WEST VIRGINIA CODE CHAPTER 11 ARTICLE 14A

WV Legislature

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

This article shall be known and may be cited as the "Motor Carrier Road 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

§11-14A-2. Definitions.

For purposes of this article:

(1) "Average fuel consumption factor" means the miles driven by the fleet of motor carriers for each gallon of motor fuel consumed in that activity (miles per gallon), and is calculated by dividing the total distance driven in all jurisdictions during the reporting period by the total quantity of motor fuel consumed in the operation of the motor carrier in all jurisdictions during the same reporting period.

(2) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her duly authorized agent.

(3) "Fleet" means, for purposes of administering the tax imposed by this article, one or more motor carriers operated by the same person.

(4) "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.

(5) "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 hereinafter defined: Provided, That in the event there is a question as to the proper classification of any product, "gasoline" has the same meaning as in article fourteen-c of this chapter.

(6) "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 thereof or the federal government or any of its agencies.

(7) "Household goods carrier" means a person that uses a motor carrier for the movement of another's household goods.

(8) "Identification marker" means the decal issued by the commissioner for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the state: Provided, That an identification marker shall include decals issued under the authority of article fourteen-b of this chapter to persons licensed thereunder: Provided, however, That said decals shall comply with the international fuel tax agreement requirements referenced under the said article fourteen-b.

(9) "Independent contractor" means a person that uses its motor carrier or motor carriers in its own or another person's business for the purpose of transporting passengers or the goods of a third party.

(10) "Lease" means any oral or written contract for valuable consideration granting the use of a motor carrier.

WV Legislature

(11) "Motor carrier" means any vehicle used, designed or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or eleven thousand seven hundred ninety-seven kilograms, or having three or more axles regardless of weight, or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-seven kilograms gross vehicle weight or registered gross vehicle weight. The term motor carrier does not include any type of recreational vehicle.

(12) "Motor fuel" means motor fuel as defined in article fourteen-c of this chapter effective January 1, 2004.

(13) "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated any motor carrier.

(14) "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 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.

(15) "Pool operation" means any operation whereby two or more taxpayers combine to operate or cause to be operated a motor carrier or motor carriers upon any highway in this state.

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

(17) "Recreational vehicles" means vehicles such as motor homes, pickup trucks with attached campers and buses, when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(18) "Road tractor" means every motor carrier designed and used for drawing other vehicles and not constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

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

(20) "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

WV Legislature

known as natural or casing-head 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: Provided, That in the event there is a question as to the proper classification of any gas or liquid, "special fuel" has the same meaning as in article fourteen-c of this chapter.

(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) "Tractor truck" means every motor carrier designed and used primarily for drawing other vehicles and not constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(24) "Truck" means every motor carrier designed, used or maintained primarily for the transportation of property and having more than two axles.

WV Legislature

§11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.

Every person who operates or causes to be operated on any highway in this state any motor carrier shall pay a road tax on each motor carrier equivalent to the amount of tax per gallon of gasoline or special fuel imposed by article fourteen of this chapter, calculated on each gallon of gasoline or special fuel used as fuel in each motor carrier's operations in this state: Provided, That effective January 1, 2004, the tax imposed by this section shall be equal to the amount of the flat rate of tax per gallon of motor fuel imposed by article fourteen-c of this chapter and calculated on each gallon of motor fuel used as fuel in each motor carrier's operations in this state.

The tax imposed by this article is in addition to all other taxes of whatever character imposed upon any person by any other provisions of law.

WV Legislature

§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 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.

WV Legislature

(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.

WV Legislature

§11-14A-4. Computation of tax.

Computation of the tax is based upon the amount of gallons of motor fuel used in the operation of any motor carrier within this state and shall be calculated by dividing the total number of taxable miles traveled in this state during the reporting period by the average fuel consumption factor calculated for that same reporting period.

WV Legislature

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

(a) Every taxpayer subject to the tax imposed by this article, or by article fourteen-c of this chapter, except as provided, in subsections (b) and (c) of this section, shall on or before the last day of January, April, July and October of every calendar year make to the commissioner reports of its operations during the quarter ending the last day of the preceding month as the commissioner requires and other reports from time to time as the commissioner considers necessary. For good cause shown, the commissioner may extend the time for filing the reports for a period not exceeding thirty days.

