WEST VIRGINIA CODE CHAPTER 11 ARTICLE 14C

WV Legislature

PART 1. GENERAL PROVISIONS.

§11-14C-1. Short title; nature of tax.

(a) This article shall be known and may be cited as the "West Virginia Motor Fuels Excise Tax Act".

(b) All taxes levied under this article, or imposed under any other article of this chapter but collected under this article, are imposed upon the ultimate consumer but are precollected as prescribed in this article. The levies and assessments imposed on licensees as provided in this article are imposed on them as agents of this state for the precollection of the tax. The taxes levied under this article shall be collected and paid at those times, in the manner, and by those persons specified in this article.

WV Legislature

§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) "Agricultural purposes" means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

(B) Using land for breeding and management of farm livestock including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing of timber for commercial purposes or other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.

(2) "Aircraft" includes any airplane or helicopter.

(3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of 98 percent ethanol or methanol by volume.

(4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine or mechanical contrivance and includes, but is not limited to, products commonly known as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

(5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

(6) "Alternative-fuel commercial refueling infrastructure" means property owned by a commercial establishment and used for storing alternative fuels and for dispensing such alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles or commercial vehicles other than those owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered: *Provided*, That the property is not located on a private residence or private home. "Alternative-fuel commercial refueling infrastructure" does not

WV Legislature

include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as described in this subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(7) "Alternative-fuel home refueling infrastructure" means property owned by a private individual for personal use that is located at the individual's private residence or private home and used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this article, "alternative-fuel home refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(9) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.

(10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(15) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

WV Legislature

(16) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(18) "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(21) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(22) "Code" means the Code of West Virginia, 1931, as amended.

(23) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire or other trade or business.

WV Legislature

(24) "Commissioner" or "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her delegate.

(25) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as or used as an engine motor fuel.

(26) "Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership or member of a limited liability company who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership or limited liability company, the tax collection, accounting or remitting obligations.

(27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more.

(28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(29) "Designated inspection site" means a state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(30) "Destination state" means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term does not include a tribal reservation of a recognized Native American tribe.

(31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline or aviation fuel.

(32) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use.

(33) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(34) "Division" or "State Tax Division" means the Tax Division of the West Virginia Department of Revenue.

(35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

WV Legislature

(36) "End seller" means the person who sells motor fuel to the ultimate user of the motor fuel.

(37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory or foreign country.

(38) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(39) "Fuel" means motor fuel.

(40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(42) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.

(43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(44) "Gasoline" means a product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

(45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. The term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale.

(46) "Gallon equivalent" means the amount of an alternative fuel that is considered to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

(47) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U. S. gallons.

(48) "Governmental entity" means this state or a political subdivision thereof or the United States or its commissioners, agencies and instrumentalities.

(49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil, #2

WV Legislature

dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial processing purposes.

(50) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

(51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

(52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline or any other means. Import does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(53) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(54) "Import verification number" means the number assigned by the commissioner to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(55) "In this state" means the area within the borders of West Virginia including all territory within the borders of West Virginia that is owned by the United States of America.

(56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

(57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this article.

(58) "Liquid" means a substance that is liquid above its freezing point.

(59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(60) "Motor carrier" means a vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding 26,000 pounds or having three or more axles regardless of weight or used in combination when the weight of the combination exceeds 26,000 pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: *Provided*, That the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds. The term "motor carrier" does not include any

WV Legislature

type of recreational vehicle.

(61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel.

(62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

(63) "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 motor fuel.

(64) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(65) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of this state but who meets both of the following requirements: (A) Is registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: *Provided*, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or representative (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(66) "Person" means an individual, firm, cooperative, association, corporation, limited liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate, partnership, limited partnership, copartnership, organization, limited liability partnership, joint venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group or combination acting as a unit, a public body including, but not limited to, this state and any other state and an agency, commissioner, institution, political subdivision or instrumentality of this state or any other state and, also, an officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(67) "Position holder" means the person who holds the inventory position in motor fuel in a terminal as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(68) "Principal" means:

WV Legislature

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(69) "Producer/manufacturer" means a person who produces, refines, blends, distills, manufactures or compounds motor fuel.

(70) "Provider of alternative fuel" means a person who does one or more of the following:

(A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an alternative-fuel retailer;

(B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel retailer to operate a highway vehicle;

(C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the vehicle;

(D) Imports alternative fuel into this state by a means other than the usual tank or receptacle connected with the engine of a highway vehicle for use by that person to operate a highway vehicle.

(71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is outside the bulk transfer/terminal system.

(72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on railroad rails and includes a switching engine.

(73) "Receive" means acquisition of ownership or possession of motor fuel.

(74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

(75) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(76) "Removal" means a physical transfer other than by evaporation, loss or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk

WV Legislature

transfer/terminal system is complete upon delivery into the means of conveyance.

(77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(78) "Retailer of alternative fuel" means a person who maintains storage facilities, including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

(79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, ethanol, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains 85 percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. "Special fuel" does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(80) "State" or "this state" means the State of West Virginia.

(81) "Supplier" means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator is not a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest and additions to tax and penalties unless the context requires a more limited meaning.

(83) "Taxpayer" means a person required to file a return for the tax imposed by this article or a person liable for payment of the tax imposed by this article.

WV Legislature

(84) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(85) "Terminal operator" means a person who owns, operates or otherwise controls a terminal.

(86) "Transmix" means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(89) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator’s books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor vehicle, aircraft or watercraft.

(91) "Watercraft" means any vehicle used on waterways.

WV Legislature

§11-14C-3. Rules; forms.

The commissioner may promulgate rules in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate and enforce this article. The commissioner may also prescribe forms necessary to effectuate and enforce this article, and provide other necessary guidelines on the administration of this article.

WV Legislature

§11-14C-4. Exchange of information; criminal penalty for unauthorized disclosure.

(a) The commissioner may enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, the exchange of information relating to taxes administered by the commissioner pursuant to this article, and providing information relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by any person of motor fuel.

(b) The commissioner may divulge tax information to the commissioner of the Division of Highways: Provided, That the information disclosure requirements of section five-d, article ten of this chapter are satisfied.

(c) The commissioner may provide to any person a list of licensees. The list shall state the name, business address and, if available, telephone number of each licensee on the list.

(d) Any person to whom tax information is divulged pursuant to this section is subject to the prohibitions and penalties prescribed in article ten of this chapter as though that person was an employee of the state Tax Division.

WV Legislature

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to $.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable component comprised of:

(1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The variable component shall be equal to five percent of the average wholesale price of the motor fuel: Provided, That on and after January 1, 2010, the average wholesale price shall be no less than $2.34 per invoiced gallon and is computed as hereinafter prescribed in this section: Provided, however, That on and after July 1, 2017, the average wholesale price of motor fuel may not be determined to be less than $3.04 per invoiced gallon for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this code to the contrary and on and after July 1, 2017, the tax per gallon may not be less than 15.2 cents per gallon of motor fuel; and

(2) On alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The variable component of the tax on alternative fuel shall be equal to five percent of the average wholesale price of the alternative fuel.

(b) Determination of average wholesale price. —

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by other means as the Tax Commissioner considers reasonable.

