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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Com. Sub. for
HOUSE BILL No. 1657

(By Mr. Speaker, Mr. Lee, by request of the
Executive)



Passed February 18, 1983

In Effect April 1, 1983 ~~Passage~~



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1657

(By MR. SPEAKER, MR. SEE, by request of the Executive)

[Passed February 18, 1983; in effect April 1, 1983.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article fifteen by adding thereto a new section, designated section eighteen; to amend and reenact section three, article fifteen-a of said chapter eleven; and to further amend said article fifteen-a by adding thereto a new section, designated section thirteen, all relating to imposing the consumers sales and service tax on sales of gasoline and special fuel, generally at the wholesale level, by distributors, importers and others, and the use tax on the use or consumption within this state of gasoline or special fuel; terminating certain exemptions and making sales taxable; defining terms; providing for sales and use tax to be imposed on the basis of specified rate applicable to the average wholesale price, converted and computed on a per gallon basis, and exclusive of state and federal gallonage taxes, with such average wholesale price to not be less than the average wholesale price of gasoline and special fuel specified on the effective date of the bill; requiring computation of use tax liability of motor carriers to be based on such average wholesale price of gasoline and special fuel, as determined by the tax commissioner annually, and providing that in no event shall such price be less than that specified on the effective date of the

bill; providing for filing of returns and payment of tax on the twenty-fifth day of the month following a taxable period; authorizing combined returns and combined payments of the taxes due under articles fourteen and fifteen, and fourteen-a and fifteen-a, chapter eleven of the code, to facilitate compliance, and for such purpose, changing to the twenty-fifth day of each month succeeding the tax period, the due dates of returns and payments of taxes imposed by articles fourteen and fourteen-a of chapter eleven of the code; dedicating revenues to the "road fund"; providing a construction clause; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section eighteen; that section three, article fifteen-a of said chapter eleven be amended and reenacted; and that said article fifteen-a be further amended by adding thereto a new section, designated section thirteen, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (1) Sales of gas, steam and water delivered to consumers
3 through mains or pipes, and sales of electricity;

4 (2) Sales of textbooks required to be used in any of the
5 schools of this state;

6 (3) Sales of property or services to the state, its institutions
7 or subdivisions, and to the United States, including agencies
8 of federal, state or local governments for distribution in public
9 welfare or relief work;

10 (4) Sales of motor vehicles which are titled by the depart-
11 ment of motor vehicles and which are subject to the tax im-
12 posed by section four, article three, chapter seventeen-a of the
13 code;

14 (5) Sales of property or services to churches and bona fide
15 charitable organizations who make no charge whatsoever for
16 the services they render: *Provided*, That the exemption here-
17 in granted shall apply only to services, equipment, supplies
18 and materials directly used or consumed by these organiza-
19 tions, and shall not apply to purchases of gasoline or special
20 fuel;

21 (6) Sales of property or services to corporations or organi-
22 zations qualified under section 501(c)(3) of the Internal Reve-
23 nue Code of 1954, as amended, or under section 501(c)(4)
24 of the Internal Revenue Code of 1954, as amended, who make
25 casual and occasional sales not conducted in a repeated man-
26 ner or in the ordinary course of repetitive and successive
27 transactions of like character: *Provided*, That the exemption
28 herein granted shall apply only to services, equipment, sup-
29 plies and materials directly used or consumed by these organi-
30 zations and shall not apply to purchases of gasoline or special
31 fuel;

32 (7) Sales of property or services to persons engaged in this
33 state in the business of contracting, manufacturing, transpor-
34 tation, transmission, communication or in the production of
35 natural resources: *Provided*, That the exemption herein grant-
36 ed shall apply only to services, machinery, supplies and ma-
37 terials directly used or consumed in the businesses or organiza-
38 tions named above, and shall not apply to purchases of gaso-
39 line or special fuel;

40 (8) An isolated transaction in which any tangible personal
41 property is sold, transferred, offered for sale, or delivered by
42 the owner thereof or by his representative for the owner's
43 account, such sale, transfer, offer for sale or delivery not being
44 made in the ordinary course of repeated and successive trans-
45 actions of like character by such owner or on his account by
46 such representatives;

47 (9) Sales of tangible personal property and services ren-
48 dered for use or consumption in connection with the conduct of
49 the business of selling tangible personal property to consumers
50 or dispensing a service subject to tax under this article or
51 which would be subject to tax under this article but for the

