion engine, or that is sold, transferred or delivered to its company operated retail storage or any other retail station or user wherein the storage is for use or for the sale for use as fuel in an internal combustion engine.

(2) A retail dealer, or importer, or user shall use as the measure of tax all actual metered gallons of gasoline and all actual metered gallons of special fuel, not previously included in the measure of tax, received into such person's storage within this state wherein the storage is for use or for the sale for use as gasoline or special fuel in an internal combustion engine, or is used by him as fuel in an internal combustion engine.

(3) A person who is not a distributor or producer, retail dealer, importer, or user shall use as the measure of tax all actual metered gallons of gasoline or special fuel subject to tax under this article and not previously included in the measure of tax by him or any other person.

(b) Exemptions. -- There may be subtracted from the measure of tax determined under subsection (a) of this section, to the extent included in the measure:

(1) The actual metered gallons of gasoline and special fuel that are exempt under section five of this article from the tax imposed by this article; and

(2) The actual metered gallons of gasoline and special fuel sold by a distributor or producer that are exempt under sections five-a and five-b of this article from the tax imposed by this article.

(c) This article shall not be construed to require the inclusion in the measure of tax of any gasoline or special fuel previously included in the measure of tax upon which the tax has been previously paid.

(d) The tax imposed by this article shall be in addition to all other taxes of whatever character imposed by any other provisions of law.

§11-14-5. Exemptions from tax.

There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:

- (1) All gallons of gasoline or special fuel exported from this state to any other state or nation;
- (2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency of the United States when delivered in bulk quantities of five hundred gallons or more;
- (3) All gallons of gasoline or special fuel sold to and purchased by a county board of education when delivered in bulk quantities of five hundred gallons or more;
- (4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense or emergency service program, or to any person on whom is imposed a requirement to maintain an inventory of gasoline or special fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;
- (5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter;
- (6) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines;
- (7) All gallons of special fuel for heating any public or private dwelling, building or other premises;
- (8) All gallons of special fuel for boilers;
- (9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent;
- (10) All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or compound;
- (11) All gallons of gasoline or special fuel sold to any municipality or agency of a municipality for use in vehicles or equipment owned and operated by the municipality or agency of a municipality and when purchased for delivery in bulk quantities of five hundred gallons or more;

- (12) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system;
- (13) All gallons of gasoline or special fuel sold for use as aircraft fuel;
- (14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft;
- (15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;
- (16) All gallons of gasoline or special fuel sold to and purchased by a unit of county government when delivered in bulk quantities of five hundred gallons or more;
- (17) All gallons of special dyed diesel fuel; and
- (18) All gallons of propane gas for off road use.

§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 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.

§11-14-5b. Exemptions for sales made through special devices.

(a) Where the requirements of this section have been met, gasoline or special fuel sold by a distributor or producer to a customer described in subsection (b) of this section through a special device described in subsection (c) of this section is exempt from the taxes otherwise imposed by this article and article fifteen of this chapter.

(b) For purposes of this section, "customer" means any of the following entities that regularly purchase gasoline or special fuel for nontaxable uses for its exclusive use in vehicles it owns or leases:

(A) The United States government or any agency thereof;

(B) A municipality in this state;

(C) A county commission in this state;

(D) A county board of education in this state; and

(E) An organization in a county in this state that is certified annually by the county commission as a bona fide:

(i) Volunteer fire department;

(ii) Nonprofit ambulance service; or

(iii) Nonprofit emergency rescue service.

(c) For purposes of this section, "special device" means a device, such as a cardlock system, that accurately accounts for sales of gasoline or special fuel for nontaxable uses that is maintained by a distributor or producer at an attended or unattended location in this state.

(d) (1) To qualify for the exemption described in subsection (a) of this section, the distributor or producers must maintain accurate records that establish to the satisfaction of the Tax Commissioner the right to the exemption.