(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. On and after January 1, 2010, in no event shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel: Provided, That on and after July 1, 2017, the average wholesale price may not be determined to be less than $3.04 per gallon of motor fuel. On and after January 1, 2011, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax

WV Legislature

Commissioner for the previous calendar year: Provided, however, That in no case shall the average wholesale price of motor fuel be determined to be less than $3.04 per invoiced gallon. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of a change in rate, and in establishing and determining the average wholesale price of motor fuel may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In an administrative or court proceeding brought to challenge the average wholesale price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.

(d) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate by reference provisions of the National Institute of Standards and Technology, United States Department of Commerce, the Internal Revenue Code, United States Treasury Regulations, the Internal Revenue Service publications or guidelines or other publications or guidelines which may be useful in determining, setting or describing the gasoline gallon equivalent for each alternative fuel used as motor fuel.

(e) Effective date. — The amendments to this section enacted during the first extraordinary session of 2017 shall take effect on July 1, 2017.

WV Legislature

§11-14C-6. Point of imposition of motor fuels tax.

(a) The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, other than by a bulk transfer, is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state and is payable by the person importing the motor fuel unless otherwise specified in this section.

(b) Except as provided in subsection (a) of this section, the tax levied pursuant to section five of this article is measured by invoiced gallons of motor fuel removed, other than by a bulk transfer:

(1) From the bulk transfer/terminal system within this state;

(2) From the bulk transfer/terminal system outside this state for delivery to a location in this state as represented on the shipping papers: Provided, That the supplier imports the motor fuel for the account of the supplier; and

(3) Upon sale or transfer in a terminal or refinery in this state to any person not holding a supplier's license and payable by the person selling or transferring the motor fuel.

(c) The tax levied pursuant to section five of this article upon motor fuel removed from a refinery or terminal in this state shall be collected by the supplier, as shown in the records of the terminal operator, acting as trustee, from the person removing the motor fuel from the facility.

(d) The tax levied pursuant to section five of this article shall not apply to motor fuel imported into this state in the motor fuel supply tank or tanks of a motor vehicle: Provided, That the person owning or operating as a motor carrier is not relieved of any taxes imposed by article fourteen-a of this chapter.

(e) The tax imposed pursuant to section five of this article at the point that blended motor fuel is made in West Virginia outside the bulk transfer/terminal system is payable by the blender. The number of gallons of blended motor fuel on which the tax is payable is the difference, if any, between the number of invoiced gallons of blended motor fuel made and the number of invoiced gallons of previously taxed motor fuel used to make the blended motor fuel.

(f) The terminal operator of a terminal in this state is jointly and severally liable with the supplier for the tax levied pursuant to section five of this article and shall remit payment to this state at the same time and on the same basis as a supplier under section twenty-two of this article upon:

(1) The removal of motor fuel from the terminal on account of any supplier who is not licensed in this state: Provided, That the terminal operator is relieved of liability if the terminal operator establishes all of the following:

WV Legislature

(A) The terminal operator has a valid terminal operator's license issued for the facility from which the motor fuel is withdrawn;

(B) The terminal operator has a copy of a valid license from the supplier as required by the commissioner; and

(C) The terminal operator has no reason to believe that any information is false; or

(2) The removal of motor fuel that is not dyed and marked in accordance with internal revenue service requirements, if the terminal operator provides any person with any bill of lading, shipping paper or similar document indicating that the motor fuel is dyed and marked in accordance with the internal revenue service requirements.

WV Legislature

§11-14C-6a. Point of imposition of motor fuels tax on alternative fuel.

(a) The tax levied pursuant to section five of this article is imposed on alternative fuel without regard to whether it is sold, transported or distributed within the bulk transfer/terminal system or outside of the bulk transfer/terminal system.

(b) The tax levied pursuant to section five of this article is imposed on alternative fuel that is not otherwise taxed at the point of imposition prescribed under section six of this article at the following points of imposition in the following order:

(1) At the time alternative fuel is withdrawn from the storage facility including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures;

(2) If not taxed at the point of imposition described in subdivision (1) of this subsection, then at the time alternative fuel is sold for use in a highway vehicle;

(3) If not taxed at the point of imposition described in subdivision (1) or at the point of imposition described in subdivision (2) of this subsection, then at the time alternative fuel is used in a highway vehicle.

WV Legislature

§11-14C-7. Tax on unaccounted-for motor fuel losses; liability.

(a) There is hereby annually levied a tax at the rate specified by section five of this article on taxable unaccounted-for motor fuel losses at a terminal in this state. "Taxable unaccounted-for motor fuel losses" means the number of gallons of unaccounted-for motor fuel losses that exceed one half of one percent of the number of invoiced gallons removed from the terminal during the year by a bulk transfer or at the terminal rack. "Unaccounted-for motor fuel losses" means the difference between: (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year; and (2) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted-for motor fuel losses which have been approved by the commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted-for motor fuel losses.

(b) The terminal operator whose motor fuel is unaccounted for is liable for the tax levied by this section. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the commissioner as having been removed from the terminal is presumed to be unaccounted-for motor fuel losses. A terminal operator may rebut this presumption by establishing that motor fuel received at a terminal, but not shown on an informational return as having been removed from the terminal, was an accounted-for loss or constitutes part of a transmix.

WV Legislature

§11-14C-8. Backup tax; liability.

(a) The tax levied pursuant to section five of this article is levied on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a taxable use other than a use exempt under 26 U.S.C. §4082;

(2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used or consumed on a highway; and

(3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed on the basis that the motor fuel was used for an off-highway purpose.

(b) The operator of a highway vehicle that uses untaxed or refunded motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the motor fuel is owned by or leased to a motor carrier, the operator of the highway vehicle and the motor carrier are jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the operator of the highway vehicle and the end seller are jointly and severally liable for the tax.

(c) The tax liability levied by this section is in addition to any other penalty imposed pursuant to this article.

WV Legislature

§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) *Per se exemptions from flat rate component of tax*. — Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: *Provided,* That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane unless sold for use in a motor vehicle.

(b) *Per se exemptions from variable component of tax*. — Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: *Provided,* That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) *Refundable exemptions from flat rate component of tax*. — A person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

(1) The United States or agency thereof: *Provided,* That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the flat rate component of tax imposed by section five of this article on those sales;

(2) A county government or unit or agency thereof;

(3) A municipal government or any agency thereof;

(4) A county board of education;

(5) An urban mass transportation authority created pursuant to the provisions of article

WV Legislature

twenty-seven, chapter eight of this code;

(6) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided,* That motor 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. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided,* That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

(14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of 25 gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of 25 gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck, garbage truck, or fuel delivery truck equal to

WV Legislature

25 percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of 25 gallons or more: *Provided,* That the amount refunded is equal to six cents per gallon: *Provided, however,* That the gallons of motor fuel 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 40 miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) *Refundable exemptions from variable rate component of tax.* — Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

(1) The United States or agency thereof: *Provided,* That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax imposed by section five of this article on those sales.