52 exemption for food provided in section eleven of this article
53 and sales of tangible personal property and services rendered
54 for use or consumption in connection with the commercial
55 production of an agricultural product the ultimate sale of which
56 will be subject to the tax imposed by this article or which
57 would have been subject to tax under this article but for the
58 exemption for food provided in section eleven of this article:
59 *Provided*, That sales of tangible personal property and services
60 to be used or consumed in the construction of or permanent
61 improvement of real property and sales of gasoline and special
62 fuel shall not be exempt;

63 (10) Sales of tangible personal property for the purpose
64 of resale in the form of tangible personal property: *Provided*,
65 That sales of gasoline and special fuel by distributors and im-
66 porters shall be taxable except when the sale is to another
67 distributor for resale;

68 (11) Sales of property or services to nationally chartered
69 fraternal or social organizations for the sole purpose of free
70 distribution in public welfare or relief work: *Provided*, That
71 sales of gasoline and special fuel shall be taxable;

72 (12) Sales and services, fire fighting, or station house equip-
73 ment, including construction and automotive, made to any
74 volunteer fire department organized and incorporated under
75 the laws of the state of West Virginia: *Provided*, That sales
76 of gasoline and special fuel shall be taxable;

77 (13) Sales of newspapers when delivered to consumers by
78 route carriers;

79 (14) Sales of drugs dispensed upon prescription and sales
80 of insulin to consumers for medical purposes;

81 (15) Sales of radio and television broadcasting time, news-
82 paper and outdoor advertising space for the advertisement of
83 goods or services;

84 (16) Sales and services performed by day care centers;

85 (17) Casual and occasional sales of property or services
86 not conducted in a repeated manner or in the ordinary course
87 of repetitive and successive transactions of like character by

88 corporations or organizations qualified under section 501(c)(3)
89 of the Internal Revenue Code of 1954, as amended, or under
90 section 501(c)(4) of the Internal Revenue Code of 1954, as
91 amended;

92 (18) Bank safety deposit boxes;

93 (19) Sales of property or services to a school which has
94 approval from the West Virginia board of regents to award
95 degrees, which has its principal campus in this state, and
96 which is exempt from federal and state income taxes under
97 section 501(c)(3) of the Internal Revenue Code of 1954, as
98 amended: *Provided*, That sales of gasoline and special fuel
99 shall be taxable; and

100 (20) Sales of mobile homes to be utilized by purchasers
101 as their principal year-round residence and dwelling: *Provided*,
102 that these mobile homes shall be subject to tax at the three
103 percent rate.

§11-15-18. Tax on gasoline and special fuel.

1 (a) *General.* — All sales of gasoline or special fuel by
2 distributors or importers, except when to another distributor
3 for resale in this state, when delivery is made in this state,
4 shall be subject to the tax imposed by this article, notwith-
5 standing any provision of this article to the contrary. Sales
6 of gasoline or special fuel by a person who paid the tax
7 imposed by this article on his purchases of fuel, shall not
8 thereafter be again taxed under the provisions of this article.
9 This section shall be construed so that all gallons of gasoline
10 or special fuel sold and delivered, or delivered, in this state
11 are taxed one time.

12 (b) *Measure of tax.* — The measure of tax on sales of
13 gasoline or special fuel by distributors or importers shall be
14 the average wholesale price as defined and determined in sub-
15 section (c), section thirteen, article fifteen-a of this chapter.
16 For purposes of maintaining revenue for highways, and recog-
17 nizing that the tax imposed by this article is generally imposed
18 on gross proceeds from sales to ultimate consumers, whereas
19 the tax on gasoline and special fuel herein is imposed on the
20 average wholesale price of such gasoline and special fuel;

21 in no case, for the purposes of taxation under this article,
22 shall such average wholesale price be deemed to be less
23 than ninety-seven cents per gallon of gasoline or special fuel
24 for all gallons of gasoline and special fuel sold during the
25 reporting period, notwithstanding any provision of this article
26 to the contrary.

27 (c) *Definitions.* — For purposes of this section:

28 (1) “Aircraft” shall include any airplane or helicopter that
29 lands in this state on a regular or routine basis, and trans-
30 ports passengers or freight.

31 (2) “Aircraft fuel” shall mean gasoline and special fuel
32 suitable for use in any aircraft engine.

33 (3) “Distributor” shall mean and include every person:

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

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

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

42 (4) “Gasoline” shall mean and include any product com-
43 monly or commercially known as gasoline, regardless of
44 classification, suitable for use as fuel in an internal combustion
45 engine, except special fuel as hereinafter defined, including
46 any product obtained by blending together any one or more
47 products, with or without other products, if the resultant pro-
48 duct is capable of the same use.

