WEST VIRGINIA CODE CHAPTER 11 ARTICLE 14B

WV Legislature

§11-14B-1. Purpose.

This article is enacted to conform laws of this state relating to registration of motor carriers and reporting and payment of motor fuel use taxes with requirements of the "Intermodal Surface Transportation and Efficiency Act of 1991", Public Law 102-240. More specifically:

(1) Section 4005 of said act requires establishment of a single state registration system for motor carriers. Under this system, a motor carrier is required to register annually only with one state. Single state registration is considered to satisfy the registration requirements of all other states.

(2) Section 4008 of said act mandates state participation in the international registration plan and adoption of the international fuel tax agreement by providing that after September 30, 1996:

(A) No state, other than a state participating in the international registration plan, may establish, maintain or enforce any motor carrier registration law, regulation or agreement which limits the operation of any motor carrier within its borders which is not registered under the laws of the state if the motor carrier is registered under the laws of any other state participating in the international registration plan;

(B) No state may establish, maintain or enforce any law or regulation which has fuel use tax reporting requirements including tax reporting forms which are not in conformity with the international fuel tax agreement; and

(C) No state may establish, maintain or enforce any law or regulation which provides for the payment of a fuel use tax unless the law or regulation is in conformity with the international fuel tax agreement with respect to collection of tax by a single base jurisdiction and proportional sharing of fuel use taxes charged among the states in which a motor carrier is operated.

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§11-14B-2. Definitions.

For purposes of this article:

(a) "Base jurisdiction" means the member jurisdiction where a motor carrier is based for vehicle registration purposes and:

(1) Where the operational control and operational records of the licensee's motor carriers are maintained or can be made available; and

(2) Where some travel is accrued by motor carriers within the fleet.

(b) "Fuel use tax" means a tax imposed on or measured by the consumption of fuel in a motor carrier.

(c) "International fuel tax agreement" means the international agreement for the collection and distribution of fuel use taxes paid by motor carriers, developed under the auspices of the national Governors' association: Provided, That this term includes amendments to the international fuel tax agreement.

(d) "International registration plan" means the interstate agreement for the apportionment of vehicle registration fees paid by motor carriers developed by the American association of motor vehicle administrators.

(e) "Licensee" means a person who holds an uncanceled license issued by a base jurisdiction in accordance with the international fuel tax agreement.

(f) "Motor carrier":

(1) As used with respect to the international registration plan, has the meaning the term "apportionable vehicle" has under that plan; and

(2) As used with respect to the international fuel tax agreement, has the meaning the term "qualified motor vehicle" has under that agreement.

(g) "Motor fuel" means motor fuel as defined in article fourteen-c of this chapter.

(h) "Motor fuel use taxes imposed by this state" means the aggregate amount of taxes, expressed in cents per gallon, imposed by this state, under articles fourteen-a and fifteen-a of this chapter, on motor fuel consumed in this state by a motor carrier.

(i) "State" means any of the forty-eight contiguous states and the District of Columbia, and any other jurisdiction which imposes a motor fuel use tax and is a member of the international fuel tax agreement.

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§11-14B-3. Registration of motor carriers.

(a) To facilitate adoption of the single point registration system in this state, the powers, duties and responsibilities of the Tax Commissioner under section seven, article fourteen-a of this chapter, are transferred to the commissioner of the Division of Motor Vehicles effective with the registration year that begins July 1, 1995: Provided, That no identification marker or trip permit is required under section seven, article fourteen-a of this chapter of a motor carrier based in another state which is a member of the international fuel tax agreement.

(b) Beginning with the registration year specified in subsection (a) of this section, the Commissioner of Motor Vehicles shall furnish the Tax Commissioner with motor carrier registration information and information pertaining to the trip permit registration program for use by the Tax Commissioner in collecting motor fuel taxes.

(c) Also beginning with the registration year specified in subsection (a) of this section, the Tax Commissioner shall furnish the Commissioner of Motor Vehicles with the taxpayer identity information for any motor carrier which fails to file required returns or report for, or to pay, the motor fuel use taxes imposed by this state. This information may give the Commissioner of Motor Vehicles sufficient cause to revoke or refuse to renew the identification marker previously issued under section seven, article fourteen-a of this chapter.