(2) The records must include purchase orders or contracts for the sale or sales of the gasoline or special fuel or, in the absence of such purchase orders or contracts, a certificate, signed by an authorized officer of the customer, that the gasoline or special fuel was purchased for the exclusive use of an entity described in subsection (b) of this section.

(3) The records must also include, for each nontaxable sale:

(A) The names of the customer and the person to whom the gasoline or special fuel was delivered;

(B) The date of delivery;

(C) The license number of the vehicle fueled;

(D) The type and quantity of gasoline or special fuel delivered; and

(E) Such other information as the Tax Commissioner may require.

(e) (1) A customer's privilege to purchase nontaxable gasoline or special fuel through a special device is subject to suspension or revocation by the Tax Commissioner.

(2) A customer is required to make and retain such records of its purchases of gasoline and special fuel through a special device as may be required by the Tax Commissioner.

(f) When the Tax Commissioner determines, as the result of an audit or investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is reselling the gasoline or special fuel, is using the gasoline or special fuel for purposes other than the customer's exclusive use, or is failing to make and retain sufficient and adequate records showing the quantity of gasoline or special fuel used or consumed for the customer's exclusive use, the Tax Commissioner shall suspend the privilege of the customer to purchase untaxed gasoline or special fuel through any special device for such period as the Tax Commissioner by written order specifies. The order shall be served on the customer in the same manner as a notice of assessment may be served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of the order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.

(g) When the Tax Commissioner determines, as the result of an audit or other investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is knowingly and intentionally failing to comply with any requirements of this section, the Tax Commissioner shall by written order revoke the customer's privilege to purchase untaxed gasoline or special fuel through any special device. The order of the Tax Commissioner shall be served on the customer in the same manner as a notice of assessment is served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of that order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.

(h) Notwithstanding the exemption provided under subsection (a) of this section to the contrary, a customer is liable for the taxes that would otherwise be imposed by this article and article fifteen of this chapter on the gasoline or special fuel delivered to the customer if the customer sells or uses the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation.

(i) A customer liable for the taxes described in subsection (h) of this section shall, in addition to paying the taxes described in subsection (h) of this section, pay a money penalty equal to twenty-five percent of the taxes plus interest calculated beginning with the day the gasoline or special fuel was received by the customer until the day the taxes, penalty and interest are paid to the Tax Commissioner. For each subsequent sale or use, during a fiscal year, of the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation, the purchaser shall pay the taxes and a money penalty equal to fifty percent of the tax plus interest calculated in the same manner. For purposes of this section, gasoline and special fuel is received by the customer when it is put into the supply tank of a vehicle owned or leased by the customer.

(j) A customer liable for the taxes described in subsection (h) of this section is not entitled to a refund or any credit for the taxes paid or required to be paid under subsection (i) of this section.

(k) The exemptions created by this section apply to gasoline or special fuel received by a customer through a special device on or after July 1, 1998.

§11-14-6. Gasoline or special fuel exported or in interstate commerce; distributors or producers may pay tax shipments into state.

This article shall not be construed to require the inclusion in the computation of tax of a distributor or producer, retail dealer, or importer, of any gasoline or special fuel when the same is exported by a person from this state to another state or nation or territories or possessions thereof, nor to require the inclusion in the computation of tax of any gasoline or special fuel shipped in interstate commerce while the same is in transportation; but the gallonage of gasoline or special fuel shipped from another state shall be included in the computation of tax as required by this article after the same shall have been divested of its interstate character: Provided, That distributors making shipments of gasoline or special fuel into this state may, as a matter of convenience to purchasers located in this state, assume and pay the tax imposed by this article when written permission so to do is first obtained from the commissioner.

§11-14-7. Due date of reports; reports required; records to be kept; examination of records; subpoena powers; examination of witnesses.

Every taxpayer subject to the tax imposed by this article shall make, on or before the last day of each month, to the commissioner a report of its operations during the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

The reports and taxes due, as imposed by this article, shall be deemed as having been timely filed for the purpose of avoiding interest, additions to tax and penalties only if the postmark date thereon is clearly within the said last day of the calendar month, or is received within such period. If the last day falls on a Saturday or Sunday, or a day which is a legal holiday in the State of West Virginia, filing will be considered timely if it is done on the next succeeding day which is not a Saturday, Sunday or legal holiday.