(b) Every motor carrier which operates exclusively in this state during a fiscal year that begins on July 1, of one calendar year and ends on June 30 of the next succeeding calendar year and during the fiscal year consumes in its operation only motor fuel upon which the tax imposed by article fourteen of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file an annual report for the fiscal year on or before the last day of July each calendar year: Provided, That effective January 1, 2004, every motor carrier which operates exclusively in this state during a fiscal year that begins on July 1, of one calendar year and ends on June 30 of the next succeeding calendar year and during the fiscal year consumes in its operation only motor fuel upon which the tax imposed by article fourteen-c of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file an annual report for the fiscal year on or before the last day of July of each calendar year: Provided, however, That effective January 1, 2005, every motor carrier which operates exclusively in this state and during the calendar year consumes in its operation only motor fuel upon which the tax imposed by article fourteen-c of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file before the last day of January an annual report for the calendar year ending on the last day of the immediately preceding December. For good cause shown, the commissioner may extend the time for filing the report for a period of thirty days.

(c) Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state in lieu of the separate reports required by subsection (a) of this section. The taxes imposed by this article are calculated on the basis of the joint reports as though the taxpayers were a single taxpayer; and the taxpayers making the reports are jointly and severally liable for the taxes shown to be due. The joint reports shall show the total number of miles traveled in this state and the total number of gallons of motor fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled are not allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

(d)(1) A taxpayer shall keep records necessary to verify the total miles traveled within and without the State of West Virginia, the number of gallons of motor fuel used and purchased

WV Legislature

within and without West Virginia and any other records which the commissioner by regulation may prescribe. A finding by the Tax Commissioner on the basis of the best information available that the taxpayer has failed to maintain records prescribed by the Tax Commissioner, or that the taxpayer refused to make available upon written request the records prescribed by the Tax Commissioner, is sufficient cause for the Commissioner of Motor Vehicles to revoke the identification markers issued to the taxpayer: Provided, That upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

(2) If the Tax Commissioner determines that a taxpayer used an incorrect average fuel consumption factor resulting in the filing of incorrect returns, the Tax Commissioner shall determine the correct average fuel consumption factor, calculate the correct amount of tax due under this article, and under the authority of article ten of this chapter issue an assessment for the amount of tax, interest, penalties and additions due and owing: Provided, That absent adequate information to the contrary, the average fuel consumption factor is four miles per gallon (one and seven-tenths kilometers per liter).

(e) In addition to the Tax Commissioner's powers set forth in sections five-a and five-b, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records or records of highway miles traveled within and without West Virginia and the records of any other person to verify the truth and accuracy of any statement or report to ascertain whether the tax imposed by this article has been properly paid.

(f) In addition to the Tax Commissioner's powers set forth in sections five-a and five-b, article ten of this chapter, and 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 reports due under this article, the commissioner has 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 names to the circuit court of the county having jurisdiction of the party and the court shall thereupon issue a subpoena duces tecum to the party to appear before the commissioner, at a place designated within the jurisdiction of the court, on a day fixed.

WV Legislature

§11-14A-6. Payment of tax.

The tax hereby imposed by this article shall be paid by each taxpayer annually to the Tax Commissioner on or before the last day of January of each calendar year, and calculated upon the amount of motor fuel used as fuel in the operation of each motor carrier operated or caused to be operated by the taxpayer during the year ending with the last day of the preceding month: Provided, That each person subject to the provisions of article fourteen-b of this chapter shall pay quarterly to the Tax Commissioner on or before the last day of January, April, July and October of each calendar year, the correct amount of motor fuel use taxes imposed by each state on motor carriers using the highways of those states during the quarter ending with the last day of the preceding month, the taxes to be calculated in accordance with the instructions provided by those respective states.

WV Legislature

§11-14A-7. Identification markers; fees; civil penalties; criminal penalties.

