

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 102.....

(By Mr. Speaker, Mr. Chambers & Del. Burk)
[By Request of the Executive]

— ● —

Passed January 31, 1989

In Effect From Passage

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SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 102

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed January 31, 1989; in effect from passage.]

AN ACT to repeal section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fifteen, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section five-a; to amend and reenact sections five and seven of said article fourteen-a; and to further amend said article fourteen-a by adding thereto two new sections, designated sections three-a and twenty-eight, all relating generally to gasoline and motor fuel excise taxes; increasing the rate of tax to fifteen and one-half cents per gallon of gasoline or special fuel beginning the first day of April, one thousand nine hundred eighty nine; exempting from gasoline and special fuel excise tax and from consumers sales tax bulk sales of gasoline or special fuel to interstate motor carriers provided the motor carrier road tax and the use tax are paid on such gallons used in this state; providing administrative procedures for this exemption and its effective date; repealing the motor carrier road tax surtax as of the first day of April, one thousand nine hundred eighty-nine; establishing primary liability for payment of registration fees and motor carrier road tax when motor

carrier is leased or rented; requiring annual reports from motor carriers operating solely in this state in lieu of quarterly reports; providing for issuance of temporary trip permits and issuance of annual transporters permits, and setting fees therefor; imposing criminal penalties; authorizing exchange of motor carrier information between certain agencies when purpose of exchange is to administer a combined trip permit program; authorizing issuance of combined trip permits and specifying fee therefor; dedicating the sum of twenty-five million dollars to bridge replacement or repair; authorizing the use of the proceeds to be used to match federal amounts available for expenditure on the Appalachian Highway System, providing that amounts remaining after funding the foregoing priorities shall be used for the maintenance, construction, repair and reconstruction of state highways; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of ten and one-
2 half cents per gallon on all gasoline or special fuel,
3 which tax shall be computed in accordance with the
4 appropriate measure of tax as hereinafter prescribed in
5 this article: *Provided*, That beginning the first day of
6 April, one thousand nine hundred eighty-nine, the tax
7 levied by this article shall be fifteen and one-half cents
8 per gallon.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

1 (a) In general.—There shall be exempt from the taxes
2 imposed by this article and by article fifteen of this code
3 all gallons of gasoline or special fuel sold by a distrib-
4 utor to an interstate motor carrier having fuel storage
5 tanks in this state which are used solely for the purpose
6 of fueling motor carriers owned, leased or operated by
7 the motor carrier, when the purchase is delivered in
8 bulk quantities of one thousand gallons or more into
9 such fuel storage tanks and is purchased for the motor
10 carrier's exclusive use: *Provided*, That this exemption
11 shall not relieve the person owning or operating a motor
12 carrier from payment of any taxes imposed by article
13 fourteen-a or fifteen-a of this chapter on gasoline or
14 special fuel used or consumed in this state by the motor
15 carrier.

16 (b) Surety bond; release of surety; new bond.—The
17 commissioner may in his discretion require an interstate
18 motor carrier having fuel storage tanks in this state to
19 file a continuous surety bond in an amount to be fixed
20 by the commissioner, except that the amount thereof
21 shall not be less than one thousand dollars. Upon
22 completion of the filing of such surety bond an annual
23 notice of renewal, only, shall be required thereafter. The
24 surety must be authorized to engage in business within
25 this state. This bond shall be conditioned upon the motor
26 carrier's faithful compliance with the provisions of this
27 article and articles fourteen-a and fifteen-a of this
28 chapter with respect to such gasoline or special fuel,
29 including the filing of the returns and payment of all
30 tax due with respect to such gasoline or special fuel.
31 Such bond shall be approved by the commissioner as to
32 sufficiency and by the attorney general as to form, and
33 shall indemnify the state against any loss arising from
34 the failure of the taxpayer for whatever reason to pay
35 any tax imposed by article fourteen-a or fifteen-a of this
36 chapter on gasoline or special fuel purchased as
37 provided in this section which was used or consumed in
38 operation of the motor carrier in this state: *Provided*,
39 That a noninterest bearing cash deposit may be accepted
40 by the commissioner in lieu of such bond. The cash
41 deposit shall be in an amount to be fixed by the
42 commissioner, except the amount thereof may not be
43 less than one thousand dollars.