(2) This state and its institutions;

(3) A county government or unit or agency thereof;

(4) A municipal government or agency thereof;

(5) A county board of education;

(6) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to a person who is required to maintain an inventory of motor 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;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue

WV Legislature

service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located;

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided,* That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle; or

(10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in railroad diesel locomotives: *Provided*, That the refundable exemption contained in this subdivision may not exceed an aggregate amount of $4,300,000 in any year to all taxpayers claiming the exemption and that if more than an aggregate amount of $4,300,000 is appropriately claimed in any year, then the refundable exemption shall be distributed proportionately to the taxpayers so that the total aggregate refund is $4,300,000 in that year. The Tax Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that the Tax Commissioner considers necessary to administer the exemption contained in this subdivision.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

WV Legislature

§11-14C-9a. Additional exemptions from tax.

(a) Additional per se exemptions from flat rate component of tax. — In addition to the provisions of section nine of this article, sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: Provided, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this exemption, "field gas" means "natural gas" or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term "field gas" does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.

(b) Additional per se exemptions from variable component of tax. — In addition to the provisions of section nine of this article, sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: Provided, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this exemption, "field gas" means "natural gas" or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term "field gas" does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.

WV Legislature

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

(a) A person shall obtain the appropriate license or licenses issued by the commissioner before conducting the activities of:

(1) A supplier which includes a refiner;

(2) A permissive supplier;

(3) An importer;

(4) An exporter;

(5) A terminal operator;

(6) A blender;

(7) A motor fuel transporter;

(8) A distributor;

(9) A producer/manufacturer;

(10) An alternative-fuel bulk end user;

(11) A provider of alternative fuel; or

(12) A retailer of alternative fuel.

(b) A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as otherwise determined by the commissioner.

WV Legislature

§11-14C-11. License application procedure.

(a) To obtain a license under this article, an applicant shall file an application with the commissioner on a form provided by the commissioner. The application shall include the applicant's name, address, federal employer identification number, and any other information required by the commissioner.

(b) An applicant for a license as a supplier, permissive supplier, terminal operator, importer, blender, or distributor, shall satisfy the following requirements:

(1) If the applicant is a corporation, the applicant shall either be incorporated in this state or authorized to transact business in this state;

(2) If the applicant is a limited liability company, the applicant shall either be organized in this state or authorized to transact business in this state;

(3) If the applicant is a limited liability partnership, the applicant shall either be formed in this state or authorized to transact business in this state; and

(4) If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

(c) An applicant for a license as a supplier, permissive supplier, terminal operator, or blender shall have a federal certificate of registry issued under 26 U.S.C. §4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. §4101 shall include the registration number of the certificate on the application for a license under this section.

(d) An applicant for a license as an importer or distributor shall list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on its application for an importer's license or a distributor's license shall provide the commissioner written notice of the action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

(e) An applicant for a license as an exporter shall designate an agent located in West Virginia for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the

WV Legislature

applicant intends to export motor fuel received in West Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on its application for an exporter's license or a distributor's license shall provide the commissioner written notice of the action before exporting motor fuel to that state. The notice shall include the information required on the license application.

(f) An applicant for a license as a motor fuel transporter shall list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to transport motor fuel from or to a state not listed on its application for a motor fuel transporter's license shall provide the commissioner written notice of the action before transporting motor fuel from or to that state. The notice shall include the information that is required on the license application.

WV Legislature

§11-14C-12. Permissive supplier requirements on out-of-state removals.

(a) A person may elect to obtain a permissive supplier license to collect the tax levied by section five of this article for motor fuel that is removed at a terminal in another state and has West Virginia as the destination state.

(b) A licensed permissive supplier shall comply with all of the following requirements with respect to motor fuel that is removed by that licensed permissive supplier at a terminal located in another state and has West Virginia as the destination state:

(1) Collect the tax due this state on the motor fuel;

(2) Waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due this state on the motor fuel under this article;

(3) Report and pay the tax due on the motor fuel in the same manner as if the removal had occurred at a terminal located in West Virginia;

(4) Keep records of the removal of the motor fuel and submit to audits concerning the motor fuel as if the removal had occurred at a terminal located in West Virginia; and

(5) Report sales by the supplier not engaged in business in this state to a person who is not licensed in the state where the removal occurred if the destination state is West Virginia.

(c) A licensed permissive supplier acknowledges that this state imposes the requirements listed in subsection (b) of this section under its general police power and submits to the jurisdiction of this state only for purposes related to the administration of this article.

WV Legislature

§11-14C-13. Bond requirements.

(a) Along with an application for a license required by section eleven of this article, either a cash bond or a continuous surety bond in the amount or amounts specified in this section shall be filed. If a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed. If a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter. If the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, is conditioned upon compliance with the requirements of this article, payable to this state and in the form required by the commissioner. The amount of the bond is as follows:

(1) For a supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million: When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(2) For a permissive supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(3) For a terminal operator license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(5) For an importer license for a person that imports by transport vehicle or another means

WV Legislature

outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported requires the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; or (B) the seller of the motor fuel is a permissive supplier, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(7) For a license as both a distributor and an importer as described in subdivision (5) of this subsection, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(9) For a blender license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(10) For a distributor license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(11) For a motor fuel transporter license, there is no bond;

(12) For a producer/manufacturer license, there is no bond. If the taxpayer fails to file a

WV Legislature

return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(13) For an alternative-fuel bulk end user, a provider of alternative fuel and a retailer of alternative fuel, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification; and

(14) An applicant for a licensed activity listed under subdivisions (1) through (10), inclusive, of this subsection may, in lieu of posting either the cash bond or continuous surety bond required by this subsection, provide proof of financial responsibility acceptable to the commissioner. The proof of financial responsibility must demonstrate the absence of circumstances indicating risk with the collection of taxes from the applicant. The following constitutes proof of financial responsibility:

(A) Proof of $5 million net worth constitutes evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of $2,500,000 net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and

(C) Proof of $1,250,000 net worth constitutes financial responsibility in lieu of posting twenty-five percent of the required bond. Net worth is calculated on a business, not individual basis.

(15) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the State Tax Division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond. When a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(16) A licensee who disagrees with the commissioner's decision requiring new or additional security may seek a hearing by filing a petition with the Office of Tax Appeals in accordance with the provisions of section nine, article ten-a of this chapter. The hearing shall be provided within thirty days after receipt by the Office of Tax Appeals of the petition.

(b) The surety must be authorized under article nineteen, chapter thirty-three of this code to engage in business of transacting surety insurance within this state. The cash bond and the

WV Legislature

continuous surety bond are 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. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form and shall indemnify the state against loss arising from the failure of the taxpayer to pay, for any cause whatever, the motor fuel excise tax levied by this article.

(c) Surety on a continuous surety bond furnished hereunder is relieved, released and discharged from all liability accruing on the 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. Discharge from the continuous surety bond does not relieve, release or discharge the surety from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) A taxpayer that has furnished a cash bond hereunder is relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner, a written request to be discharged and the amount of the cash bond refunded. The commissioner may retain all or part of the cash bond until the commissioner performs an audit of the taxpayer's business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a taxpayer seeks discharge as herein provided, it is the duty of the taxpayer to provide the commissioner with another cash bond or a continuous surety bond prior to the expiration of the original cash bond. Failure to provide either a new cash bond or a continuous surety bond shall result in the commissioner canceling each license and registration previously issued to the taxpayer.

