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WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1986



ENROLLED

*Committee Substitute for*

SENATE BILL NO. 1

(By Senator *Francis M. Rowland*)



PASSED *July 23,* 1986

In Effect *Jan.* 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.

*Judd C. Vella*  
.....  
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 M. ...*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 7/25/86

Time 2:54 p.m.

Preparation

1958 JUN 31 11 46 AM

Department of Commerce

U.S. DEPARTMENT OF COMMERCE

1958 JUN 31 11 46 AM

U.S. DEPARTMENT OF COMMERCE