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WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1986

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ENROLLED

Committee Substitute for
SENATE BILL NO. 1

(By Senator *Lewis, Mr. President*)

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PASSED *July 23,* 1986

In Effect *for* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 1

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[Passed July 23, 1986; in effect from passage.]

AN ACT to repeal section twenty-six, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen, eighteen, twenty-one and twenty-two, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto two new sections, designated sections three-a and ten-a, all relating to the compensating use tax; defining terms used therein; imposing tax on the use in this state of tangible personal property; exempting from tax property that is per se exempt from the consumers sales and service tax; exempting from payment of the use tax transactions for which persons may issue an exemption certificate under the consumers sales and service tax for the same type of property; exempting sales of property upon which the consumers sales and service tax has been paid; and exempting tangible personal property brought into the state by a nonresident for his or her use or enjoyment while temporarily in this state; providing rule for determining tax when a nonresident person or business moves into this state; creating presumption that tangible personal property sold for delivery in this state was sold for use or other consumption in this state; providing for tax to be collected by retailers or

remitted directly to the state tax commissioner; requiring retailers engaging in business in this state and making sales of tangible personal property for delivery into this state or with the knowledge, directly or indirectly, that the property is intended for use in this state to collect the use tax; permitting retailers not engaging in business in this state to collect the use tax; prohibiting retailers from absorbing tax; making it a misdemeanor to absorb tax; requiring quarterly remittance of collected tax by retailers; requiring users who do not pay tax to a retailer to quarterly remit such tax directly to the tax commissioner; authorizing credit against tax due on use of tangible personal property for which sales tax was lawfully paid in another state; allowing such credit to be applied against tax due on gasoline and special fuel consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, which was subject to sales tax in another state; providing for imposition of use tax on gasoline and special fuels consumed in this state; providing rules for imposition and calculation of such tax; authorizing tax commissioner to semiannually determine average wholesale price of gasoline and special fuel, with such average wholesale price of gasoline and special fuel, with such average wholesale price to not be less than ninety-seven cents per gallon; providing rules for computation of tax due from motor carriers and for returns and payment of tax; dedicating such tax to highways; providing rules for construction of such tax; expressing legislative intent to tax gasoline and special fuel used or consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, prohibiting the tax commissioner from refunding or establishing a credit for tax paid subsequent to said thirtieth day of June, when such claim for refund or credit is based on purported nonexistence of the tax; placing burden on seller to prove that sale was not at retail; providing for this burden to be met by seller taking, in good faith, a properly executed exemption certificate signed by the purchaser; requiring retailers to keep books and records; authorizing tax commissioner to examine such books and records; authorizing tax commissioner to revoke the business registration certificate of a retailer engaging in business in this state or of a retailer not engaging in business in this state who is registered to collect use tax for failure to comply with

the requirements of the use tax law; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15A. USE TAX.

§11-15A-1. Definitions.

- 1 The following words, terms and phrases, when used in
- 2 this article, have the meanings ascribed to them in this
- 3 section, except where the context clearly indicates that a
- 4 different meaning is required:
- 5 (1) "Business" means any activity engaged in by any
- 6 person, or caused to be engaged in by any person, with the
- 7 object of direct or indirect economic gain, benefit or
- 8 advantage, and includes any purposeful revenue generating
- 9 activity in this state.
- 10 (2) "Consumer" means any person purchasing tangible
- 11 personal property from a retailer as defined in paragraph
- 12 (7).
- 13 (3) "Lease" includes rental, hire and license.
- 14 (4) "Person" includes any individual, firm, partnership,
- 15 joint venture, joint stock company, association, public or
- 16 private corporation, cooperative, estate, trust, business
- 17 trust, receiver, executor, administrator, any other
- 18 fiduciary, any representative appointed by order of any
- 19 court or otherwise acting on behalf of others, or any other
- 20 group or combination acting as a unit, and the plural as well
- 21 as the singular number.
- 22 (5) "Purchase" means any transfer, exchange or barter,
- 23 conditional or otherwise, in any manner or by any means
- 24 whatsoever, for a consideration.
- 25 (6) "Purchase price" means the total amount for which
- 26 tangible personal property is sold, valued in money,
- 27 whether paid in money or otherwise: *Provided*, That cash

28 discounts allowed and taken on sales shall not be included.