WV Legislature

§11-14C-14. Grounds for denial of license.

(a) The commissioner may refuse to issue a license under this article if the applicant or any principal of the applicant that is a business entity has:

(1) Had a license or registration issued under prior law or this article canceled by the commissioner for cause;

(2) Had a motor fuel license or registration issued by another state canceled for cause;

(3) Had a federal certificate of registry issued under section 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;

(4) Been convicted of any offense involving fraud or misrepresentation; or

(5) Been convicted of any other offense that indicates that the applicant may not comply with this article if issued a license.

WV Legislature

§11-14C-15. Issuance of license.

Upon approval of an application, the commissioner shall issue to the applicant the appropriate license or licenses for each place of business of the applicant. Each licensee shall display the license issued under this article in a conspicuous place at each of the licensee's places of business. A license is not transferable and remains in effect until surrendered or canceled.

WV Legislature

§11-14C-16. Notice of discontinuance, sale or transfer of business.

(a) A licensee who discontinues the business for which was issued a license authorized by this article shall notify the commissioner in writing within fifteen days of discontinuance and shall surrender the license to the commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the commissioner.

(b) All taxes for which the licensee is liable under this article but are not yet due are due on the date of the discontinuance. If the licensee has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred is jointly and severally liable for the amount of any tax owed by the licensee to this state on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the licensee.

WV Legislature

§11-14C-17. License cancellation.

(a) The commissioner may cancel the license of any person licensed under this article, upon written notice sent by registered mail to the licensee's last known address, or to the licensee's designated agent for service of process, appearing in the commissioner's files, for any of the following reasons:

(1) Filing by the licensee of a false report of the data or information required by this article;

(2) Failure, refusal, or neglect of the licensee to file a report or information required by this article;

(3) Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as required by this article;

(4) Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in West Virginia;

(5) Failure to file a new or additional cash bond or continuous surety bond upon request of the commissioner pursuant to section thirteen of this article;

(6) Conviction of the licensee or a principal of the licensee for any act prohibited under this article;

(7) Failure, refusal, or neglect of a licensee to comply with any other provision of this article or any rule promulgated pursuant to this article; or

(8) A change in the ownership or control of the business.

(b) Upon cancellation of any license for any cause listed in subsection (a) of this section, the tax levied under this article becomes due and payable on all untaxed motor fuel held in storage or otherwise in the possession of the licensee and all motor fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

(c) The commissioner may cancel any license upon the written request of the licensee.

(d) Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this article, the commissioner shall cancel and surrender the bond, filed by the licensee: Provided, That the requirements of section thirteen of this article are satisfied.

WV Legislature

§11-14C-18. Records and lists of license applicants and licensees.

(a) The commissioner shall maintain a record of:

(1) All applicants for a license under this article;

(2) All persons to whom a license has been issued under this article; and

(3) All persons holding a current license issued under this article, by license category.

(b) The commissioner shall provide a list of licensees to any person who requests a copy. The list shall state the name, business address, and, if available, telephone number of each licensee on the list and may include other information determined appropriate by the commissioner.

WV Legislature

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

§11-14C-19. When tax return and payment are due.

(a) The tax levied by this article shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft or money order payable to the commissioner for the amount of tax due, if any, for the preceding month. The commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax. If no tax is due, the return required by the commissioner shall be completed and filed before the last day of the calendar month for the preceding month.

(b) The following shall file a monthly return as required by this section:

(1) A terminal operator;

(2) A supplier;

(3) An importer;

(4) A blender;

(5) A person incurring liability under section eight of this article for the backup tax on motor fuel;

(6) A permissive supplier;

(7) A motor fuel transporter;

(8) An exporter; and

(9) A producer/manufacturer.

(c) For the calendar years beginning on or after January 1, 2014, the tax levied by this article on alternative fuel that is subject to tax at the point of imposition prescribed in section six-a of this article shall be paid by the alternative-fuel bulk end user, provider of alternative fuel or retailer of alternative fuel on or before January 31 of every year, unless determined by the Tax Commissioner that payment must be made more frequently, by check, bank draft or money order payable to the Tax Commissioner for the amount of tax due. The Tax Commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the Tax Commissioner shall accompany the payment of tax. If no tax is due, the return required by the Tax Commissioner shall be completed and filed on or before January 31.

WV Legislature

§11-14C-20. Remittance of tax to supplier or permissive supplier.

(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, of the motor fuel the tax levied by section five of this article and due on motor fuel removed at a terminal rack: Provided, That at the election of a licensed distributor or licensed importer, the supplier or permissive supplier shall not require the licensed distributor or licensed importer to pay tax levied by section five of this article until two days before the date the supplier or permissive supplier is required to pay the tax to this state: Provided, however, That an election under this subsection is subject to the condition that remittances by the licensed distributor or licensed importer of all tax due to the supplier or permissive supplier shall be paid by electronic funds transfer two days before the date of the remittance by the supplier or permissive supplier to the commissioner. An election under this subsection may be terminated by the supplier or permissive supplier if the licensed distributor or licensed importer does not make timely payments to the supplier or permissive supplier as required by this subsection.

(b) A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the motor fuel. The date by which an exporter shall remit tax is governed by the law of the destination state of the exported motor fuel: Provided, That if the laws of the destination state prohibit the collection of the destination state's tax, the supplier may elect to either collect the tax levied by section five of this article or, in lieu thereof, take from the exporter documentation sufficient to establish: (i) That the motor fuel was immediately exported to another state and the name of that state; (ii) that the entire amount of motor fuel exported was reported to the destination state and the tax imposed on the motor fuel by the destination state was paid by the exporter; (iii) the name and address of the person to which the motor fuel was sold and the quantity of motor fuel sold to that person; and (iv) that the exporter shall pay the tax levied by section five of this article if the foregoing documentation is not provided: Provided, however, That until such time as either the tax imposed by this state is paid, the tax imposed by the destination state is paid or the motor fuel is sold in a transaction not subject to tax in the destination state, both the supplier and the exporter shall be jointly liable for the tax levied by section five of this article.

(c) All tax payments received by a supplier or permissive supplier shall be held in trust by the supplier or permissive supplier until the supplier or permissive supplier remits the tax payment to this state or to another state and the supplier or permissive supplier shall constitute the trustee for the tax payments.

(d) The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax required by this article is subject to cancellation.

WV Legislature

§11-14C-21. Notice of cancellation or reissuance of licenses; effect of notice.

(a) If the commissioner cancels the license of a distributor or importer, the commissioner shall notify all suppliers and permissive suppliers of the cancellation. If the commissioner issues a license to a distributor or importer whose license was previously canceled, the commissioner shall notify all suppliers and permissive suppliers of the issuance.

(b) A supplier or permissive supplier who sells motor fuel to a distributor or importer after receiving notice from the commissioner that the commissioner has canceled the distributor's or importer's license is jointly and severally liable with the distributor or importer for any tax due on motor fuel sold to the distributor or importer subsequent to receipt of the notice: Provided, That the supplier or permissive supplier is not liable for tax due on motor fuel sold to a previously unlicensed distributor or importer after the supplier or permissive supplier receives notice from the commissioner that the commissioner has issued another license to the distributor or importer.