49 (5) “Importer” shall mean and include every person,
50 resident or nonresident, other than a distributor, who receives
51 gasoline or special fuel outside this state for use, sale or con-
52 sumption within this state, but shall not include the fuel in
53 the supply tank of a motor vehicle that is not a motor carrier.

54 (6) “Motor carrier” shall mean and include: (A) Any
55 passenger vehicle which has seats for more than nine passengers

56 in addition to the driver, any road tractor, tractor truck or any
57 truck having more than two axles, which is operated or
58 caused to be operated, by any person on any highway in this
59 state using gasoline or special fuel; and (B) any aircraft,
60 barge or other watercraft, or locomotive transporting passen-
61 gers or freight in or through this state.

62 (7) "Motor vehicle" shall mean and include automobiles,
63 motor carriers, motor trucks, motorcycles and all other ve-
64 hicles or equipment, engines or machines which are operated
65 or propelled by combustion of gasoline or special fuel.

66 (8) "Retail dealer of gasoline or special fuel" shall mean
67 and include any person not a distributor, who sells gasoline
68 or special fuel from a fixed location in this state to users.

69 (9) "Special fuel" shall mean and include any gas or
70 liquid, other than gasoline, used or suitable for use as fuel
71 in an internal combustion engine. The term "special fuel"
72 shall include products commonly known as natural or casing-
73 head gasoline and shall include gasoline and special fuel for
74 heating any private residential dwelling, building or other
75 premises; but shall not include any petroleum product or
76 chemical compound such as alcohol, industrial solvent, heavy
77 furnace oil, lubricant, etc., not commonly used nor practicably
78 suited for use as fuel in an internal combustion engine.

79 (10) "Supply tank" shall mean any receptacle on a motor
80 vehicle from which gasoline or special fuel is supplied for the
81 propulsion of the vehicle or equipment located thereon, ex-
82 clusive of a cargo tank. A supply tank includes a separate
83 compartment of a cargo tank used as a supply tank, and any
84 auxiliary tank or receptacle of any kind or cargo tank, from
85 which gasoline or special fuel is supplied for the propulsion
86 of the vehicle, whether or not such tank or receptacle is
87 directly connected to the fuel supply line of the vehicle.

88 (11) "Tank wagon" shall mean and include any motor
89 vehicle or vessel with a cargo tank or cargo tanks ordinarily
90 used for making deliveries of gasoline or special fuel, or
91 both, for sale or use.

92 (12) "Taxpayer" shall mean any person liable for the
93 tax imposed by this article.

94 (13) "User" shall mean any person who purchases gaso-
95 line or special fuel for use or consumption.

96 (d) *Tax due.* — The tax on sales of gasoline and special
97 fuel shall be paid by each taxpayer, on or before the twenty-
98 fifth day of each month, by check, bank draft, certified check
99 or money order, payable to the tax commissioner, for the
100 amount of tax due for the preceding month, notwithstanding
101 any provision of this article to the contrary.

102 (e) *Monthly return.* — On or before the twenty-fifth
103 day of each month, the taxpayer shall make and file a return
104 for the preceding month showing such information as the tax
105 commissioner may require, notwithstanding any provision of
106 this article to the contrary.

107 (f) *Compliance.* — To facilitate ease of administration and
108 compliance by taxpayers, the tax commissioner may require
109 distributors, importers and other persons liable for the tax
110 imposed by this article on sales of gasoline or special fuel,
111 to file a combined return and make a combined payment of
112 the tax due under this article on sales of gasoline and special
113 fuel, and the tax due under article fourteen of this chapter,
114 on gasoline and special fuel. In order to encourage use of a
115 combined return each month and the making of a single
116 payment each month for both taxes, the due date of the
117 return and tax due under article fourteen of this chapter is
118 hereby changed from the last day of each month to the
119 twenty-fifth day of each month, notwithstanding any provision
120 in article fourteen of this chapter to the contrary.

121 (g) *Dedication of tax to highways.* — All tax collected
122 under the provisions of this section after deducting the amount
123 of any refunds lawfully paid, shall be deposited in the "road
124 fund" in the state treasurer's office, and shall be used only
125 for the purpose of construction, reconstruction, maintenance
126 and repair of highways, and payment of principal and interest
127 on state bonds issued for highway purposes.