29 (7) "Retailer" means and includes every person
30 engaging in the business of selling, leasing or renting
31 tangible personal property for use within the meaning of
32 this article, or in the business of selling, at auction, tangible
33 personal property owned by the person or others for use in
34 this state: *Provided*, That when in the opinion of the tax
35 commissioner it is necessary for the efficient
36 administration of this article to regard any salesmen,
37 representatives, truckers, peddlers or canvassers as the
38 agents of the dealers, distributors, supervisors, employees
39 or persons under whom they operate or from whom they
40 obtain the tangible personal property sold by them,
41 irrespective of whether they are making sales on their own
42 behalf or on behalf of such dealers, distributors,
43 supervisors, employers or persons, the tax commissioner
44 may so regard them and may regard the dealers,
45 distributors, supervisors, employers, or persons as retailers
46 for purposes of this article.

47 (8) "Retailer engaging in business in this state" or any
48 like term, unless otherwise limited by federal statute, shall
49 mean and include but not be limited to any retailer having
50 or maintaining, occupying or using, within this state,
51 directly or by a subsidiary, an office, distribution house,
52 sales house, warehouse, or other place of business, or any
53 agent (by whatever name called) operating within this state
54 under the authority of the retailer or its subsidiary,
55 irrespective of whether such place of business or agent is
56 located here permanently or temporarily, or whether such
57 retailer or subsidiary is admitted to do business within this
58 state pursuant to section forty-nine, article one, chapter
59 thirty-one of this code.

60 (9) "Sale" means any transaction resulting in the
61 purchase of tangible personal property from a retailer.

62 (10) "Seller" means a retailer, and includes every
63 person selling or leasing tangible personal property in a
64 transaction which is subject to the tax imposed by this
65 article.

66 (11) "Tax commissioner" or "commissioner" means the
67 state tax commissioner, or his delegate.

68 (12) "Tangible personal property" means tangible
69 goods, wares and merchandise when sold by a retailer for
70 use in this state.

71 (13) "Taxpayer" includes any person within the
72 meaning of this section, who is subject to a tax imposed by
73 this article, whether acting for himself or as a fiduciary.

74 (14) "Use" means and includes the exercise by any
75 person of any right or power over tangible personal
76 property incident to the ownership, possession or
77 enjoyment of such property, or by any transaction in which
78 possession of or the exercise of any right or power over
79 tangible personal property is acquired for a consideration,
80 including any lease, rental or conditional sale of tangible
81 personal property. As used in this definition, "enjoyment"
82 includes a purchaser's right to direct the disposition of the
83 property, whether or not the purchaser has possession of the
84 property. The term "use" does not include the keeping,
85 retaining or exercising any right or power over tangible
86 personal property for the purpose of subsequently
87 transporting it outside the state for use thereafter solely
88 outside this state.

§11-15A-2. Imposition of tax.

1 (a) *General.* — An excise tax is hereby levied and
2 imposed on the use in this state of tangible personal
3 property to be collected and paid as hereinafter provided, at
4 the rate of five percent of the purchase price of such
5 property.

6 (b) Said tax is hereby imposed upon every person using
7 tangible personal property within this state. That person's
8 liability is not extinguished until such tax has been paid. A
9 receipt with the tax separately stated thereon issued by a
10 retailer engaged in business in this state, or by a foreign
11 retailer who is authorized by the tax commissioner to
12 collect the tax imposed by this article, relieves the
13 purchaser from further liability for the tax to which the
14 receipt refers.

15 (c) Purchases of tangible personal property made from
16 the government of the United States or any of its agencies
17 by ultimate consumers shall be subject to the tax imposed
18 by this section. Industrial materials and equipment owned
19 by the federal government within the state of West Virginia
20 of a character not ordinarily readily obtainable within the
21 state, shall not be subject to use tax when sold, if such
22 industrial materials and equipment would not be subject to

23 use taxes if such were sold outside of the state for use in
24 West Virginia.

