WEST VIRGINIA CODE: §11-15A-13A

§11-15A-13a. Tax on motor fuel effective January 1, 2004.

(a) Imposition of tax. –

(1) On deliveries in this state. – Effective January 1, 2004, motor fuel furnished or delivered within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of motor fuel as determined in accordance with said section five, article fourteen-c.

(2) On purchases out-of-state subject to motor fuel tax. – Effective January 1, 2004, an excise tax is imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. The rate of the tax due under this article shall not be less than five percent of the average wholesale price of the motor fuel, as determined in accordance with said section five, article fourteen-c. The motor fuel subject to the tax imposed by this article comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted by the seller at the time the seller remits the tax imposed by the said section five, article fourteen-c.

(3) On other purchases out-of-state. – An excise tax is imposed on the use or consumption in this state of motor fuel purchased outside this state at the rate of five percent of the average wholesale price of the motor fuel, as determined in accordance with section five, article fourteen-c of this chapter. Motor fuel contained in the fuel supply tank of a motor vehicle that is not a motor carrier is not taxable except that motor fuel imported in the fuel supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the fuel supply tank of a motor carrier.

(4) On use of alternative fuel. – Effective January 1, 2014, an excise tax is imposed on alternative fuel used within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. Alternative fuel is subject to the tax imposed by this article and comprises the variable component of the tax imposed by the section five, article fourteen-c of this chapter and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of alternative fuel as determined in accordance with section five, article fourteen-c of this chapter.

WV Legislature

(b) Definitions. – For purposes of this article, the terms "gasoline" and "special fuel" are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in article fourteen-c of this chapter.

(c) Computation of tax due from motor carriers. – Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons or equivalent gallons of motor fuel used in the operation of a motor carrier within this state, under the following rules:

(1) The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in a motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter, of motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all motor fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(d) Return and payment of tax. -- Tax due under this article on the uses or consumption in this state of motor fuel shall be paid by each taxpayer on or before January 25, April 25, July 25 and October 25 of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the Tax Commissioner, for the amount of tax due for the preceding quarter. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter is due on the last day of the month. Every taxpayer shall make and file with his or her remittance, a return showing the information the Tax Commissioner requires. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require motor carriers liable for the taxes imposed by this article on the use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and

WV Legislature

make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year: Provided, That the Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax to highways. – Tax collected under the provisions of this section, after deducting the amount of 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.

(g) Construction. – The tax imposed by this article on the use of motor fuel in this state does not tax motor fuel which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(h) Effective date. – The provisions of this section take effect January 1, 2004. The provisions of this section enacted during the 2013 legislative session take effect on January 1, 2014.

WV Legislature