(a) Registration of motor carriers. -- No person may operate, or cause to be operated, in this state any motor carrier subject to this article without first securing from the Commissioner of Motor Vehicles an identification marker for each motor carrier, except as provided in subsection (b) or (c) of this section. A person who operates, or causes to be operated, in this state more than one motor carrier may obtain an identification marker for each motor carrier: Provided, That such person may also obtain an additional number of identification markers equal to twenty-five percent of the total number of motor carriers in the person's fleet of motor carriers that require identification markers.

(1) Each identification marker for a particular motor carrier shall bear a number. This identification marker shall be displayed on the driver's side of the motor carrier as required by the Commissioner of Motor Vehicles: Provided, That the identification markers issued under the authority of article fourteen-b of this chapter shall be displayed on the exterior portion of both sides of the motor carrier.

(2) The Tax Commissioner, after issuance of any identification marker to a motor carrier, shall cause an internal cross-check to be made in his or her office as to any state tax which he or she administers, to aid in determination of any noncompliance in respect to failure to file returns or payment of tax liabilities. If the Tax Commissioner determines the motor carrier is not in compliance with the requirement to file any tax return or pay any tax liability required by any tax governed by article ten of this chapter, the identification markers issued to that motor carrier by the Commissioner of Motor Vehicles shall be revoked until all the returns are filed and payments made.

(3) The identification markers provided for in this section are valid for a period of one year, ending December 31, each year. A fee of $5 shall be paid to the Commissioner of Motor Vehicles for issuing each identification marker which is reasonably related to the Commissioner of Motor Vehicles' costs of issuing each identification marker.

(4) All tax or returns due under this article shall be paid or returns filed before the issuance of a new identification marker. If the Tax Commissioner determines that a person subject to the requirements of this article has failed to file any return or pay the taxes imposed by this article, the Commissioner of Motor Vehicles shall revoke each identification marker previously issued to that person and shall refuse to issue a new identification marker to that person until all returns are filed and all taxes imposed by this article paid.

(5) Each identification marker shall be removed from a motor carrier:

(A) Prior to the motor carrier being sold or traded in for a different motor carrier;

(B) When a motor carrier registered under subsection (a) of this section ceases doing business in this state, or requests cancellation of the account authorized under article fourteen-b of this chapter; or

WV Legislature

(C) When the identification marker issued under subsection (a) of this section is revoked.

(6) Each identification marker so removed and any additional identification markers issued under the authority of subsection (a) of this section shall within thirty days of removal be returned to the Commissioner of Motor Vehicles.

(b) Trip permit. -- A motor carrier that does not have a motor carrier identification marker issued under subsection (a) of this section may obtain a trip permit which authorizes the motor carrier specified therein to be operated in this state without an identification marker for a period of not more than ten consecutive days beginning and ending on the dates specified on the face of the permit: Provided, That if a motor carrier's identification marker, whether issued by this state or another jurisdiction, has been revoked, the motor carrier may not be issued a trip permit. The fee for this permit is $24.

(1) Fees for trip permits shall be in lieu of the tax otherwise due under this article on account of the vehicles specified in the permit operating in this state during the period of the permit, and no reports of mileage shall be required with respect to that vehicle.

(2) A trip permit shall be carried in the cab of the motor vehicle for which it was issued at all times while it is in this state.

(3) A trip permit may be obtained from the Commissioner of Motor Vehicles or from wire services authorized by the commissioner to issue trip permits. The cost of the telegram or similar transmissions is the responsibility of the motor carrier requesting the trip permit.

(c) Transportation permit. -- The Commissioner of Motor Vehicles is hereby authorized to grant, in his or her discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of business of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter's permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter's permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for a transporter's permit is $15 and a transporter's permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the Tax Commissioner.

(d) Civil penalties. -- Upon a finding by the Tax Commissioner based upon the best evidence available that a taxpayer, whether the owner, licensee or lessee, or the employee, servant or agent thereof, has performed any of the following acts, the Commissioner of Motor Vehicles shall revoke and refuse to renew the taxpayer's identification marker or trip permit until the cause for the revocation is corrected:

(1) Maintains inaccurate or incomplete records;

WV Legislature

(2) Fails to respond to written requests for information;

(3) Fails to make records available upon request;

(4) Falsified application for identification markers or trip permit;

(5) Has a prior revocation of identification markers in another jurisdiction without reinstatement in that jurisdiction;

(6) Is delinquent in payment of taxes, but only after the assessment of those taxes is finalized;

(7) Transfers or sells an identification marker or trip permit; or

(8) Receives or purchases from any person not the Commissioner of Motor Vehicles an identification marker or trip permit.

Upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

(e) Criminal penalties. --

(1) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this state, a motor carrier in violation of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than $500,000; and each day the violation continues or reoccurs constitutes a separate offense.

(2) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who transfers or sells an identification marker or trip permit is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000.

(3) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who receives or purchases from any person not the Commissioner of Motor Vehicles an identification marker or trip permit is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000.

(f) Notwithstanding the provisions of section five-d, article ten of this chapter, the Tax Commissioner shall deliver to or receive from the commissioner of the Division of Motor Vehicles and the commissioner of the Public Service Commission, the information contained in the application filed by a motor carrier for a trip permit under this section, when the information is used to administer a combined trip permit registration program for motor carriers operating in this state, which program may be administered by one agency or any combination of the three agencies, as embodied in a written agreement executed by the head of each agency participating in the program. The agencies have authority to enter into

WV Legislature

an agreement notwithstanding any provision of this code to the contrary; and the fee for a combined trip permit is $24, which shall be in lieu of the fee set forth in subsection (b) of this section.

WV Legislature

§11-14A-7a.

Repealed.

Acts, 1989, 1st Ex. Sess., Ch. 4.

WV Legislature

§11-14A-8. Exemptions.

Nothing in this article shall apply to any motor carrier operated or caused to be operated by or on behalf of any department, board, bureau, commission or other agency of the federal government or of this or any other state or any political subdivision thereof, nor shall the provisions of this article apply to any school bus operated or caused to be operated by or on behalf of this state or any political subdivision thereof or any private or privately operated school or schools.

WV Legislature

§11-14A-9. Credits against tax.

Every taxpayer subject to the road tax imposed in this article is entitled to a credit on the tax equivalent to the amount of tax per gallon of gasoline or special fuel imposed by article fourteen of this chapter on all gasoline or special fuel purchased by the taxpayer for fuel in each motor carrier which it operates or causes to be operated within this state, and upon which gasoline or special fuel the tax imposed by the laws of this state has been paid: Provided, That the credit is not allowed for any gasoline or special fuel taxes for which any taxpayer has applied or received a refund of gasoline or special fuel tax under article fourteen of this chapter: Provided, however, That effective January 1, 2004, every taxpayer subject to said road tax is entitled to a credit against the tax equivalent to the amount of the flat rate of tax per gallon of motor fuel imposed by article fourteen-c of this chapter on all motor fuel purchased by the taxpayer and used as motor fuel in motor carriers which it operates or causes to be operated within this state, and upon which the motor fuel tax imposed by the laws of this state has been paid: Provided further, That no credit is allowed for any motor fuel taxes for which the taxpayer has applied or received a refund of motor fuel tax under article fourteen-c of this chapter. Evidence of the payment of the tax in the form as required by the commissioner shall be furnished by the taxpayer claiming the credit allowed in this section. When the amount of the credit provided for in this section exceeds the amount of the tax for which the taxpayer is liable in the same quarter, the excess, if less than $20, shall be used as a credit on the tax for which the taxpayer would be otherwise liable for any of the eight succeeding quarters: And provided further, That if the taxpayer has ceased to do business in this state under either this article or article fourteen-b of this chapter, the amount of the credit shall be refunded in accordance with section eleven of this article: And provided further, That if the amount of the credit provided in this section exceeds by $20 or more the amount of the tax for which the taxpayer is liable in the same quarter, the entire amount, upon the written request by the taxpayer, shall be allowed as a credit on the tax for which the taxpayer would otherwise be liable for any of the succeeding eight quarters: And provided further, That any credit not used within the eight succeeding quarters after the credit is established shall be forfeited.

WV Legislature

§11-14A-10.

Repealed.

