WEST VIRGINIA CODE: §11-14A-3A

§11-14A-3a. Leased motor carriers, household goods carriers, and independent contractors.

(a) Motor carriers.

(1) Motor carriers leased for less than thirty days. -- A lessor of motor carriers who is regularly engaged in the business of leasing or renting motor carriers with or without drivers to licensees or other lessees for a period of less than thirty days is primarily liable for payment of the taxes and fees imposed by this article unless:

(A) The lessor has a written lease contract that designates the lessee as the party liable for reporting and paying the tax imposed by this article; and

(B) If the lessee is subject to article fourteen-b of this chapter, the lessor has a copy of the lessee's license issued thereunder and the license is valid for the term of the lease.

(2) Motor carriers leased for thirty days or more. -- A licensee or other lessee who leases or rents a motor carrier with or without drivers for a period of thirty days or more is primarily liable for payment of the taxes and fees imposed by this article.

(b) Household goods carriers.

(1) Each household goods carrier operating only in West Virginia that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from independent contractors or others under intermittent leases for periods of thirty days or more is liable for the tax imposed by this article: Provided, That the lessor is liable for the tax imposed by this article when the lease periods are for less than thirty days.

(2) Each household goods carrier subject to article fourteen-b of this chapter that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from independent contractors or others under intermittent leases is liable for the tax imposed by this article when the motor carrier is operated under the lessee's jurisdictional operating authority: Provided, That when the motor carrier is operated under the lessor's jurisdictional operating authority, the lessor is liable for the tax imposed by this article.

(c) Independent contractors.

(1) An independent contractor operating only in West Virginia, when leased to a person also operating only in West Virginia, and the lease is for a period of less than thirty days is liable for the tax imposed by this article: Provided, That if the lease is for a period of thirty days or more, the lessee is responsible for the tax imposed by this article.

(2) A person subject to article fourteen-b of this chapter that leases an independent

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contractor for thirty days or more is responsible for the tax imposed by this article unless there is a written contract stating that the lessor is liable for the tax imposed by this article.

(d) The provision of subsections (a), (b) and (c) of this section shall govern the primary liability of lessors and licensees or other lessees of motor carriers. If a lessor or licensee or other lessee primarily liable fails, in whole or in part, to discharge his or her liability, the failing party and other party to the transaction, whether denominated as a lessor, licensee or other lessee, is jointly and severally responsible and liable for compliance with the provisions of this article and for payment of any tax or fees due under this article: Provided, That the aggregate of taxes and fees collected by the commissioner shall not exceed the total amount or amounts of taxes and fees due under this article on account of the transactions in question plus interest, additions to tax, other penalties and costs, if any, that may be imposed: Provided, however, That no person, other than the person primarily responsible for the taxes and fees under this article, may be assessed penalties or additions to tax resulting from the failure of the party primarily liable for taxes and fees to pay: Provided further, That once the other party to the transaction who is not primarily liable for the taxes under this article but who is made jointly and severally liable under this subsection for taxes is assessed for those taxes and fees and fails to discharge the assessment within the time prescribed therefor, or within thirty days after receiving the assessment if no time is so prescribed, nothing herein shall prohibit the commissioner from imposing additions to tax or penalties upon that person for failing to pay the assessment issued in his or her name.

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