A taxpayer shall keep such records necessary to verify the reports and returns required by this article, including inventories, receipts, disbursements, and any other records which the commissioner by regulation may prescribe, for a period of time not less than three years.

Unless otherwise permitted, in writing, by the commissioner, each delivery ticket or invoice for each purchase or sale of gasoline or special fuel shall be recorded upon a serially numbered invoice showing the name and address of the seller and the purchaser, point of delivery, the date, number of gallons, kind of fuel and price of said fuel. The amount of tax shall be indicated separately or the invoice shall indicate whether or not the tax imposed by this article is included in the total price and such other information as the commissioner may require: Provided, That these invoicing requirements shall not apply to cash sales, and a person making such sales shall maintain such records as may be necessary to verify his return.

In addition to the Tax Commissioner's powers set forth in section five, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records of a taxpayer or any other person to verify the truth and accuracy of any report or return to ascertain whether the tax imposed by this article has been properly paid.

In addition to the Tax Commissioner's powers set forth in section five, article ten of this chapter, as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and the reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and papers, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue a subpoena

duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

WV Legislature

§11-14-8. Tax due.

The tax hereby imposed by this article shall be paid by each taxpayer on or before the last day of each calendar month by check, bank draft, certified check or money order, payable to the commissioner, for the amount of tax due, if any, for the preceding month.

WV Legislature

§11-14-9.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

WV Legislature

§11-14-10. Refund of taxes illegally collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.

The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously or illegally collected from any person.

If any distributor or producer, retail dealer or importer, while he shall be the owner thereof, loses any gallons of gasoline or special fuel through fire, lightning, breakage, flood or other casualty, which gallons have been previously included in the tax by or for such person, he shall be refunded a sum equal to the amount of the tax paid upon such gallons so lost.

Any distributor or producer, retail dealer or importer or other person who purchases or receives gasoline or special fuel in this state upon which the tax imposed by this article has been paid, and who subsequently exports the same from this state (except in a supply tank), shall be entitled to a refund for the amount of tax paid.

Any dealer as defined in section two, article eleven-c, chapter forty-seven of the code, who purchases or receives gasoline or special fuel in this state upon which the tax imposed by this article has been paid, shall be entitled to an annual refund for gallons lost through evaporation. Such refund shall be computed at the rate of tax imposed per gallon under this article on all gallons of gasoline or special fuel actually lost due to evaporation, not exceeding one half of one percent of the adjusted total accountable gallons, computed as determined by the commissioner.

Every distributor or producer, retail dealer or importer shall be entitled to a refund from this state of the amount resulting from a change of rate decreasing the tax under the provisions of this article on gasoline and special fuel on hand and in inventory on the effective date of such rate change, which gasoline and special fuel shall have been included in any previous computation by which the tax imposed by this article has been paid by him

No refund shall be made under this section unless a written petition therefor sets forth the circumstances upon which said refund is claimed. A claim for refund shall be subject to the provisions of section fourteen, article ten, chapter eleven of the code. The petition shall be in such form and with such supporting records as required by the commissioner and shall be made under the penalty of perjury. Petitions for refunds other than for evaporation loss shall be filed with the commissioner within three years from the end of the month in which the tax was erroneously or illegally paid or the gallons were exported or lost by casualty, or in which a change of rate took effect, as provided in this section. Petitions for refund for evaporation loss shall be filed within three years from the end of the year in which such evaporation occurred, but no such refund shall be allowed for any period prior to the year one thousand nine hundred seventy-eight.

§11-14-11. Refund of tax because of certain nonhighway uses; statute of limitations and effective date.