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

WV Legislature

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

The commissioner is hereby authorized to refund from the funds collected under the provisions of this article and article fourteen of this chapter, the amount of the credit accrued for gallons of motor fuel purchased in this state but consumed outside of this state, if the taxpayer by duly filed claim requests the commissioner to issue a refund and if the commissioner is satisfied that the taxpayer is entitled to the refund and that the taxpayer has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, That effective January 1, 2004, the refunds authorized in this section shall be made from the funds collected under the provisions of this article and from the flat rate of tax imposed under section five, article fourteen-c of this chapter: Provided, however, That unless the taxpayer has ceased doing business in this state under either this article or article fourteen-b of this chapter, any amount less than $20 may not be refunded but shall be used as a credit in accordance with the provisions of section nine of this article: Provided further, That the commissioner shall not approve a claim for refund when the claim for a refund is filed after thirteen months from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed: And provided further, That effective April 1, 2004, the commissioner shall not approve a claim for refund when the claim for refund is filed after eight quarters from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed: And provided further, That any refund or credit due a taxpayer subject to article fourteen-b of this chapter shall be withheld if the taxpayer is delinquent on any fuel taxes due any other state: And provided further, That the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on gasoline or special fuel used as fuel in this state as provided by article fourteen of this chapter: And provided further, That effective January 1, 2004, the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on motor fuel used in this state as provided by article fourteen-c of this chapter. The right to receive any refund under the provisions of this article is not assignable and any attempt at assignment thereof is void and of no effect. The claim for refund or credit shall also be subject to the provisions of section fourteen, article ten of this chapter.

www.LegisWV.org

§11-14A-12. Enforcement powers.

(a) Any employee or agent of the Tax Commissioner or any employee or agent of the commissioner of the West Virginia department of highways or any employee or agent of the West Virginia Public Service Commission so authorized by the Tax Commissioner or the commissioner of the West Virginia department of highways or the West Virginia Public Service Commission 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.

(b) Any such employee or agent so authorized by either the Tax Commissioner or by the commissioner of the West Virginia department of highways or by the West Virginia Public Service Commission shall execute a bond with security in the sum of $3,500, payable to the State of West Virginia, 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.

(c) The provisions of this bill shall apply notwithstanding section five, article ten of this chapter.

WV Legislature

§11-14A-13. 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, and payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, That the taxes collected under the provisions of this article but for the purposes of article fourteen-b of this chapter shall be disposed of in accordance with the provisions of section eleven, article fourteen-b of this chapter.

Unless necessary for the 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.

WV Legislature

§11-14A-14.

Repealed.

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

WV Legislature

§11-14A-15.

Repealed.

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

WV Legislature

§11-14A-16. Civil 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 can be shown that the failure is due to reasonable cause and not due to willful neglect, there shall be collected a civil penalty of $50 or ten percent of the net tax due, whichever is greater, for each month of the failure or fraction thereof. The civil penalty prescribed under this section shall be assessed, collected and paid in the same manner as the motor carrier road tax.

WV Legislature

§11-14A-17.

Repealed.

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

WV Legislature

§11-14A-18.

Repealed.

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

WV Legislature

§11-14A-19.

Repealed.

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

WV Legislature

§11-14A-20.

Repealed.

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

WV Legislature

§11-14A-21.

Repealed.

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

WV Legislature

§11-14A-22.

Repealed.

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

WV Legislature

§11-14A-23.

Repealed.

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

WV Legislature

§11-14A-24.

Repealed.

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

WV Legislature

§11-14A-25.

Repealed.

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

WV Legislature

§11-14A-26. 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

§11-14A-27. 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 motor carrier road tax imposed by this article with like effect as if said act were applicable only to the motor carrier road tax imposed by this article and were set forth with respect thereto in extenso in this article: Provided, That for purposes of the tax imposed by this article and notwithstanding sections seventeen and seventeen-a, article ten of this chapter, the annual rate of interest in effect at the time of assessment or when the payment of delinquent tax is made shall be one percent per month, calculated for each month or part thereof from the date prescribed for payment to the date the payment is made.

WV Legislature

§11-14A-28. Effective date.

The provisions of this article take effect on April 1, 1989: Provided, That the amendments to this article made during the 2004 legislative session shall be effective July 1, 2004.

WV Legislature