(c) If the commissioner cancels the license of a supplier or permissive supplier, the commissioner shall notify all licensed distributors, exporters and importers of the cancellation. If the commissioner issues a license to a supplier or permissive supplier whose license was previously canceled, the commissioner shall notify all licensed distributors, exporters, and importers of the issuance.

(d) A licensed distributor, exporter or importer who purchases motor fuel from a supplier or permissive supplier after receiving notice from the commissioner that the commissioner has canceled the supplier's or permissive supplier's license is jointly and severally liable with the supplier or permissive supplier for any tax due on motor fuel purchased from the supplier or permissive supplier after receiving the notice: Provided, That a licensed distributor that purchases motor fuel from a supplier or permissive supplier whose license has been canceled shall file a tax return on or before the last day of the month following the month in which the purchase occurred. The return shall include the following information and any other information required by the commissioner:

(1) The number of invoiced gallons of tax paid motor fuel, sorted by type of motor fuel, terminal code, name of seller, point of origin and carrier; and

(2) The number of invoiced gallons of untaxed motor fuel, sorted by type of motor fuel, terminal code, name of seller, point of origin and carrier.

The licensed distributor, exporter or importer is not liable for tax due on motor fuel purchased from a previously unlicensed supplier or permissive supplier after the licensee receives notice from the commissioner that the commissioner has issued another license to the supplier or permissive supplier.

WV Legislature

§11-14C-22. Information required on return filed by supplier or permissive supplier.

The return of each supplier and permissive supplier shall list all of the following information and any other information required by the commissioner:

(a) The number of invoiced gallons of tax-paid motor fuel received by the supplier or permissive supplier during the month, sorted by type of motor fuel, seller, point of origin, destination state and carrier or motor fuel transporter;

(b) The number of invoiced gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of motor fuel, person receiving the motor fuel, terminal code and carrier or motor fuel transporter;

(c) The number of invoiced gallons of motor fuel removed during the month for export, sorted by type of motor fuel, person receiving the motor fuel, terminal code, destination state and carrier or motor fuel transporter; and

(d) The number of invoiced gallons of motor fuel removed during the month from a terminal located in another state for conveyance to West Virginia, as indicated on the shipping document for the motor fuel, sorted by type of motor fuel, person receiving the motor fuel, terminal code and carrier or motor fuel transporter.

WV Legislature

§11-14C-23. Deductions and discounts allowed a supplier and a permissive supplier when filing a return.

(a) The supplier or permissive supplier may deduct from the next monthly return those tax payments that were not remitted for the previous month to the supplier or permissive supplier by any licensed distributor or any licensed importer who removed motor fuel on which the tax is due from the supplier's or permissive supplier's terminal. The licensed supplier or permissive supplier is eligible to take this deduction if the licensed supplier or permissive supplier notifies the state within ten business days after a return is due of any licensed distributor or importer who did not pay to the supplier or permissive supplier the tax due by the time the supplier or permissive supplier filed the monthly return: Provided, That when a licensed distributor or licensed importer fails to remit the tax to the licensed supplier or permissive supplier, the licensed supplier or permissive supplier is not eligible to take the deduction for any tax payments that accrue after the ten business day period referenced above for delinquent distributors or importers. The notice shall be transmitted to the state in the form required by the commissioner. A supplier or permissive supplier is not liable for the tax a licensee owes but fails to pay. If a licensee pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has deducted the amount of the tax on a return, the supplier or permissive supplier shall remit the payment to the commissioner with the next monthly return filed subsequent to receipt of the tax.

(b) A supplier or permissive supplier who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one tenth of one percent of the amount of tax payable to this state, not to exceed $5,000 per month.

(c) For sales from permissive suppliers or suppliers to licensed distributors, a supplier or permissive supplier shall deduct three fourths of one percent of the tax due from the licensed distributor as a discount to that licensed distributor. The discount given to the licensed distributor shall be reported on the supplier or the permissive supplier's next monthly return. This discount only applies to sales from permissive suppliers and suppliers to licensed distributors, and shall not apply to any other transactions, including, but not limited to, licensed distributor to licensed distributor transactions: Provided, That if the permissive supplier and/or supplier is also a licensed distributor, this discount shall not apply.

WV Legislature

§11-14C-24. Duties of supplier or permissive supplier as trustee.

(a) All tax payments due to this state that are received by a supplier or permissive supplier shall be held by the supplier or permissive supplier as trustee in trust for this state and the supplier or permissive supplier has a fiduciary duty to remit to the commissioner the amount of tax received. A supplier or permissive supplier is liable for the taxes paid to it.

(b) A supplier or permissive supplier shall notify a licensed distributor, licensed exporter or licensed importer who received motor fuel from the supplier or permissive supplier during a reporting period of the number of invoiced gallons received. The supplier or permissive supplier shall give this notice after the end of each reporting period and before the licensee is required to remit the amount of tax due on the motor fuel.

(c) A supplier or permissive supplier of motor fuel at a terminal shall notify the commissioner within the time period established by the commissioner of any licensed distributors, licensed exporters or licensed importers who did not pay the tax due when the supplier or permissive supplier filed its return. The notice shall be transmitted to the commissioner in the form required by the commissioner.

(d) A supplier or permissive supplier who receives a payment of tax shall not apply the payment of tax to a debt that the person making the payment owes for motor fuel purchased from the supplier or permissive supplier.

WV Legislature

§11-14C-25. Returns and discounts of importers.

(a) The monthly return of an importer shall contain the following information for the period covered by the return and any other information required by the commissioner:

(1) The number of invoiced gallons of imported motor fuel acquired from a supplier or permissive supplier who collected the tax due this state on the motor fuel;

(2) The number of invoiced gallons of imported motor fuel acquired from a person who did not collect the tax due this state on the motor fuel, listed by type of motor fuel, source state, person and terminal;

(3) The number of invoiced gallons of imported motor fuel acquired from a bulk plant outside this state, listed by bulk plant name, address and type of motor fuel; and

(4) The import confirmation number, as may be required under section thirty-five of this article, of each import that is reported under subdivision (2) or (3) of this subsection, as applicable, and was removed from a terminal or bulk plant.

(b) An importer that imports by transport vehicle or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in which: (1) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; and (2) the seller of the motor fuel is not a licensed supplier or permissive supplier, who timely files a return with the payment due, may deduct, from the amount of tax payable with the return, an administrative discount of one tenth of one percent of the amount of tax payable by the importer to this state not to exceed $5,000 per month.

WV Legislature

§11-14C-26. Informational returns of terminal operators.

(a) A terminal operator shall file with the commissioner a monthly information return showing the amount of motor fuel received and removed from the terminal during the month. The return is due by the last day of the month following the month covered by the return. The return shall contain the following information and any other information required by the commissioner:

(1) The beginning and ending inventory which pertains to the applicable reporting month;

(2) The number of gross and net gallons of motor fuel received in inventory at the terminal during the month and each position holder for the motor fuel;

(3) The number of gross and net gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the motor fuel and the destination state of the motor fuel; and

(4) The number of gross and net gallons of motor fuel gained or lost at the terminal during the month.