(a) The tax imposed by this article shall be refunded to any person who shall buy in quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed for the following purposes:

(1) As a special fuel for internal combustion engines not operated upon highways of this state; or (2) Gasoline consumed to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the highways of this state; or

(3) Gasoline used by any railway company, subject to regulation by the Public Service Commission of West Virginia, for any purpose other than upon the highways of this state; or

(4) Gasoline consumed in the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the highways of this state; or

(5) Gasoline consumed in motorboats or other watercraft operated upon the navigable waters of this state; or

(6) Gasoline or special fuel used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, the person claiming the refund may present to the Tax Commissioner a statement of his claim and shall be allowed a refund for fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax imposed by this article paid on all fuel used in such a truck.

(b) Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and consumed by such user, other than upon any highways of this state, and how used; and the Tax Commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

(c) The right to receive any refund under the provisions of this section shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The Tax Commissioner shall cause a refund to be made under the authority of this section only when the claim for such refund is

filed with the Tax Commissioner, upon forms prescribed by the Tax Commissioner, within six months from the month of purchase or delivery of the gasoline or special fuel, except that any application for refund made under authority of subdivision (2) above shall be filed within twelve months from the month of purchase or delivery of such gasoline or special fuel. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the State of West Virginia for payment. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

(d) Effective date. -- The provisions of this section as hereby amended shall apply to all gasoline and special fuels purchased or delivered on or after July 1, 1986, and the provisions of this section in effect prior to July 1, shall apply to gasoline and special fuels purchased or delivered prior to July 1, 1986.

§11-14-11a. Refund of tax on gasoline or special fuel paid by any municipality, county, county board of education, volunteer fire department, nonprofit ambulance service and emergency rescue service.

(a) Upon application by a municipality, county or county board of education, or upon application and certification by the county commission to the State Tax Commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by any municipality, unit of county government or any such organization shall be refunded.

(b) The tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing the purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of the gasoline or special fuel purchased and consumed by the user and the commissioner upon the receipt of the affidavit and the paid sales slips or invoices shall cause to be refunded the tax paid on gasoline or special fuel purchased and consumed as provided in this section.

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as set forth in this section. The commissioner shall cause a refund to be made under the authority of this section only when the application for the refund is filed with the commissioner, upon forms prescribed by the commissioner, no later than the thirty-first day of August for purchases of fuel made during the preceding fiscal year ending June 30. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the State of West Virginia for payment. The claim for refund is also subject to the provisions of section fourteen, article ten of this chapter: Provided, That the refund established in this section for counties and municipalities shall only apply to those purchases of gasoline and special fuels made after June 30, 1995.

§11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.

Any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, when such person purchases tax-paid gasoline or tax-paid special fuel, as required by this article, in an amount of twenty-five gallons or more, and complies with all the requirements of section eleven, with the exception of off-highway use, may be refunded an amount equal to four and one-half cents per gallon under authority of this section: Provided, That said gallons of gasoline or special fuel shall have been consumed in the operation of urban and suburban bus lines, and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools. There shall be presented to the commissioner a claim for refund accompanied by proof of such purchase and payment as required by section eleven of this article. The right to a refund under this section shall not be assignable, and any assignment so made shall be void. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

§11-14-13. Surety bonds required; release of surety; new bond.

The commissioner may require a taxpayer to file a continuous surety bond in an amount to be fixed by the commissioner, except that the amount 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. The bond shall be conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. 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 to pay any tax imposed by this article for any cause whatever.

Any surety on a bond furnished hereunder shall be relieved, released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek discharge as herein provided, it shall be the duty of the principal of such bond to supply the commissioner with another bond, or pledge of property equal in value to the original bond, such pledge to be in the form of a tax lien on the property pledged and said lien shall be duly perfected in the office of the clerk of the county court of the county wherein such property is situated and shall be submitted to the commissioner along with a certified appraisal statement as to the value of the property pledged prior to the expiration of the original bond.

§11-14-14. Enforcement powers.

(1) Any employee or agent of the commissioner so authorized by the commissioner shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article, when bonded as hereinafter provided in this section.