(d) Information exchanged pursuant to this section shall be used solely for tax administration and motor carrier registration purposes and treated as confidential information for all other purposes as provided in article ten of this chapter.

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§11-14B-4. Cooperative agreements between states authorized.

(a) The Tax Commissioner may enter into cooperative reciprocal international fuel tax agreements on behalf of the State of West Virginia with the appropriate authorities of another state or group of states for administration of the motor fuel use taxes imposed by this state.

(b) The Tax Commissioner may enter into any ancillary or related agreements on behalf of this state with the appropriate officials of one or more other states, or the federal government which the tax commissioner considers appropriate and necessary to fully implement any international fuel tax agreement entered into under subsection (a) of this section.

WV Legislature

§11-14B-5. Scope of agreement.

An international fuel tax agreement may provide for:

(a) Determining the base jurisdiction of motor carriers;

(b) Making and retaining of records by motor carriers;

(c) Auditing the books and records of motor carriers and auditing procedures;

(d) Exchanging information for purposes of motor fuel use tax administration and collection;

(e) Determining persons eligible for a motor carrier tax license or registration;

(f) Defining qualified motor carriers;

(g) Determining if or when bonding is required;

(h) Specify reporting requirements and periods;

(i) Specifying uniform penalty and interest rates for late reporting and payment of motor fuel use taxes;

(j) Determining methods for collecting and forwarding of motor fuel use taxes and penalties to another jurisdiction; and

(k) Any other provision which the parties to the agreement believe will facilitate administration of the agreement and collection of motor fuel use taxes from interstate motor carriers.

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§11-14B-6. Effect of international fuel tax agreement on the administration or application of motor fuel use taxes imposed by this state.

(a) Even though the State of West Virginia is a member of the international fuel tax agreement, the State of West Virginia retains substantive authority to determine when the motor fuel use taxes imposed by this state apply, the applicable rate of tax, the applicable interest rate, and any other substantive tax issues related to the administration or application of those taxes.

(b) The provisions of article fourteen-a of this chapter shall apply to every licensee that is subject to the provisions of this article: Provided, That, the amount of international fuel tax agreement taxes reported as due and owing by a motor carrier based in this state shall for purposes of articles nine and ten of this chapter be treated as taxes due and owing to the State of West Virginia: and,

(c) Every motor carrier that is not a licensee, every motor carrier based in another state which is not a member of the international fuel tax agreement and every West Virginia intrastate motor carrier shall continue to be subject to the provisions of article fourteen-a of this chapter, and any subsequent amendments thereto.

WV Legislature

§11-14B-7. Effective date of international fuel tax agreement or amendment.

The terms of an international fuel tax agreement, or an amendment thereto, shall not be effective until they are stated in writing and a properly executed copy is filed with the Tax Commissioner.

WV Legislature

§11-14B-8. Copy of agreement to be maintained by Tax Commissioner.

A current copy of the international fuel tax agreement shall be maintained by the Tax Commissioner. A current copy of the international fuel tax agreement and any amendment thereto shall be published in the state register.

WV Legislature

§11-14B-9. Exchange of information.

(a) The Tax Commissioner may, as required by the terms of any agreement executed under section four of this article, forward to the proper officers of any party to such agreement any information in the Tax Commissioner's possession relative to the manufacture, receipt, sale, use, transportation or shipment of motor fuels by any person.

(b) The Tax Commissioner may disclose to the proper officers of any party to an agreement executed under section four of this article the location of offices, motor vehicles and other real and personal property of users of motor fuels.

(c) Information which the Tax Commissioner is authorized to disclose under this article, which is confidential information under article ten of this chapter when in the possession of the Tax Commissioner, shall be treated as confidential information by the recipient thereof and that information may be used only for tax administration purposes.

(d) In the event of any inconsistency between the disclosure of information rules specified in this article and the confidentiality rules provided in article ten of this chapter, the language of this article shall control.