(b) The Tax Commissioner may accept the federal ExSTARS terminal operator report provided to the internal revenue service in lieu of the required state terminal operator report.

WV Legislature

§11-14C-27. Informational returns of motor fuel transporters.

(a) A person who transports by marine vessel, railroad tank car, or transport vehicle, motor fuel that is imported into West Virginia or exported from West Virginia shall file a monthly information return with the commissioner that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor who is not required to be licensed as a motor fuel transporter.

(b) The return required by this section is due by the last day of the month following the month covered by the return. The return shall contain the following information and any other information required by the commissioner:

(1) The name, address and terminal control number of each person or terminal from whom the transporter received motor fuel outside West Virginia for delivery in West Virginia, the invoiced gallons of motor fuel received, the date the motor fuel was received, and the name and address of the purchaser of the motor fuel; and

(2) The name, address and terminal control number of each person or terminal from whom the transporter received motor fuel in West Virginia for delivery outside West Virginia, the invoiced gallons of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the motor fuel.

WV Legislature

§11-14C-28. Exports.

(a) A person who exports motor fuel from West Virginia shall file a monthly return with the commissioner identifying the exports. The return is due by the last day of the month following the month covered by the return. The return shall serve as a claim for a refund for tax paid to this state on exported motor fuel.

(b) The return shall contain the following information and any other information required by the commissioner:

(1) The number of invoiced gallons of motor fuel exported during the month;

(2) The destination state of the motor fuel exported during the month; and

(3) A certification that the tax has been paid to the destination state of the motor fuel exported during the month.

WV Legislature

§11-14C-29. Identifying information required on return.

When a transaction with a person licensed under this article is required to be reported on a return, the return must state the licensee's name, address and, if available, license number and telephone number as stated on the lists compiled by the commissioner under section eighteen of this article.

WV Legislature

§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.

(a) 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 collected from any person.

(b) Any supplier, distributor, producer, retail dealer, exporter or importer, while the owner of motor fuel in this state, that loses any invoiced gallons of motor fuel through fire, lightning, breakage, flood or other casualty, which gallons having been previously included in the tax by or for that person, may claim a refund of a sum equal to the amount of any and all taxes levied by section five of this article paid upon the invoiced gallons lost.

(c) Any dealer as defined in §47-11C-2 of this code, and any bulk plant in this state that purchases or receives motor fuel in this state upon which the tax levied by section five of this article has been paid, is entitled to an annual refund of any and all taxes levied by section five of this article for invoiced gallons lost through evaporation: *Provided,* That only the owner of the bulk plant that is also the owner of the fuel in the bulk plant may claim this refund for invoiced gallons lost through evaporation. The refund is computed at the rate of tax levied per gallon under this article on all invoiced gallons of motor fuel actually lost due to evaporation, not exceeding one percent of the adjusted total accountable gallons, computed as determined by the Commissioner.

(d) Every supplier, distributor or producer, retail dealer, exporter or importer is entitled to a refund of the rate of the tax levied by section five of this article from this state of the amount resulting from a change of rate decreasing the tax under the provisions of this article on motor fuel on hand and in inventory on the effective date of the rate change, which motor fuel has been included in any previous computation by which the tax levied by this article has been paid.

WV Legislature

§11-14C-31. Claiming refunds.

(a) Any person seeking a refund pursuant to §11-14C-9(c) or §11-14C-9(d) of this code shall present to the commissioner a petition for refund in the form required by the commissioner and provide the information required by the commissioner. The Tax Commissioner may require the petitioner to provide the original or duplicate original sales slips or invoices from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked "duplicate" are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of §11-14C-9(c)(15) of this code when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes: And provided further, That a refund claim made under the authority of §11-14C-9(c)(1) of this code and a refund claim made under the authority of §11-14C-9(d)(1) of this code shall be accompanied by such verification as prescribed by the Tax Commissioner: And provided further, That billing statements and electronic invoices are acceptable in lieu of original invoices at the discretion of the Tax Commissioner: And provided further, That the person claiming a refund under §11-14C-9(c) or §11-14C-9(d) of this code shall retain for at least three years following the postmark date of the application for refund a copy of the invoices, sales slips, and billing statements for which the refund was claimed.

(b) Any person claiming a refund pursuant to §11-14C-30 of this code shall file a petition in writing with the commissioner. The petition shall be in the form and with supporting records as required by the commissioner and made under the penalty of perjury.

(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. No payment of any refund may be made to any person other than the original person entitled to claim the refund except as otherwise expressly provided in this article. The commissioner shall cause a refund to be made under the authority of this section only when the claim for refund is filed with the commissioner within the following time periods:

(1) A petition for refund under §11-14C-30 of this code, other than for evaporation loss, shall be filed with the commissioner within three years from the end of the month in which: (A) The tax was erroneously or illegally paid; (B) the gallons were exported or lost by casualty; or (C) a change of rate took effect;

(2) A petition for refund under §11-14C-30 of this code for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

(3) A petition for refund under §11-14C-9(c) or §11-14C-9(d) of this code shall be filed with the commissioner within one year from the end of the calendar year for purchases of motor fuel during the calendar year: Provided, That any application for refund made under

WV Legislature

authority of §11-14C-9(c)(15) of this code when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be filed within 12 months from the month of purchase or delivery of the motor fuel: Provided, however, That all persons authorized to claim a refundable exemption under the authority of §11-14C-9(c)(1) through §11-14C-9(c)(6) of this code and §11-14C-9(d)(1) through §11-14C-9(d)(6) of this code shall do so no later than December 31 for the purchases of motor fuel made during the preceding fiscal year ending June 30: Provided further, That a petition for refund under §11-14C-9(d)(10) of this code shall be filed with the commissioner on or before the last day of January, April, July, and October for purchases of motor fuel during the immediately preceding calendar quarter.

(d) Any petition for a refund not timely filed is not construed to be or constitute a moral obligation of the State of West Virginia for payment. Every petition for refund is subject to the provisions of §11-10-14 of this code.

(e) The commissioner may make any investigation considered necessary before refunding to a person the tax levied by §11-14C-5 of this code. The commissioner may also subject to audit the records related to a refund of the tax levied by §11-14C-5 of this code.

WV Legislature

§11-14C-32. Payment of refund.

Whenever it appears to the satisfaction of the commissioner that any person is entitled to a refund for taxes paid pursuant to section five of this article, the commissioner shall forthwith certify the amount of the refund.

WV Legislature

PART 6. ENFORCEMENT AND ADMINISTRATION.

§11-14C-33. General procedure and administration; crimes and penalties.

(a) Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter applies to the taxes levied by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes levied by this article and were set forth in extenso in this article.

(b) Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter applies to the taxes levied by this article with like effect as if that act were applicable only to the taxes levied by this article and were set forth in extenso in this article.

(c) To the extent that any provision of this article is in conflict with either article nine or article ten of this chapter, the provision of this article shall control.

WV Legislature

§11-14C-34. Shipping documents; transportation of motor fuel; civil penalty.

(a) A person shall not transport motor fuel loaded at a terminal rack unless the person has a shipping document, that complies with this section. A terminal operator shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack.