(2) Each employee or agent so authorized by the commissioner shall execute a bond with security in the sum of \$3,500, payable to the State of West Virginia, and conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the Attorney General, and the same shall be filed with the Secretary of State and preserved in his office.

§11-14-15. Disposition of tax collected.

All tax collected under the provisions of this article shall be paid into the State Treasury and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal monies available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, that for fiscal year one thousand nine hundred eighty-nine-ninety, \$25 million shall be used only for bridge repair and replacement and all amounts remaining shall next be used for payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, however, that any amounts remaining after funding these priorities shall next be used in matching any federal amounts available for expenditure on the Appalachian highway system in this state: Provided further, that any amounts remaining after funding these priorities shall be used for the maintenance, reconstruction and construction of state highways.

Unless necessary for such bond requirements, five fourteenths of the tax collected under the provisions of this article shall be used for feeder and state local service highway purposes.

§11-14-16.

Repealed.

Acts, 2001 1st Ex. Sess. Reg. Sess., Ch. 11.

WV Legislature

§11-14-17. No dyed fuel on highways.

No person may operate or maintain a motor vehicle on any public highway in this state with special dyed diesel fuel as the motor fuel contained in the fuel supply tank. This provision does not apply to: (a) Persons operating motor vehicles that have received fuel into their fuel tanks outside of this state in a jurisdiction that permits introduction of dyed taxable motor fuel of that color and type into the motor fuel tank of highway vehicles, and can show proof of such; or (b) uses of dyed fuel on the highway which are lawful under the Internal Revenue Code and regulations under that code, including state and local government vehicles and buses unless otherwise prohibited by this chapter.

Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$10 per gallon of fuel capacity of the fuel tanks or \$1,000, whichever is greater, for the first two violations of this section in a calendar year, and a fine of \$15 per gallon of fuel capacity of the fuel tanks or \$2,000, whichever is greater, for each subsequent offense in the same calendar year.

§11-14-17a. Spot check inspections.

(a) The Tax Commissioner or his or her appointees, may stop, inspect and issue citations to operators of motor vehicles for violations of this chapter at sites where fuel is, or may be, produced, stored, or loaded into or consumed by motor vehicles. These sites include, but are not limited to:

(1) A terminal;

(2) A fuel storage facility that is not a terminal, such as a bulk storage facility;

(3) A retail fuel facility;

(4) Highway rest stops; or

(5) A designated inspection area, including any state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the Tax Commissioner.

(b) Nothing contained in this section may be construed to prohibit the issuance of a citation for the violation of the provisions of this article on the open highway or other than the spot check areas where the violation of this article is discovered where the motor vehicle is lawfully stopped for any other criminal violation of the laws of this state.

§11-14-18. Penalty for refusal to permit inspection.

Any person who refuses to permit the inspection authorized by section seventeen-a of this article is guilty of a violation of the rules of the State Tax Division and shall pay a civil penalty of \$5,000, in addition to any other penalty imposed in this code.

WV Legislature

§11-14-19. Penalty for failure to file required return when no tax due.

In the case of any failure to make or file a return when no tax is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure is due to reasonable cause and not due to willful neglect, there shall be collected a penalty of \$25 for each month of such failure or fraction thereof.

WV Legislature

§11-14-20.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-21.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-22.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-23.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-24.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-25. Receivership or insolvency proceeding.

In the event that a business of a person subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated or was caused to be operated shall, by entry of a proper order in the cause, make provisions for the regular payment of such taxes as the same become due.

WV Legislature

§11-14-26.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-27.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-28.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-14-29. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

WV Legislature

§11-14-30. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the gasoline and special fuel excise tax imposed by this article fourteen with like effect as if said act were applicable only to such gasoline and special fuel excise tax imposed by this article fourteen and were set forth with respect thereto in extenso in this article fourteen.

WV Legislature

§11-14-31. Repeal of article.

Each and every provision of this article is repealed for all tax periods beginning on and after January 1, 2004: Provided, That tax liabilities arising for taxable periods ending before January 1, 2004, are determined, paid, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.