WEST VIRGINIA CODE: §11-15-18

§11-15-18. Tax on gasoline and special fuel; section repealed January 1, 2004.

(a) General. -- All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, is subject to the tax imposed by this article, notwithstanding any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his or her purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. -- The measure of tax on sales of gasoline or special fuel by distributors or importers is the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel is imposed on the average wholesale price of gasoline and special fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be considered to be less than 97¢ per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. -- For purposes of this section:

(1) "Aircraft" includes any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

(2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

(3) "Distributor" means and includes every person:

(A) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;

(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(C) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by the person.

(4) "Gasoline" means and includes any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section, including any product obtained by blending together any one or more products, with or without other products, if the resultant

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product is capable of the same use.

(5) "Importer" means and includes every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle that is not a motor carrier.

(6) "Motor carrier" means and includes: (A) Any passenger vehicle which has seats for more than nine passengers in addition to the driver, any road tractor, tractor truck or any truck having more than two axles, which is operated or caused to be operated, by any person on any highway in this state using gasoline or special fuel; and (B) any aircraft, barge or other watercraft or locomotive transporting passengers or freight in or through this state.

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

(8) "Retail dealer of gasoline or special fuel" means and includes any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

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

(10) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

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

(12) "Taxpayer" means any person liable for the tax imposed by this article.

(13) "User" means any person who purchases gasoline or special fuel for use or consumption.

(d) Tax due. -- The tax on sales of gasoline and special fuel shall be paid by each taxpayer on or before the twenty-fifth day of each month, by check, bank draft, certified check or money

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order, payable to the Tax Commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary.

(e) Monthly return. -- On or before the twenty-fifth day of each month, the taxpayer shall make and file a return for the preceding month showing the information as the Tax Commissioner requires, notwithstanding any provision of this article to the contrary.

(f) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner may require distributors, importers and other persons liable for the tax imposed by this article on sales of gasoline or special fuel, to file a combined return and make a combined payment of the tax due under this article on sales of gasoline and special fuel, and the tax due under article fourteen of this chapter, on gasoline and special fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen of this chapter is hereby changed from the last day of each month to the twenty-fifth day of each month, notwithstanding any provision in article fourteen of this chapter to the contrary.

(g) Dedication of tax to highways. -- All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the "road fund" in the State Treasurer's office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aircraft fuel shall be deposited in the State Treasurer's office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(h) Construction. -- This section is not construed as taxing any sale of gasoline or special fuel which this state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(i) Effective date. -- This section shall have no force or effect after December 31, 2003: Provided, That tax liabilities arising for periods ending before January 1, 2004, shall be determined, paid, administered, assessed and collected as if this section had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.

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