44 (c) Revocation of suspension of exemption.

45 (1) The tax commissioner may revoke or suspend
46 application of this exemption to a motor carrier if:

47 (A) The motor carrier filed a false or fraudulent
48 return for the tax imposed by article fourteen-a or
49 fifteen-a of this chapter on gasoline or special fuel it
50 used or consumed in this state.

51 (B) The motor carrier willfully refused or willfully
52 neglected to file a tax return or willfully failed to report
53 information required by the tax commissioner, concern-
54 ing gasoline or special fuel which it used or consumed
55 in this state, on or before the date specified for filing
56 the return or report.

57 (C) The motor carrier willfully refused or willfully
58 neglected to pay any tax, additions to tax, penalties or
59 interest, or any part thereof, with respect to gasoline or
60 special fuel used or consumed in this state when they
61 became due and payable under this chapter, determined
62 with regard to any authorized extension of time for
63 payment.

64 (2) Before cancelling or suspending this exemption,
65 the tax commissioner shall give written notice to the
66 motor carrier of his intent to suspend or cancel this
67 exemption, the reason for the suspension or cancellation,
68 the effective date of the suspension or cancellation, and
69 the date, time and place where the taxpayer may appear
70 at an informal hearing and show cause why this
71 exemption should not be suspended or canceled. This
72 written notice shall be served on the taxpayer in the
73 same manner as a notice of assessment is served under
74 article ten of this chapter, not less than twenty days
75 prior to the date of such informal hearing. The taxpayer
76 may appeal suspension or cancellation of its exemption
77 under this section in the same manner as a notice of
78 assessment is appealed under article ten of this chapter:
79 *Provided*, That the filing of a petition for appeal shall
80 not stay the effective date of the suspension or cancel-
81 lation. A stay may be granted only after a hearing is
82 held on a motion to stay filed by the motor carrier, upon
83 finding that state revenues will not be jeopardized by
84 the granting of the stay. The tax commissioner may, in
85 his discretion and upon such terms as he may specify,

86 agree to stay the effective date of the suspension or
87 cancellation until another date certain.

88 (3) The tax commissioner shall promptly give notice
89 to distributors in this state of the name and mailing
90 address of every motor carrier whose exemption under
91 this section is suspended or cancelled. The effective date
92 of such suspension or cancellation shall be included, and
93 if this exemption is suspended, the date the suspension
94 expires shall also be provided. The affected motor
95 carrier shall promptly give similar written notice to all
96 distributors from whom he purchases gasoline or special
97 fuel exempt from tax as provided in subsection (a) of
98 this section.

99 (4) A motor carrier whose exemption under this
100 section is cancelled may, after the cancellation has been
101 in effect for twelve months, petition the tax commis-
102 sioner for reinstatement of exemption under this section.
103 The tax commissioner may, in his discretion, and upon
104 such terms as he may require reinstate this exemption,
105 but only if he reasonably believes that the motor carrier
106 will fully and timely comply with this article and the
107 provisions of articles fourteen-a and fifteen-a of this
108 chapter. Upon reinstatement, the motor carrier shall
109 provide his distributor with a true copy of the tax
110 commissioner's order reinstating the exemption.

111 (d) Effective date.—The provisions of this section
112 shall apply to gasoline or special fuel delivered after the
113 thirty-first day of March, one thousand nine hundred
114 eighty-nine.

§11-14-15. Disposition of tax collected.