128 (h) *Construction.* — This section shall not be construed as
129 taxing any sale of gasoline or special fuel which this state is
130 prohibited from taxing under the constitution of this state or
131 the constitution or laws of the United States.

132 (i) *Effective date.* — The provisions of this section and
133 the amendments to section nine of this article shall take effect
134 on the first day of April, one thousand nine hundred eighty-
135 three.

ARTICLE 15A. USE TAX.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible personal prop-
2 erty is hereby specifically exempted from the tax imposed by
3 this article:

4 (1) All articles of tangible personal property brought into
5 the state of West Virginia by a nonresident individual thereof
6 for his or her use or enjoyment, except gasoline and special
7 fuel: *Provided*, That fuel contained in the supply tank of a
8 motor vehicle that is not a motor carrier shall not be taxable.

9 (2) Tangible personal property, the gross receipts from
10 the sale of which are exempted from the sales tax by the terms
11 of article fifteen, chapter eleven of the code of West Virginia,
12 one thousand nine hundred thirty-one, as amended.

13 (3) Tangible personal property, the gross receipts from the
14 sale of which are derived from the sale of machinery, supplies
15 and materials to contractors, or to persons engaged in the
16 business of manufacturing, transportation, transmission, com-
17 munication or in the production of natural resources in this
18 state: *Provided*, That purchases of gasoline or special fuel
19 from distributors or importers shall be taxable.

20 (4) Tangible personal property, the gross receipts or the
21 gross proceeds from the sale of which are required to be in-
22 cluded in the measure of the tax imposed by article fifteen,
23 chapter eleven of the code of West Virginia, one thousand nine
24 hundred thirty-one, as amended.

25 (5) Tangible personal property the sale of which in this
26 state is not subject to the West Virginia consumers sales tax.

27 (6) Sales of mobile homes to be utilized by purchasers as
28 their principal year-round residence and dwelling: *Provided*,
29 That these mobile homes shall be subject to tax at the three
30 percent rate.

§11-15A-13. Tax on gasoline and special fuel.

1 (a) Imposition of tax.

2 (1) *On deliveries in this state.* — Gasoline or special fuel
3 furnished or delivered within this state to consumers or users
4 is subject to the tax rate imposed by section two of this
5 article: *Provided*, That the amount of tax due under section
6 two, shall in no event be less than five percent of the average
7 wholesale price of gasoline, and with such price to, in no
8 case, be deemed to be less than ninety-seven cents per gallon
9 for all gallons of gasoline and special fuel taxable under sec-
10 tion two of this article.

11 (2) *On purchases out of state.* — An excise tax is hereby
12 imposed on the use or consumption in this state, of gasoline or
13 special fuel purchased outside this state, at the rate of five
14 percent of the average wholesale price of such gasoline or
15 special fuel, as determined under subsection (c), notwithstand-
16 ing any provision of this article to the contrary: *Provided*,
17 That gasoline or special fuel contained in the supply tank of
18 a motor vehicle that is not a motor carrier shall not be tax-
19 able, except that gasoline or special fuel imported in the supply
20 tank or auxiliary tank of construction equipment, mining equip-
21 ment, track maintenance equipment, or other similar equip-
22 ment, shall be taxed in the same manner as that in the supply
23 tank of a motor carrier.

24 (b) *Definitions.* — Terms used in the section shall have the
25 same meaning as when used in a comparable context in sec-
26 tion eighteen, article fifteen of this chapter.

27 (c) *Determination of average wholesale price.*

28 (1) To simplify determining the average wholesale price of
29 all gasoline and special fuel, the tax commissioner shall, ef-
30 fective with the period beginning the first day of the month of
31 the effective date of this section and each first day of January,
32 annually, thereafter, determine the average wholesale price of
33 gasoline and special fuel for each annual period, on the basis
34 of sales data gathered for the preceding period of the first day
35 of July through the thirty-first day of October. Notification of
36 the average wholesale price of gasoline and special fuel shall

37 be given by the tax commissioner at least thirty days in ad-
38 vance of each first day of January, annual period, by filing
39 notice of the average wholesale price in the state register, and
40 by such other means as the tax commissioner deems reason-
41 able: *Provided*, That notice of the average wholesale price of
42 gasoline and special fuel for the first period shall be timely
43 given if filed in the state register on the effective date of this
44 section.

