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
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.


1. The following sales and services shall be exempt:

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

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

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

5. (4) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;
(5) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(6) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations and shall not apply to purchases of gasoline or special fuel;

(7) Sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel;

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

(9) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article or which would be subject to tax under this article but for the
exemption for food provided in section eleven of this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property and sales of gasoline and special fuel shall not be exempt;

(10) Sales of tangible personal property for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale;

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

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

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

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

(15) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;

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

(17) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by
corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended;

(18) Bank safety deposit boxes;

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

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


(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, shall be 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 purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section shall be 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 shall be 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 herein is imposed on the average wholesale price of such gasoline and special fuel;
in no case, for the purposes of taxation under this article, shall such average wholesale price be deemed to be less than ninety-seven cents 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" shall include any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

2. "Aircraft fuel" shall mean gasoline and special fuel suitable for use in any aircraft engine.

3. "Distributor" shall mean and include every person:
   (A) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale; or
   (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 such person.

4. "Gasoline" shall mean and include 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 hereinafter defined, including any product obtained by blending together any one or more products, with or without other products, if the resultant product is capable of the same use.

5. "Importer" shall mean and include 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" shall mean and include: (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" shall mean and include 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" shall mean and include any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" shall mean and include any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" shall include products commonly known as natural or casing-head gasoline and shall include 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 practically suited for use as fuel in an internal combustion engine.

(10) "Supply tank" shall mean 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 such tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Tank wagon" shall mean and include 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" shall mean any person liable for the tax imposed by this article.
(13) "User" shall mean 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 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 such information as the tax commissioner may require, 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 shall be 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.

(h) Construction. — This section shall not be 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.** — The provisions of this section and the amendments to section nine of this article shall take effect on the first day of April, one thousand nine hundred eighty-three.

**ARTICLE 15A. USE TAX.**


1. The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

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

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

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

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

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

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

(a) Imposition of tax.

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

2. On purchases out of state. — An excise tax is hereby imposed on the use or consumption in this state, of gasoline or special fuel purchased outside this state, at the rate of five percent of the average wholesale price of such gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: Provided, That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment, or other similar equipment, shall be taxed in the same manner as that in the supply tank of a motor carrier.

(b) Definitions. — Terms used in the section shall have the same meaning as when used in a comparable context in section eighteen, article fifteen of this chapter.

(c) Determination of average wholesale price.

1. To simplify determining the average wholesale price of all gasoline and special fuel, the tax commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January, annually, thereafter, determine the average wholesale price of gasoline and special fuel for each annual period, on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of gasoline and special fuel shall
be given by the tax commissioner at least thirty days in advance of each first day of January, annual period, by filing notice of the average wholesale price in the state register, and by such other means as the tax commissioner deems reasonable: Provided, That notice of the average wholesale price of gasoline and special fuel for the first period shall be timely given if filed in the state register on the effective date of this section.

(2) The "average wholesale price" shall mean the single, state-wide 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 gasoline or diesel fuel, as determined by the tax commissioner from information furnished by distributors of gasoline or special fuel in this state, or such other information regarding wholesale selling prices as the tax commissioner may gather, or a combination of such information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of gasoline or special fuel.

(3) All actions of the tax commissioner in acquiring data necessary to establish and determine the average wholesale price of gasoline and special fuel, in providing notification of his determination prior to the effective date of any change in rate, and in establishing and determining, the average wholesale price of 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 any administrative or court proceeding brought to challenge the average wholesale price of gasoline and special fuel as determined by the tax commissioner, his determination shall be presumed to be correct and shall not be set aside unless it is clearly erroneous.

(d) 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 of gasoline or special fuel used in the operation of any motor carrier within this state, under the following rules:
(1) The total amount of gasoline or special fuel used in the operation of the motor carrier within this state shall be that proportion of the total amount of gasoline and special fuel used in any 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 subsection (c), of all gasoline and special 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 the chapter on all gasoline and special 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 shall be 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.

(e) Return and payment of tax. — Tax due under this article on the use or consumption in this state of gasoline or special fuel, shall be paid by each taxpayer, on or before the twenty-fifth day of January, April, July and October 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. Every taxpayer shall make and file with his remittance, a return showing such information as the tax commissioner may require.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require motor carriers liable for the taxes imposed by this article on the use of gasoline or special 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 fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter, on such 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 hereby changed from the last day of January, April, July and October of each calendar year, to the twenty-fifth day of such months, notwithstanding any provision in article fourteen-a of this chapter to the contrary.

(g) Dedication of tax to highways. — All tax collected under the provisions of the section after deducting the amount of any refunds lawfully paid, shall be deposited in the "road fund" in the state treasurer's office, and shall be 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.

(h) Construction. — The tax imposed by this article on the use of gasoline or special fuel in this state, shall not be construed as taxing any gasoline or special fuel which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(i) Effective date. — The provisions of this section and the amendments to section three of this article shall take effect on the first day of April, one thousand nine hundred eighty-three.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. David
Chairman Senate Committee

Donald J. Cuccillo
Chairman House Committee

Originating in the House.

Takes effect April 1, 1983.

Saul L. Wick
Clerk of the Senate

Donald L. Hoff
Clerk of the House of Delegates

Walter J. McHale
President of the Senate

W. Lewis attic
Speaker House of Delegates

The within ___ is approved____ this the ___ day of _________, 1983.

_______ _________
Governor