WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 102

(By Mr. Speaker, Mr. Chambers, & Dale Burkh)
[By Request of the Executive]

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Passed January 31, 1989

In Effect [Signature] 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-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as hereinafter prescribed in this article: Provided, That beginning the first day of April, one thousand nine hundred eighty-nine, the tax levied by this article shall be fifteen and one-half cents per gallon.

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

(b) Surety bond; release of surety; new bond.—The commissioner may in his discretion require an interstate motor carrier having fuel storage tanks in this state to file a continuous surety bond in an amount to be fixed by the commissioner, except that the amount thereof shall not be less than one thousand dollars. Upon completion of the filing of such surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. This bond shall be conditioned upon the motor carrier's faithful compliance with the provisions of this article and articles fourteen-a and fifteen-a of this chapter with respect to such gasoline or special fuel, including the filing of the returns and payment of all tax due with respect to such gasoline or special fuel. Such bond shall be approved by the commissioner as to sufficiency and by the attorney general as to form, and shall indemnify the state against any loss arising from the failure of the taxpayer for whatever reason to pay any tax imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel purchased as provided in this section which was used or consumed in operation of the motor carrier in this state: Provided, That a noninterest bearing cash deposit may be accepted by the commissioner in lieu of such bond. The cash deposit shall be in an amount to be fixed by the commissioner, except the amount thereof may not be less than one thousand dollars.
(c) Revocation of suspension of exemption.

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

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

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

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

(2) Before cancelling or suspending this exemption, the tax commissioner shall give written notice to the motor carrier of his intent to suspend or cancel this exemption, the reason for the suspension or cancellation, the effective date of the suspension or cancellation, and the date, time and place where the taxpayer may appear at an informal hearing and show cause why this exemption should not be suspended or canceled. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the date of such informal hearing. The taxpayer may appeal suspension or cancellation of its exemption under this section in the same manner as a notice of assessment is appealed under article ten of this chapter: Provided, That the filing of a petition for appeal shall not stay the effective date of the suspension or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the motor carrier, upon finding that state revenues will not be jeopardized by the granting of the stay. The tax commissioner may, in his discretion and upon such terms as he may specify,
agree to stay the effective date of the suspension or cancellation until another date certain.

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

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

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

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

All tax collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal monies available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, That for fiscal year one thousand nine hundred eighty-nine, twenty-five million dollars shall be used only for bridge repair and replacement and all amounts remaining shall next be used for payment of the interest and sinking fund obligations on state bonds issued for
highway purposes: Provided, however, That any amounts remaining after funding these priorities shall next be used in matching any federal amounts available for expenditure on the Appalachian highway system in this State: Provided further, That any amounts remaining after funding these priorities shall be used for the maintenance, reconstruction and construction of state highways.

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

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers.

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

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

(c) The provision of subsections (a) and (b) of this section shall govern the primary liability of lessors and licensees or other lessees of motor carriers. If a lessor or licensee or other lessee primarily liable fails, in whole or in part, to discharge his liability, such failing party and other party to the transaction, whether denominated as a lessor, licensee or other lessee, shall be jointly and severally responsible and liable for compliance with the provisions of this article and for payment of any tax or fees due under this article: Provided, That the aggregate of taxes and fees collected by the commissioner shall not exceed the total amount or amounts of taxes and fees due under this article on account of the transactions in question plus such interest, additions to tax, other penalties and costs, if any, that may be imposed: Provided, however, That no person, other than the person
primarily responsible for the taxes and fees under this article, may be assessed penalties or additions to tax resulting from the failure of the party primarily liable for such taxes and fees to pay: Provided further, That once such other party to the transaction who is not primarily liable for the taxes under this article but who is made jointly and severally liable under this subsection for such taxes is assessed for those taxes and fees and fails to discharge such assessment within the time prescribed therefor, or within thirty days after receiving such assessment if no time is so prescribed, nothing herein shall prohibit the commissioner from imposing additions to tax or penalties upon that person for failing to pay the assessment issued in his name.

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

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

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

(c) Two or more taxpayers regularly engaged in the
transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state in lieu of the separate reports required by subsection (a) of this section. The taxes imposed by this article shall be calculated on the basis of such joint reports as though such taxpayers were a single taxpayer; and the taxpayers making such reports shall be jointly and severally liable for the taxes shown thereon to be due. Such joint reports shall show the total number of highway miles traveled in this state and the total number of gallons of gasoline or special fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled shall not be allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

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

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

(f) In addition to the tax commissioner's powers set forth in sections five-a and five-b, article ten of this chapter, and as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and
papers, the commissioner shall certify the facts and
names to the circuit court of the county having jurisdic-
tion of the party and such court shall thereupon issue
a subpoena duces tecum to such party to appear before
the commissioner, at a place designated within the
jurisdiction of such court, on a day fixed.
§11-14A-7. Identification markers; fees; criminal penalty.

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

(b) Trip permit.—A motor carrier that does not have
a motor carrier identification marker issued under
subsection (a) of this section may obtain a trip permit
which authorizes the motor carrier specified therein to
be operated in this state without an identification
marker for a period of not more than ten consecutive
days beginning and ending on the dates specified on the
face of the permit. The fee for this permit shall be
twenty-four dollars.
(1) Fees for trip permits shall be in lieu of the tax otherwise due under this article on account of the vehicles specified in the permit operating in this state during the period of the permit, and no reports of mileage shall be required with respect to that vehicle.

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

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

(4) A trip permit may be obtained from the commissioner or from wire services authorized by the commissioner to issue such permits. The cost of the telegram or similar transmissions shall be the responsibility of the motor carrier requesting the trip permit.

(c) Transportation permit.—The commissioner is hereby authorized to grant, in his discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of businesses of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter's permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter's permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for such transporter's permit shall be fifteen dollars and a transporter's permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the tax commissioner.

(d) Criminal penalty.—Any person, whether such person be the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this state, a motor carrier in violation of this
section, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars; and each day such violation continues or reoccurs shall constitute a separate offense.

(e) Notwithstanding the provisions of section five-d, article ten of this chapter, the commissioner shall deliver to or receive from the commissioner of the department of motor vehicles and the commissioner of the public service commission, the information contained in the application filed by a motor carrier for a trip permit under this section, when the information is used to administer a combined trip permit registration program for motor carriers operating in this state, which program may be administered by one agency or any combination of the three agencies, as embodied in a written agreement executed by the head of each agency participating in the program. Such agencies have authority to enter into such an agreement notwithstanding any provision of this code to the contrary; and the fee for such combined trip permit shall be twenty-four dollars, which shall be in lieu of the fee set forth in subsection (b) of this section.


The provisions of this act shall take effect on the first day of April, one thousand nine hundred eighty-nine.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 76th day of January, 1989.

Governor