45 (2) The "average wholesale price" shall mean the single,
46 state-wide average per gallon wholesale price, rounded to the
47 third decimal (thousandth of a cent), exclusive of state and
48 federal excise taxes on each gallon of gasoline or diesel fuel,
49 as determined by the tax commissioner from information fur-
50 nished by distributors of gasoline or special fuel in this state,
51 or such other information regarding wholesale selling prices as
52 the tax commissioner may gather, or a combination of such
53 information: *Provided*, That in no event shall the average
54 wholesale price be determined to be less than ninety-seven cents
55 per gallon of gasoline or special fuel.

56 (3) All actions of the tax commissioner in acquiring data
57 necessary to establish and determine the average wholesale
58 price of gasoline and special fuel, in providing notification of
59 his determination prior to the effective date of any change in
60 rate, and in establishing and determining, the average wholesale
61 price of fuel, may be made by the tax commissioner without
62 compliance with the provisions of article three, chapter twenty-
63 nine-a of this code.

64 (4) In any administrative or court proceeding brought to
65 challenge the average wholesale price of gasoline and special
66 fuel as determined by the tax commissioner, his determination
67 shall be presumed to be correct and shall not be set aside un-
68 less it is clearly erroneous.

69 (d) *Computation of tax due from motor carriers.* — Every
70 person who operates or causes to be operated a motor carrier
71 in this state shall pay the tax imposed by this section on the
72 average wholesale price of all gallons of gasoline or special
73 fuel used in the operation of any motor carrier within this
74 state, under the following rules:

75 (1) The total amount of gasoline or special fuel used in the
76 operation of the motor carrier within this state shall be that
77 proportion of the total amount of gasoline and special fuel used
78 in any motor carrier's operations within and without this state,
79 that the total number of miles traveled within this state bears
80 to the total number of miles traveled within and without this
81 state.

82 (2) A motor carrier shall first determine the gross amount
83 of tax due under this section on the average wholesale value,
84 determined under subsection (c), of all gasoline and special
85 fuel used in the operation of the motor carrier within this
86 state during the preceding quarter, as if all gasoline and
87 special fuel had been purchased outside this state.

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

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

99 (e) *Return and payment of tax.* — Tax due under this
100 article on the use or consumption in this state of gasoline or
101 special fuel, shall be paid by each taxpayer, on or before the
102 twenty-fifth day of January, April, July and October of each
103 year, notwithstanding any provision of this article to the con-
104 trary, by check, bank draft, certified check or money order,
105 payable to the tax commissioner, for the amount of tax due
106 for the preceding quarter. Every taxpayer shall make and file
107 with his remittance, a return showing such information as the
108 tax commissioner may require.

109 (f) *Compliance.* — To facilitate ease of administration and
110 compliance by taxpayers, the tax commissioner may require
111 motor carriers liable for the taxes imposed by this article on
112 the use of gasoline or special fuel in the operation of motor

113 carriers within this state, and the tax imposed by article four-
114 teen-a of this chapter, on such gallons of fuel, to file a com-
115 bined return and make a combined payment of the tax due
116 under this article and article fourteen-a of this chapter, on
117 such fuel. In order to encourage use of a combined return and
118 the making of a single payment each quarter for both taxes,
119 the due date of the return and tax due under article fourteen-
120 a of this chapter, is hereby changed from the last day of Jan-
121 uary, April, July and October of each calendar year, to the
122 twenty-fifth day of such months, notwithstanding any pro-
123 vision in article fourteen-a of this chapter to the contrary.

124 (g) *Dedication of tax to highways.* — All tax collected under
125 the provisions of the section after deducting the amount of any
126 refunds lawfully paid, shall be deposited in the “road fund” in
127 the state treasurer’s office, and shall be used only for the pur-
128 pose of construction, reconstruction, maintenance and repair
129 of highways, and payment of principal and interest on state
130 bonds issued for highway purposes.

131 (h) *Construction.* — The tax imposed by this article on the
132 use of gasoline or special fuel in this state, shall not be con-
133 strued as taxing any gasoline or special fuel which the state is
134 prohibited from taxing under the constitution of this state or
135 the constitution or laws of the United States.

136 (i) *Effective date.* — The provisions of this section and the
137 amendments to section three of this article shall take effect
138 on the first day of April, one thousand nine hundred eighty-
139 three.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Arnold Belton
Chairman House Committee

Originating in the House.

Takes effect April 1, 1983.

Todd C. Wick
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Walter P. McCreaw
President of the Senate

W. H. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *2* day of *March*, 1983.

Paul Ryan
Governor

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SECY. OF STATE