1 All tax collected under the provisions of this article
2 shall be paid into the state treasury and shall be used
3 only for the purpose of construction, reconstruction,
4 maintenance and repair of highways, matching of
5 federal monies available for highway purposes and
6 payment of the interest and sinking fund obligations on
7 state bonds issued for highway purposes: *Provided*, That
8 for fiscal year one thousand nine hundred eighty-nine-
9 ninety, twenty-five million dollars shall be used only for
10 bridge repair and replacement and all amounts remain-
11 ing shall next be used for payment of the interest and
12 sinking fund obligations on state bonds issued for

13 highway purposes: *Provided, however,* That any amounts
14 remaining after funding these priorities shall next be
15 used in matching any federal amounts available for
16 expenditure on the Appalachian highway system in this
17 State: *Provided further,* That any amounts remaining
18 after funding these priorities shall be used for the
19 maintenance, reconstruction and construction of state
20 highways.

21 Unless necessary for such bond requirements, five
22 fourteenths of the tax collected under the provisions of
23 this article shall be used for feeder and state local
24 service highway purposes.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers.

1 (a) Motor carriers leased for less than thirty days.—
2 A lessor of motor carriers who is regularly engaged in
3 the business of leasing or renting motor carriers with
4 or without drivers to licensees or other lessees for a
5 period of less than thirty days is primarily liable for
6 payment of the taxes and fees imposed by this article.

7 (b) Motor carriers leased for thirty days or more.—A
8 licensee or other lessee who leases or rents a motor
9 carrier with or without drivers for a period of thirty
10 days or more is primarily liable for payment of the taxes
11 and fees imposed by this article.

12 (c) The provision of subsections (a) and (b) of this
13 section shall govern the primary liability of lessors and
14 licensees or other lessees of motor carriers. If a lessor
15 or licensee or other lessee primarily liable fails, in whole
16 or in part, to discharge his liability, such failing party
17 and other party to the transaction, whether denominated
18 as a lessor, licensee or other lessee, shall be jointly and
19 severally responsible and liable for compliance with the
20 provisions of this article and for payment of any tax or
21 fees due under this article: *Provided,* That the aggregate
22 of taxes and fees collected by the commissioner shall not
23 exceed the total amount or amounts of taxes and fees
24 due under this article on account of the transactions in
25 question plus such interest, additions to tax, other
26 penalties and costs, if any, that may be imposed:
27 *Provided, however,* That no person, other than the person

28 primarily responsible for the taxes and fees under this
 29 article, may be assessed penalties or additions to tax
 30 resulting from the failure of the party primarily liable
 31 for such taxes and fees to pay: *Provided further*, That
 32 once such other party to the transaction who is not
 33 primarily liable for the taxes under this article but who
 34 is made jointly and severally liable under this subsection
 35 for such taxes is assessed for those taxes and fees and
 36 fails to discharge such assessment within the time
 37 prescribed therefor, or within thirty days after receiv-
 38 ing such assessment if no time is so prescribed, nothing
 39 herein shall prohibit the commissioner from imposing
 40 additions to tax or penalties upon that person for failing
 41 to pay the assessment issued in his name.

**§11-14A-5. Reports of carriers; joint reports; records;
 examination of records; subpoenas and
 witnesses.**

1 (a) Every taxpayer subject to the tax imposed by this
 2 article, except as provided in subsections (b) and (c) of
 3 this section, shall on or before the twenty-fifth day of
 4 January, April, July and October of every calendar year
 5 make to the commissioner such reports of its operations
 6 during the quarter ending the last day of the preceding
 7 month as the commissioner may require and such other
 8 reports from time to time as the commissioner may
 9 deem necessary. For good cause shown, the commis-
 10 sioner may extend the time for filing said reports for
 11 a period not exceeding thirty days.

12 (b) Every motor carrier which operates exclusively in
 13 this state during a fiscal year that begins on the first
 14 day of July of one calendar year and ends on the
 15 thirtieth day of June of the next succeeding calendar
 16 year and during such fiscal year consumes in its
 17 operation only gasoline or special fuel upon which the
 18 tax imposed by article fourteen of this chapter has been
 19 paid shall, in lieu of filing the quarterly reports
 20 required by subsection (a), file an annual report for such
 21 fiscal year on or before the last day of July each
 22 calendar year. For good cause shown, the commissioner
 23 may extend the time for filing such report for a period
 24 of thirty days.