(b) The shipping document issued by the terminal operator shall contain the following information and any other information required by the commissioner:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

(4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;

(5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;

(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase; and

(7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. In the event that either the terminal operator, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel

WV Legislature

described;

(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

(A) Notifies the commissioner's designated entity by the next business day that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) Receives from the commissioner's designated entity, a confirmation number authorizing the diversion;

(C) Records with the shipping document the change in destination state and the confirmation number for the diversion; and

(4) Provides the confirmation number for the diversion to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by any means of conveyance shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia: *Provided*, That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the commissioner's designated entity. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel by any means of conveyance without a shipping document or with a false or an incomplete shipping document or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft, or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is $5,000.

(4) The amount of the civil penalty for each subsequent violation, after notice to correct the

WV Legislature

shipping document, is $10,000.

(5) Civil penalties prescribed under this section are assessed, collected, and paid in the same manner as the motor fuel excise tax imposed by this article.

(g) *Penalty Defense*. — Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section, resulting from the delivery of motor fuel to a state other than the destination state printed on the shipping document for the motor fuel. The commissioner shall waive a penalty imposed against the person who transported the motor fuel under that subsection, if that person establishes a defense under this subsection. The conditions for the defense are:

(1) The person who transported the motor fuel notified the commissioner's designated entity of the diversion and received a confirmation number for the diversion before the imposition of the penalty; and

(2) Unless the person is a motor fuel transporter, the tax was timely paid on the diverted motor fuel.

WV Legislature

§11-14C-35. Import confirmation number; civil penalty.

(a) The commissioner may require an importer who acquires motor fuel for import from a person who is not a supplier or a permissive supplier to obtain an import confirmation number from the commissioner before importing the motor fuel. The importer shall write the import confirmation number on the shipping document issued for the motor fuel. If required by the commissioner, the importer shall obtain a separate import confirmation number for each delivery of motor fuel into West Virginia.

(b) An importer who does not obtain an import confirmation number when required by this section is subject to the following civil penalty.

(1) For the first violation, the amount is $5,000.

(2) For each subsequent violation the amount is $10,000.

(c) The civil penalty is payable by the person in whose name the transport vehicle is registered.

(d) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the motor fuel excise tax imposed by this article.

WV Legislature

§11-14C-36. Improper sale or use of untaxed motor fuel; civil penalty.

(a) Any person who commits any of the following violations is subject to the civil penalty specified in subsection (b) of this section:

(1) Sells or stores any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed as such, unless that use is allowed under the authority of 26 U.S.C. §4082;

(2) Willfully alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel;

(3) Uses dyed diesel fuel in a highway vehicle unless that use is allowed under the authority of 26 U.S.C. §4082;

(4) Acquires, sells or stores any motor fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid; or

(5) Uses any motor fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid.

(b) The amount of the civil penalty for the first two violations of this section in a calendar year, as described in subsection (a) of this section, is $10 per gallon of motor fuel based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or $1,000, whichever is greater: Provided, That for each subsequent violation in the same calendar year, the penalty is $15 per gallon based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or $2,000, whichever is greater.

(c) Each violation is subject to a separate civil penalty.

(d) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

WV Legislature

§11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.

(a) Any person who refuses to allow an inspection authorized by section forty-five of this article or to allow the taking of a fuel sample authorized by said section is subject to a civil penalty of $5,000 for each refusal. If the refusal is for a sample to be taken from a vehicle, the person operating the vehicle and the owner of the vehicle are jointly and severally liable for payment of the civil penalty. If the refusal is for a sample to be taken from any other storage tank or container, the owner of the storage tank or container and the owner of the motor fuel in the storage tank or container, if different from the owner of the storage tank or container, are jointly and severally liable for payment of the civil penalty.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

WV Legislature

§11-14C-38. Engaging in business without a license; civil penalty.

(a) Any person who engages in any business activity for which a license is required by this article without having first obtained and subsequently retained such a valid license is subject to the following civil penalty.

(1) For the first violation the amount is $5,000.

(2) For each subsequent violation the amount is $10,000.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

WV Legislature

§11-14C-39. Preventing a person from obtaining a license; civil penalty.

(a) Any terminal operator, supplier, or position holder in a terminal who, by use of coercion, threat, intimidation or any other means of interference, intentionally prevents any person from applying for or obtaining a license issued under this article is subject to the following civil penalty.

(1) For the first violation the amount is $5,000.

(2) For each subsequent violation the amount is $10,000.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

WV Legislature

§11-14C-40. Filing a false return; failure to file return; civil penalty.

(a) Any person liable for a tax levied under this article who files a false return, report or document under the provisions of this article with the intent to evade the tax levied by section five of this article is subject to a civil penalty equal to the total amount of tax evaded, or not collected, by the filing of a return, report or document. The civil penalty is in addition to the amount of the tax evaded or not collected.

(b) Any person liable for a tax levied under this article who fails to file, even if no tax is due, within thirty days after it is due any return required by this article is subject to a civil penalty of $50 for each month, or part thereof, the return is not filed. The civil penalty is in addition to the amount of tax not correctly returned.

(c) Any person required to file a return under this article who fails to file within thirty days after it is due is subject to a civil penalty of $50 for each month, or part thereof, the return is not filed.

(d) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

WV Legislature

§11-14C-41. Willful commission of prohibited acts; criminal penalties.

(a) Any person who willfully commits any of the following offenses is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned:

(1) Fails to obtain a license required by this article prior to performing an act for which the license is required;

(2) Fails to pay to this state no more than thirty days after the date the tax is due the tax levied by this article;

(3) Makes a false statement in an application, return, ticket, invoice, statement, or any other document required under this article;

(4) Fails to file no more than thirty days after it is due any return required by this article;

(5) Fails to maintain any record required by this article;

(6) Makes a false statement in an application for a refund;

(7) Refuses to allow the commissioner to examine the person's books and records concerning motor fuel;

(8) Fails to make a required disclosure of the correct amount of fuel sold or used in this state;

(9) Fails to file a replacement or additional cash bond or continuous surety bond as required under this article;

(10) Fails to show or give a shipping document as required under this article;

(11) Refuses to allow a licensed distributor, licensed exporter, or licensed importer to defer payment of tax to the licensed supplier or permissive supplier, as required by section twenty of this article;

(12) Uses, delivers, or sells any aviation fuel for use or intended for use in highway vehicles or watercraft;

(13) Interferes with or refuses to permit seizures authorized under section forty-two of this article;

(14) Delivers motor fuel from a transport vehicle to the fuel supply tank of a highway vehicle;

(15) Dispenses into the supply tank of a highway vehicle, watercraft or aircraft any motor fuel on which tax levied by section five of this article has not been paid;

WV Legislature

(16) Allows to be dispensed into the supply tank of a highway vehicle, watercraft or aircraft any motor fuel on which tax levied by section five of this article has not been paid;

(17) Purchases motor fuel from an unlicensed distributor, unlicensed importer or unlicensed supplier; or

(18) Uses twenty-five or less gallons of dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the motor fuel, or sells twenty-five or less gallons of dyed diesel fuel to a person who the seller knows or has reason to know will use the motor fuel for a taxable purpose.