25 (d) This article shall not apply to purchases made by
26 counties or municipal corporations.

§11-15A-3. Exemptions.

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

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

11 (2) Tangible personal property, the gross receipts from
12 the sale of which are exempt from the sales tax by the terms
13 of article fifteen, chapter eleven of the code of West
14 Virginia, one thousand nine hundred thirty-one, as
15 amended, and the property is being used for the purpose for
16 which it was exempted.

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

25 (4) Tangible personal property, the gross receipts or the
26 gross proceeds from the sale of which are required to be
27 included in the measure of the tax imposed by article
28 fifteen, chapter eleven of the code of West Virginia, one
29 thousand nine hundred thirty-one, as amended, and upon
30 which the tax imposed by said article fifteen has been paid.

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

33 (6) Mobile homes utilized by the owners thereof as their
34 principal year-round residence and dwelling: *Provided*,
35 That use of these mobile homes shall be subject to tax at the
36 three percent rate.

§11-15A-3a. Moving residence or business into state.

1 The tax imposed by this article shall not apply to tangible
2 personal property purchased outside this state for use
3 outside this state by a person who at that time was a
4 nonresident natural person, or a business entity not
5 actually doing business within this state, who or which later
6 brings such tangible personal property into this state in
7 connection with his establishment of a permanent residence
8 or business in this state: *Provided*, That such property was
9 purchased more than six months prior to the date it was
10 first brought into this state, or six months prior to the
11 establishment of such residence or business, whichever first
12 occurs.

§11-15A-4. Evidence of use.

1 For the purpose of the proper administration of this
2 article to prevent evasion of the tax, evidence that tangible
3 personal property was sold by any person for delivery in
4 this state shall be prima facie evidence that such tangible
5 personal property was sold for use in this state.

§11-15A-5. How collected.

1 The tax herein imposed shall be collected in the following
2 manner:
3 (1) The tax upon the use of all tangible personal
4 property, which is sold by a retailer engaging in business in
5 this state, or by such other retailer as the tax commissioner
6 shall authorize pursuant to section seven of this article shall
7 be collected by such retailer and remitted to the state tax
8 commissioner, pursuant to the provisions of sections six
9 through ten, inclusive, of this article.

10 (2) The tax upon the use of all tangible personal
11 property not paid pursuant to subsection one of this section,
12 shall be paid to the tax commissioner directly by any person
13 using such property within this state, pursuant to the
14 provisions of section eleven of this article.

§11-15A-6. Collection by retailer.

1 (a) Every retailer engaging in business in this state and
2 making sales of tangible personal property for delivery into
3 this state, or with the knowledge, directly or indirectly, that
4 the property is intended for use in this state, that are not

5 exempted under the provisions of section three of this
6 article, shall at the time of making such sales, whether
7 within or without the state, collect the tax imposed by this
8 article from the purchaser, and give to the purchaser a
9 receipt therefor in the manner and form prescribed by the
10 tax commissioner, if the tax commissioner shall, by
11 regulation, so prescribe.

12 (b) Each such retailer shall list with the tax
13 commissioner the name and address of all his agents
14 operating in this state, and the location of any and all
15 distribution or sales houses or offices or other places of
16 business in this state.

§11-15A-7. Foreign retailers.

1 The tax commissioner may, in his discretion, upon
2 application authorize the collection of the tax herein
3 imposed by any retailer not engaging in business within this
4 state, who, to the satisfaction of the tax commissioner,
5 furnishes adequate security to insure collection and
6 payment of the tax. Such retailer shall be issued, without
7 charge, a permit to collect such tax in such manner, and
8 subject to such regulations and agreements as the tax
9 commissioner shall prescribe. When so authorized, it shall
10 be the duty of such retailer to collect the tax upon all
11 tangible personal property sold to his knowledge for use
12 within this state, in the same manner and subject to the
13 same requirements as a retailer engaging in business within
14 this state. Such authority and permit may be canceled
15 when, at any time, the tax commissioner considers the
16 security inadequate, or that such tax can more effectively
17 be collected from the person using such property in this
18 state.

§11-15A-8. Absorbing tax; criminal penalty.