25 (c) Two or more taxpayers regularly engaged in the

26 transportation of passengers on through buses on
27 through tickets in pool operation may, at their option
28 and upon proper notice to the commissioner, make joint
29 reports of their entire operations in this state in lieu of
30 the separate reports required by subsection (a) of this
31 section. The taxes imposed by this article shall be
32 calculated on the basis of such joint reports as though
33 such taxpayers were a single taxpayer; and the taxpay-
34 ers making such reports shall be jointly and severally
35 liable for the taxes shown thereon to be due. Such joint
36 reports shall show the total number of highway miles
37 traveled in this state and the total number of gallons of
38 gasoline or special fuel purchased in this state by the
39 reporting taxpayers. Credits to which the taxpayers
40 making a joint return are entitled shall not be allowed
41 as credits to any other taxpayer; but taxpayers filing
42 joint reports shall permit all taxpayers engaged in this
43 state in pool operations with them to join in filing joint
44 reports.

45 (d) A taxpayer shall keep such records necessary to
46 verify the highway miles traveled within and without
47 the state of West Virginia, the number of gallons of
48 gasoline and special fuel used and purchased within and
49 without West Virginia and any other records which the
50 commissioner by regulation may prescribe.

51 (e) In addition to the tax commissioner's powers set
52 forth in sections five-a and five-b, article ten of this
53 chapter, the commissioner may inspect or examine the
54 records, books, papers, storage tanks, meters and any
55 equipment records or records of highway miles traveled
56 within and without West Virginia and the records of any
57 other person to verify the truth and accuracy of any
58 statement or report to ascertain whether the tax
59 imposed by this article has been properly paid.

60 (f) In addition to the tax commissioner's powers set
61 forth in sections five-a and five-b, article ten of this
62 chapter, and as a further means of obtaining the
63 records, books and papers of a taxpayer or any other
64 person and ascertaining the amount of taxes and reports
65 due under this article, the commissioner shall have the
66 power to examine witnesses under oath; and if any
67 witness shall fail or refuse at the request of the
68 commissioner to grant access to the books, records and

69 papers, the commissioner shall certify the facts and
70 names to the circuit court of the county having jurisdic-
71 tion of the party and such court shall thereupon issue
72 a subpoena duces tecum to such party to appear before
73 the commissioner, at a place designated within the
74 jurisdiction of such court, on a day fixed.

§11-14A-7. Identification markers; fees; criminal penalty.

1 (a) Registration of motor carriers.—No person may
2 operate, or cause to be operated, in this state any motor
3 carrier subject to this article without first securing from
4 the commissioner an identification marker for each such
5 motor carrier, except as provided in subsection (b) or (c)
6 of this section. Each identification marker for a
7 particular motor carrier shall bear a number. This
8 identification marker shall be displayed on the driver's
9 side of the motor carrier as required by the commis-
10 sioner. The commissioner, after issuance of any identi-
11 fication marker to a motor carrier, shall cause an
12 internal cross-check to be made in his office as to any
13 state tax which he administers, to aid in determination
14 of any noncompliance in respect to failure to file returns
15 or payment of tax liabilities. The identification markers
16 herein provided for shall be valid for the period of one
17 year, ending June thirtieth of each year. A fee of five
18 dollars shall be paid to the commissioner for issuing
19 each identification marker which is reasonably related
20 to the commissioner's costs of issuing such identification.
21 All tax or reports due under this article shall be paid
22 or reports filed before the issuance of a new identifica-
23 tion marker. Failure by a taxpayer to file the returns
24 or pay the taxes imposed by this article shall give cause
25 to the commissioner to revoke or refuse to renew the
26 identification marker previously issued.