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§11-14B-10. Audits.

(a) The international fuel tax agreement provides that each base jurisdiction audit the records of motor carriers based in that jurisdiction to determine if the motor fuel taxes due all other base jurisdictions are properly reported and paid. When a base jurisdiction performs a motor fuel use tax audit on an interstate motor carrier based in that jurisdiction, it shall forward the findings of the audit to each base jurisdiction in which the interstate motor carrier has taxable use of motor fuels.

(b) The Tax Commissioner is authorized to participate in auditing motor carriers in other base jurisdictions to determine if the motor fuel taxes due this state are properly reported and paid: Provided, That any other base jurisdiction may participate with the Tax Commissioner in auditing motor carriers based in this state to determine if motor fuel taxes due that base jurisdiction are properly reported and paid.

(c) No international fuel tax agreement entered into under this article may preclude the Tax Commissioner from auditing the records of any person covered by the provisions of this article.

WV Legislature

§11-14B-11. Disposition of moneys; international fuel tax agreement clearing fund.

(a) International fuel tax agreement clearing fund. -- All amounts collected under the international fuel tax agreement shall be deposited daily by the Tax Commissioner into the international fuel tax agreement clearing fund which is hereby created in the State Treasury.

(b) Distributions. -- The Tax Commissioner shall distribute funds in the international fuel tax agreement clearing fund as follows:

(1) Payments due and owing to member jurisdictions under the international fuel tax agreement shall be distributed as provided in the agreement.

(2) Refunds for over payment of motor fuel taxes by a West Virginia based interstate motor carrier shall be made from the fund.

(3) The Tax Commissioner shall periodically reconcile the international fuel tax agreement clearing fund and, after reconciliation, transfer to the state road fund all deposits in the clearing fund of motor fuel use taxes imposed by articles fourteen-a and fifteen-a of this chapter.

(c) Investment of funds. -- Funds in the international fuel tax agreement clearing fund shall be invested in the same manner as funds in the state road fund and all earnings from these investments shall be deposited in the State Treasury and credited to the state road fund: Provided, That these investments shall not affect or interfere with distributions from the fund in accordance with the terms of the international fuel tax agreement.

WV Legislature

§11-14B-12. Regulations.

The Tax Commissioner may adopt rules for the implementation, administration or enforcement of an international fuel tax agreement. These rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§11-14B-13. Legal remedies.

The legal remedies of any person served with an order or assessment under this article shall be those provided in this code to taxpayers in this state.

WV Legislature

§11-14B-14. General procedure and administration; conformity with agreement.

(a) All of the provisions of the West Virginia Tax Procedure and Administration Act set forth in article ten of this chapter, including amendments thereto, apply to motor fuel taxes collected under an International Fuel Tax Agreement.

(b) In the event of any inconsistency between the provisions of article ten of this chapter and the terms of the International Fuel Tax Agreement, the terms of said article ten control.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, on and after July 1, 2013, the provisions of section R1230 of the International Fuel Tax Agreement, as amended and in effect on that date, apply to motor fuel taxes collected under the International Fuel Tax Agreement.

WV Legislature

§11-14B-15. Criminal penalties.

All of the provisions of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter, including amendments thereto, apply to the international fuel tax agreement taxes collectible under this article.

WV Legislature

§11-14B-16. Reimbursement of expenses of Tax Commissioner.

The Division of Motor Vehicles shall reimburse the Tax Commissioner for costs incurred by the Tax Commissioner to implement agreements entered into under this section and for any additional expenses as may be incurred by the Tax Commissioner to collect motor fuel use taxes under these agreements, when these expenses are not provided for in the Tax Division's annual budget appropriation. For the fiscal year of the state that begins on July 1, 1994, the reimbursement amount shall be $620,000. The amount of reimbursement shall be renegotiated each fiscal year thereafter.

WV Legislature

§11-14B-17. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this article, but shall be confined in its operation to the provision of this article directly involved in the controversy in which such judgment was rendered and the material facts therein, and the applicability of the provision to other persons or circumstances shall not be affected by the judgment.

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