1 It shall be unlawful for any retailer to advertise or hold
2 out or state to the public or to any purchaser, consumer or
3 user, directly or indirectly, that the tax or any part thereof
4 imposed by this article will be assumed or absorbed by the
5 retailer or that it will not be added to the selling price of the
6 property sold, or if added that it or any part thereof will be
7 refunded. The tax commissioner shall have the power to
8 adopt and promulgate rules and regulations for adding such
9 tax, or the equivalent thereof, by providing different

10 methods applying uniformly to retailers within the same
11 general classification for the purpose of enabling such
12 retailers to add and collect, as far as practicable, the
13 amount of such tax. Any person violating any of the
14 provisions of this section within this state shall be guilty of
15 a misdemeanor and subject to the penalties provided in
16 section twenty of this article.

§11-15A-10. Payment to tax commissioner.

1 Each retailer required or authorized, pursuant to section
2 six or seven, to collect the tax herein imposed, shall be
3 required to pay to the tax commissioner the amount of such
4 tax on or before the fifteenth day of the month next
5 succeeding each quarterly period. At such time, each
6 retailer shall file with the tax commissioner a return for the
7 preceding quarterly period in such form as may be
8 prescribed by the tax commissioner showing the sales price
9 of any or all tangible personal property sold by the retailer
10 during such preceding quarterly period, the use of which is
11 subject to the tax imposed by this article, and such other
12 information as the tax commissioner may deem necessary
13 for the proper administration of this article. The return
14 shall be accompanied by a remittance of the amount of such
15 tax, for the period covered by the return: *Provided*, That
16 where such tangible personal property is sold under a
17 conditional sales contract, or under any other form of sale
18 wherein the payment of the principal sum, or a part thereof
19 is extended over a period longer than sixty days from the
20 date of sale thereof, the retailer may collect and remit each
21 quarterly period that portion of the tax equal to five percent
22 of that portion of the purchase price actually received
23 during such quarterly period. The tax commissioner, if he
24 deems it necessary in order to insure payment to the state of
25 the amount of such tax, may in any or all cases require
26 returns and payments of such amount to be made for other
27 than quarterly periods. The tax commissioner may, upon
28 request and a proper showing of the necessity therefor,
29 grant an extension of time not to exceed thirty days for
30 making any return and payment. Returns shall be signed by
31 the retailer or his duly authorized agent, and must be
32 certified by him to be correct.

§11-15A-10a. Credit for sales tax liability paid to another state.

1 (a) A person is entitled to a credit against the tax
2 imposed by this article on the use of a particular item of
3 tangible personal property equal to the amount, if any, of
4 sales tax lawfully paid to another state for the acquisition of
5 that property: *Provided*, That the amount of credit allowed
6 shall not exceed the amount of use tax imposed on the use of
7 the property in this state.

8 (b) For purposes of this section:

9 (1) "Sales tax" includes a sales tax or compensating use
10 tax imposed on the use of tangible personal property by the
11 state in which the sale occurred; and

12 (2) "State" includes the District of Columbia but does
13 not include any of the several territories organized by
14 Congress.

15 (c) This section shall apply to claims for refund or credit
16 of use tax filed after the thirty-first day of August, one
17 thousand nine hundred eighty-six, for taxable purchases
18 made on or after the first day of July, one thousand nine
19 hundred eighty-five, that were legally subject to a sales tax
20 or compensating use tax paid in another state and then also
21 taxed under this article.

§11-15A-11. Liability of user.

1 Any person who uses any tangible personal property
2 upon which the tax herein imposed has not been paid either
3 to a retailer or direct to the tax commissioner as herein
4 provided, shall be liable therefor, and shall on or before the
5 fifteenth day of the month next succeeding each quarterly
6 period pay the tax herein imposed upon all such property
7 used by him during the preceding quarterly period in such
8 manner and accompanied by such returns as the tax
9 commissioner shall prescribe. All of the provisions of
10 section ten with reference to such returns and payments
11 shall be applicable to the returns and payments herein
12 required..