27 (b) Trip permit.—A motor carrier that does not have
28 a motor carrier identification marker issued under
29 subsection (a) of this section may obtain a trip permit
30 which authorizes the motor carrier specified therein to
31 be operated in this state without an identification
32 marker for a period of not more than ten consecutive
33 days beginning and ending on the dates specified on the
34 face of the permit. The fee for this permit shall be
35 twenty-four dollars.

36 (1) Fees for trip permits shall be in lieu of the tax
37 otherwise due under this article on account of the
38 vehicles specified in the permit operating in this state
39 during the period of the permit, and no reports of
40 mileage shall be required with respect to that vehicle.

41 (2) A trip permit shall be issued if, in the course of
42 the motor carrier's operations, it operates on the public
43 roads or highways in this state no more than three times
44 in any one fiscal year of this state, and a motor carrier
45 may obtain no more than three such trip permits in any
46 fiscal year of this state.

47 (3) A trip permit shall be carried in the cab of the
48 motor vehicle for which it was issued at all times while
49 it is in this state.

50 (4) A trip permit may be obtained from the commis-
51 sioner or from wire services authorized by the commis-
52 sioner to issue such permits. The cost of the telegram
53 or similar transmissions shall be the responsibility of the
54 motor carrier requesting the trip permit.

55 (c) Transportation permit.—The commissioner is
56 hereby authorized to grant, in his discretion, a special
57 permit to a new motor vehicle dealer for use on new
58 motor vehicles driven under their own power from the
59 factory or distributing place of a manufacturer, or other
60 dealer, to a place of business of the new vehicle dealer,
61 or from the place of business of a new vehicle dealer to
62 a place of business of another dealer, or when delivered
63 from the place of businesses of the new vehicle dealer
64 to the place of business of a purchaser to whom title
65 passes on delivery. A transporter's permit must be
66 carried in the cab of the motor vehicle being trans-
67 ported. A person to whom a transporter's permit is
68 issued shall file the reports required by section five of
69 this article and pay any tax due. The fee for such
70 transporter's permit shall be fifteen dollars and a
71 transporter's permit is valid for the fiscal year for which
72 it is issued unless surrendered or revoked by the tax
73 commissioner.

74 (d) Criminal penalty.—Any person, whether such
75 person be the owner, licensee or lessee, or the employee,
76 servant or agent thereof, who operates or causes to be
77 operated in this state, a motor carrier in violation of this

78 section, is guilty of a misdemeanor, and, upon conviction
79 thereof, shall be fined not less than fifty nor more than
80 five hundred dollars; and each day such violation
81 continues or reoccurs shall constitute a separate offense.

82 (e) Notwithstanding the provisions of section five-d,
83 article ten of this chapter, the commissioner shall
84 deliver to or receive from the commissioner of the
85 department of motor vehicles and the commissioner of
86 the public service commission, the information con-
87 tained in the application filed by a motor carrier for a
88 trip permit under this section, when the information is
89 used to administer a combined trip permit registration
90 program for motor carriers operating in this state,
91 which program may be administered by one agency or
92 any combination of the three agencies, as embodied in
93 a written agreement executed by the head of each
94 agency participating in the program. Such agencies
95 have authority to enter into such an agreement notwith-
96 standing any provision of this code to the contrary; and
97 the fee for such combined trip permit shall be twenty-
98 four dollars, which shall be in lieu of the fee set forth
99 in subsection (b) of this section.

§11-14A-28. Effective date.

1 The provisions of this act shall take effect on the first
2 day of April, one thousand nine hundred eighty-nine.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Joseph C. Michie
Clerk of the Senate

Donald L. Herpp
Clerk of the House of Delegates

Sam R. Francis
President of the Senate

Walter W. Rouse
Speaker of the House of Delegates

The within *is approved* this the *7th*
day of *February*, 1989.

Walter W. Rouse
Governor

WRC III

2/1/89

2:20 p.m.