(b) Any person who willfully commits any of the following offenses with the intent either to evade or circumvent the tax levied by section five of this article or to assist any other person in efforts to evade or circumvent the tax levied by section five of this article is guilty of a felony and, upon conviction thereof, shall be fined not less than $25,000 nor more than $50,000, or imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned:

(1) Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to motor fuel pumps to measure the dispensing of motor fuel;

(2) Fails to pay motor fuels taxes and diverts the tax proceeds for other purposes;

(3) As a licensee or the agent or representative of a licensee, converts or attempts to convert motor fuel tax proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud this state;

(4) Collects motor fuel taxes when not authorized or licensed by the commissioner to do so;

(5) Imports motor fuel into this state in contravention of this article;

(6) Conspires with any other person or persons to engage in an act, plan, or scheme to defraud this state of motor fuels tax proceeds;

(7) Uses in excess of twenty-five gallons of any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the motor fuel, or sells in excess of twenty-five gallons of any dyed diesel fuel to a person who the seller knows or has reason to know will use the motor fuel for a taxable purpose;

(8) Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used for a taxable purpose; or

(9) Fails to remit to the commissioner any tax levied pursuant to this article, if the person has added, or represented that he or she has added, the tax to the sales price for the motor fuel and has collected the amount of the tax.

WV Legislature

(c) Each offense is subject to a separate criminal penalty.

WV Legislature

§11-14C-42. Unlawful importing, transportation, delivery, storage or sale of motor fuel; sale to enforce assessment.

(a) Upon the discovery of any motor fuel illegally imported into, or illegally transported, delivered, stored or sold in, this state, the commissioner shall order the tank or other storage receptacle in which the motor fuel is located to be seized and locked or sealed until the tax, interest, penalties and additions levied under this article are assessed and paid.

(b) If the assessment for the tax is not paid within thirty days, the commissioner is hereby authorized, in addition to the other remedies authorized in this article, to sell the motor fuel and use the proceeds of the sale to satisfy the assessment due, with any funds that exceed the assessment and costs of the sale being returned to the owner of the motor fuel: Provided, That the sale of seized property be conducted in accordance with the requirements established in article ten of this chapter.

(c) All motor fuel and any property, tangible or intangible, which is found upon the person or in any vehicle which the person is using, including the vehicle itself, to aid the person in the transportation or sale of illegally transported, delivered, stored, sold, imported or acquired motor fuel, and any property found in the immediate vicinity of any place where the illegally transported, delivered, stored, sold, imported or acquired motor fuel is located, including motor vehicles, tanks, and other storage devices, used to aid in the illegal transportation or sale of motor fuel, is considered contraband and shall be forfeited to this state.

WV Legislature

§11-14C-43. Record-keeping requirements.

(a) Each person required to be licensed under section ten of this article and each bulk user and retailer shall keep and maintain all records pertaining to motor fuel received, produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills of lading, and other pertinent records and papers as required by the commissioner for the reasonable administration of this article.

(b) The records required by this section to be retained shall be kept and maintained for a period to include the commissioner's current calendar year and the previous three calendar years.

WV Legislature

§11-14C-44. Inspection of records.

(a) The commissioner may, during the usual business hours of the day, examine records, books, papers, storage tanks and any other equipment of any person required to maintain records for the purpose of ascertaining the quantity of motor fuel received, produced, manufactured, refilled, compounded, used, sold, shipped, or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax levied by this article has been paid.

(b) If a person required to maintain records is open for business during hours which the commissioner may not consider usual business hours, the commissioner may examine the person's books and records during the person's normal business hours, which are those hours when the person is open for business at any of the person's places of business. If the person does not maintain the books and records on the premises, the commissioner may inspect the books and records where they are maintained, irrespective of the working hours at the location, as long as one of the person's places of business maintains hours at the time of day during which the commissioner asserts his or her inspection powers.

(c) While performing inspections authorized by section forty-five of this article, the commissioner may also inspect the books and records kept to determine any motor fuel tax liability under this article.

WV Legislature

§11-14C-45. Authority to inspect.

(a) The commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter any place and to conduct inspections in accordance with this section. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be inspected.

(b) Inspections may be conducted at any place where taxable motor fuel or motor fuel dyes or markers are, or may be, produced, altered, or stored, or at any site where evidence of production, alteration, or storage is discovered.

(c) The commissioner may physically inspect, examine, and otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of motor fuel, motor fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection with, the production, storage, or transportation of motor fuel, motor fuel dyes or markers, including equipment used for the dyeing or marking of motor fuel.

(d) The commissioner may stop, inspect and issue citations to operators of motor vehicles for violations of this article at sites where motor fuel is, or may be, produced, stored, or loaded into or consumed by motor vehicles. The commissioner may enter into agreements with other agencies of this state to provide assistance in stopping and inspecting motor vehicles for violations of this article.

(e) Inspections may occur at any terminal, motor fuel storage facility that is not a terminal, retail motor fuel facility, highway rest stop, and designated inspection site.

(f) The commissioner may, on the premises or at a designated inspection site, take and remove samples of motor fuel in reasonable quantities as necessary to determine the composition of the motor fuel.

(g) Nothing contained in this section is 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 when the motor vehicle is lawfully stopped for any other criminal violation of the laws of this state.

WV Legislature

§11-14C-46. Marking requirements for dyed diesel fuel storage facilities.

(a) A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that person or another person shall mark each visible storage tank and each dispensing device with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to operate a highway vehicle.

(b) The marking requirements of this section shall not apply to a storage facility that contains fuel used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable.

WV Legislature

§11-14C-47. Disposition of tax collected; dedicated receipts; reports.

(a) There is hereby created and established in the State Treasury a special revolving fund to be known and designated as the "Motor Fuel General Tax Administration Fund." The commissioner is authorized to retain one half of one percent of the tax collected pursuant to the provisions of this article: Provided, That in any fiscal year in which the tax collected pursuant to the provisions of this article exceed $300 million, the commissioner is authorized to retain an additional one percent of the tax in excess of the $300 million that is collected. The amounts retained by the commissioner under this subsection shall be deposited in the motor fuel general tax administration fund and may be expended for the general administration of taxes imposed by this chapter.

(b) All remaining tax collected under the provisions of this article after deducting the amount of any refunds lawfully paid shall be paid into the state road fund and used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal moneys available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes.

(c) Not less than monthly, beginning July 1, 2007, the Commissioner of Highways shall report to the Joint Committee on Government and Finance or its designated subcommittee on the amount of tax paid into the state road fund under subsection (b) of this section, any matching federal funds, and all expenditures therefrom.

WV Legislature

§11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund support payment.

There is hereby created in the State Treasury a special fund to be known and designated as the Motor Fuel Excise Tax Shortfall Reserve Fund to be administered by the Tax Commissioner for the purposes provided by this section. The fund shall consist of moneys transferred to the General Revenue Fund pursuant to appropriation of the Legislature. At the end of each fiscal year, during the fund's existence, the moneys in the fund shall not expire to the General Fund, but shall remain available for expenditure during the ensuing fiscal year. The fund shall terminate on December 1, 2009. Any moneys remaining in the fund on that termination date shall be transferred to the State Road Fund and used only for the purpose of reconstruction, renovation, maintenance and repair of secondary roads.

WV Legislature