§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

4 users is subject to tax at the rate imposed by section two of
5 this article: *Provided*, That the amount of tax due under
6 section two shall in no event be less than five percent of the
7 average wholesale price of gasoline and special fuel and
8 with such price to, in no case, be deemed to be less than
9 ninety-seven cents per gallon for all gallons of gasoline and
10 special fuel taxable under section 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
13 or 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),
16 notwithstanding any provision of this article to the
17 contrary: *Provided*, That gasoline or special fuel contained
18 in the supply tank of a motor vehicle that is not a motor
19 carrier shall not be taxable, except that gasoline or special
20 fuel imported in the supply tank or auxiliary tank of
21 construction equipment, mining equipment, track
22 maintenance equipment or other similar equipment, shall
23 be taxed in the same manner as that in the supply tank of a
24 motor carrier.

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

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

29 (1) To simplify determining the average wholesale price
30 of all gasoline and special fuel, the tax commissioner shall,
31 effective with the period beginning the first day of the
32 month of the effective date of this section and each first day
33 of January, annually, thereafter, determine the average
34 wholesale price of gasoline and special fuel for each annual
35 period, on the basis of sales data gathered for the preceding
36 period of the first day of July through the thirty-first day of
37 October. Notification of the average wholesale price of
38 gasoline and special fuel shall be given by the tax
39 commissioner at least thirty days in advance of each first
40 day of January, annual period, by filing notice of the
41 average wholesale price in the state register, and by such
42 other means as the tax commissioner deems reasonable:
43 *Provided*, That notice of the average wholesale price of
44 gasoline and special fuel for the first period shall be timely
45 given if filed in the state register on the effective date of this
46 section.

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

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

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

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

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

85 (2) A motor carrier shall first determine the gross
86 amount of tax due under this section on the average
87 wholesale value, determined under subsection (c), of all
88 gasoline and special fuel used in the operation of the motor

89 carrier within this state during the preceding quarter, as if
90 all gasoline and special fuel had been purchased outside
91 this state.

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

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

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

113 (f) *Compliance.* — To facilitate ease of administration
114 and compliance by taxpayers, the tax commissioner may
115 require motor carriers liable for the taxes imposed by this
116 article on the use of gasoline or special fuel in the operation
117 of motor carriers within this state, and the tax imposed by
118 article fourteen-a of this chapter on such gallons of fuel, to
119 file a combined return and make a combined payment of the
120 tax due under this article and article fourteen-a of this
121 chapter on such fuel. In order to encourage use of a
122 combined return and the making of a single payment each
123 quarter for both taxes, the due date of the return and tax
124 due under article fourteen-a of this chapter is hereby
125 changed from the last day of January, April, July and
126 October of each calendar year, to the twenty-fifth day of
127 such months, notwithstanding any provisions in article
128 fourteen-a of this chapter to the contrary.

129 (g) *Dedication of tax to highways.* — All tax collected
130 under the provisions of this section after deducting the

131 amount of any refunds lawfully paid shall be deposited in
132 the "road fund" in the state treasurer's office, and shall be
133 used only for the purpose of construction, reconstruction,
134 maintenance and repair of highways, and payment of
135 principal and interest on state bonds issued for highway
136 purposes.

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

142 (i) *Effective date.* — The provisions of this section and
143 the amendments to section three of this article took effect
144 on the first day of April, one thousand nine hundred eighty-
145 three.

146 (j) *Validation.* — Inasmuch as there is currently
147 litigation challenging the lawfulness of this section in the
148 situation where a motor carrier purchases gasoline or
149 special fuel in another state paying to that other state a sales
150 tax thereon and then consumes that gasoline or special fuel
151 in its operation of a motor carrier in this state, without
152 being statutorily allowed a credit for such sales tax against
153 the tax imposed by this article with respect to such
154 gallonage of tax paid fuel consumed in this state; and
155 inasmuch as section ten-a of this article reestablishes the
156 allowance of such a credit and makes such allowance
157 effectively retroactive and applicable to gasoline and
158 special fuel consumed in this state after the thirtieth day of
159 June, one thousand nine hundred eighty-five, the purported
160 constitutional infirmity is cured. To avoid any question
161 about whether this section was in effect subsequent to the
162 thirtieth day of June, one thousand nine hundred eighty-
163 five, this section is reenacted and expressly made
164 retroactive to the first day of July, one thousand nine
165 hundred eighty-five, and the tax commissioner shall not
166 refund or credit any tax previously paid under this section
167 due to a claim that the tax was not lawfully imposed
168 subsequent to the thirtieth day of June, one thousand nine
169 hundred eighty-five.

§11-15A-18. Seller must show sale not at retail; presumption.

1 The burden of proving that a sale was not taxable shall be

2 upon the seller, unless he, in good faith, takes from the
3 purchaser a certificate signed by and bearing the address of
4 the purchaser setting forth the reason for exemption of the
5 sale from imposition of the tax. To prevent evasion it shall
6 be presumed that all proceeds are subject to the tax until the
7 contrary is clearly established. This certificate shall be
8 substantially in the form prescribed by the tax
9 commissioner.

§11-15A-21. Books; examination.

- 1 (a) Every retailer required or authorized to collect taxes
2 imposed by this article and every person using in this state
3 tangible personal property purchased on or after the first
4 day of July, one thousand nine hundred fifty-one, shall keep
5 such records, receipts, invoices, and other pertinent papers
6 as the tax commissioner shall require, in such form as the
7 tax commissioner shall require.
- 8 (b) In addition to the tax commissioner's powers set
9 forth in article ten of this chapter, the tax commissioner or
10 any of his duly authorized agents is hereby authorized to
11 examine the books, papers, records and equipment of any
12 person who either:
- 13 (1) Is selling tangible personal property; or
14 (2) Is liable for the tax imposed by this article, and to
15 investigate the character of the business of any such person
16 in order to verify the accuracy of any return made, or if no
17 return was made by such person, to ascertain and determine
18 the amount due under the provisions of this article. Any
19 such books, papers and records shall be made available
20 within this state for such examination upon reasonable
21 notice when the tax commissioner shall deem it advisable
22 and shall so order. However, where the taxpayer's records
23 must be kept out-of-state, the taxpayer may upon being
24 notified by the tax commissioner that an examination is to
25 be made, elect to do one of the following: (1) Forthwith
26 transport the required records to a convenient point in West
27 Virginia and notify the tax commissioner that they are
28 available; or (2) pay the reasonable traveling expenses of
29 the tax commissioner's representatives from Charleston,
30 West Virginia, to the out-of-state place where the records
31 are kept, and return, and reasonable living expenses of such
32 representatives while engaged in their examination.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer engaging in business in this state,
2 or authorized to collect the tax herein imposed pursuant to
3 section seven of this article, fails to comply with any of the
4 provisions of this article or any orders, rules or regulations
5 of the tax commissioner prescribed and adopted for this
6 article under article ten of this chapter, the tax
7 commissioner may, upon notice and hearing, hereinafter
8 provided, by order, cancel the business registration
9 certificate, if any, issued to such retailer under article
10 twelve, chapter eleven of the code of West Virginia, one
11 thousand nine hundred thirty-one, as amended, or if such
12 retailer is a corporation authorized to do business in this
13 state under section forty-nine, article one, chapter thirty-
14 one of said code, may certify to the secretary of state a copy
15 of an order finding that such retailer has failed to comply
16 with certain specified provisions, orders, rules or
17 regulations. The secretary of state shall, upon receipt of
18 such certified copy, revoke the permit authorizing said
19 corporation to do business in this state, and shall issue a
20 new permit only when such corporation shall have obtained
21 from the tax commissioner an order finding that such
22 corporation has complied with its obligations under this
23 article. No order authorized in this section shall be made
24 until the retailer is given an opportunity to be heard and to
25 show cause why such order should not be made, and he shall
26 be given twenty days' notice of the time, place and purpose
27 of such hearing, which shall be heard as provided in section
28 nine, article ten of this chapter. The tax commissioner shall
29 have the power in his discretion to issue a new business
30 registration certificate after such canceling.

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

Gene O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Walker
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Don Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *29th* day of *July*, 1986.



Arthur A. Maness Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 7/25/86

Time 2:54 p.m.

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