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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

SENATE BILL NO. 508

(By Senator Plymale)



PASSED March 11, 1994

In Effect 90 days from Passage

**E N R O L L E D**  
**Senate Bill No. 508**

(BY SENATOR PLYMALE)

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[Passed March 11, 1994; in effect ninety days from passage.]

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AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-b, relating generally to compliance with section four thousand eight of the "Intermodal Surface Transportation and Efficiency Act of 1991"; transferring authority to register motor carriers and issue trip permits to the division of motor vehicles; authorizing tax commissioner to enter into cooperative reciprocal international fuel tax agreements with one or more other states for collection of West Virginia motor fuel use taxes from motor carriers based in other states; specifying scope and effect of such agreements; specifying powers, duties and rights under such agreements; authorizing exchanges of information

for purposes of single point registration of motor carriers and for administration and collection of motor fuel use taxes under such agreements; providing for disposition of motor fuel use taxes collected under such agreements; creating international fuel tax agreement clearing fund in the state treasury; providing for administration and collection of motor fuel use taxes under an international fuel tax agreement to be subject to the West Virginia tax procedure and administration act; and providing for West Virginia tax crimes and penalties act to apply to international fuel tax agreements.

*Be it enacted by the Legislature of West Virginia:*

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen-b, to read as follows:

**ARTICLE 14B. INTERSTATE FUEL TAX AGREEMENT.**

**§11-14B-1. Purpose.**

1 This article is enacted to conform laws of this state  
2 relating to registration of motor carriers and reporting  
3 and payment of motor fuel use taxes with requirements  
4 of the "Intermodal Surface Transportation and  
5 Efficiency Act of 1991", Public Law 102-240. More  
6 specifically:

7 (1) Section 4005 of that act requires establishment of a  
8 single state registration system for commercial motor  
9 carriers. Under this system, a motor carrier is required  
10 to register annually only with one state. Single state  
11 registration is deemed to satisfy the registration  
12 requirements of all other states.

13 (2) Section 4008 of that act mandates state participa-  
14 tion in the international registration plan and adoption  
15 of the international fuel tax agreement by providing that  
16 after the thirtieth day of September, one thousand nine  
17 hundred ninety-six:

18 (A) No state (other than a state participating in the

19 international registration plan) may establish, maintain  
20 or enforce any commercial motor vehicle registration  
21 law, regulation or agreement which limits the operation  
22 of any commercial motor vehicle within its borders  
23 which is not registered under the laws of the state if the  
24 vehicle is registered under the laws of any other state  
25 participating in the international registration plan;

26 (B) No state may establish, maintain or enforce any law  
27 or regulation which has fuel use tax reporting require-  
28 ments (including tax reporting forms) which are not in  
29 conformity with the international fuel tax agreement;  
30 and

31 (C) No state may establish, maintain or enforce any law  
32 or regulation which provides for the payment of a fuel  
33 use tax unless such law or regulation is in conformity  
34 with the international fuel tax agreement with respect to  
35 collection of such tax by a single base state and  
36 proportional sharing of such taxes charged among the  
37 states in which a commercial motor vehicle is operated.

#### **§11-14B-2. Definitions.**

1 (a) "Commercial motor vehicle": (1) As used with  
2 respect to the international registration plan, has the  
3 meaning the term "apportionable vehicle" has under that  
4 plan; and (2) as used with respect to the international  
5 fuel tax agreement, has the meaning the term "qualified  
6 motor vehicle" has under that agreement.

7 (b) "Fuel use tax" means a tax imposed on or measured  
8 by the consumption of fuel in a motor vehicle.

9 (c) "International fuel tax agreement" means the  
10 international agreement for the collection and distribu-  
11 tion of fuel use taxes paid by motor carriers, developed  
12 under the auspices of the national governors' association.

13 (d) "International registration plan" means the interstate  
14 agreement for the apportionment of vehicle registration  
15 fees paid by motor carriers developed by the American  
16 association of motor vehicle administrators.

17 (e) "Motor fuel use taxes imposed by this state" means  
18 the aggregate amount of taxes, expressed in cents per  
19 gallon, imposed by this state, under articles fourteen-a  
20 and fifteen-a of this chapter, on gasoline or special fuel  
21 consumed in this state by a motor carrier.

22 (f) "State" means any of the forty-eight contiguous states  
23 and the District of Columbia, and any other jurisdiction  
24 which imposes a motor fuel use tax and is a member of  
25 the international fuel tax agreement.

### **§11-14B-3. Registration of motor carriers.**

1 (a) To facilitate adoption of the single point registration  
2 system in this state, the powers, duties and responsibili-  
3 ties of the tax commissioner under section seven, article  
4 fourteen-a of this chapter, are transferred to the  
5 commissioner of the division of motor vehicles effective  
6 with registration year that begins the first day of July,  
7 one thousand nine hundred ninety-five: *Provided*, That  
8 no registration marker or trip permit shall be required  
9 under section seven, article fourteen of this chapter of a  
10 motor carrier based in another state which is a member  
11 of the international fuel tax agreement.

12 (b) Beginning with the registration year specified in  
13 subsection (a) of this section, the commissioner of motor  
14 vehicles shall furnish the tax commissioner with motor  
15 carrier registration information and information  
16 pertaining to the trip permit registration program for use  
17 by the tax commissioner in collecting motor fuel taxes.

18 (c) Also beginning with the registration year specified in  
19 subsection (a) of this section, the tax commissioner shall  
20 furnish the commissioner of motor vehicles with the  
21 taxpayer identity information for any motor carrier  
22 which fails to file required returns or report for, or to  
23 pay, the motor fuel use taxes imposed by this state. This  
24 information may give the commissioner of motor vehicles  
25 sufficient cause to revoke or refuse to renew the  
26 identification marker previously issued under section  
27 seven, article fourteen-a of this chapter.

28 (d) Information exchanged pursuant to this section shall  
29 be used solely for tax administration and motor carrier  
30 registration purposes and shall be treated as confidential  
31 information for all other purposes as provided in article  
32 ten of this chapter.

**§11-14B-4. Cooperative agreements between states authorized.**

1 (a) The tax commissioner may enter into cooperative  
2 reciprocal international fuel tax agreements on behalf of  
3 the state of West Virginia with the appropriate authori-  
4 ties of another state or group of states for administration  
5 of the motor fuel use taxes imposed by this state.

6 (b) The tax commissioner may enter into any ancillary  
7 or related agreements on behalf of this state with the  
8 appropriate officials of one or more other states, or the  
9 federal government which the tax commissioner  
10 considers appropriate and necessary to fully implement  
11 any international fuel tax agreement entered into under  
12 subsection (a) of this section.

**§11-14B-5. Scope of agreement.**

1 An international fuel tax agreement may provide for:

2 (a) Determining the base state of motor carriers;

3 (b) Making and retaining of records by motor carriers;

4 (c) Auditing the books and records of motor carriers  
5 and auditing procedures;

6 (d) Exchanging information for purposes of motor fuel  
7 use tax administration and collection;

8 (e) Determining persons eligible for a motor carrier  
9 tax license or registration;

10 (f) Defining qualified motor vehicles;

11 (g) Determining if or when bonding is required;

12 (h) Specify reporting requirements and periods;

13 (i) Specifying uniform penalty and interest rates for

14 late reporting and payment of motor fuel use taxes;

15 (j) Determining methods for collecting and forwarding  
16 of motor fuel use taxes and penalties to another  
17 jurisdiction; and

18 (k) Any other provision which the parties to the  
19 agreement believe will facilitate administration of the  
20 agreement and collection of motor fuel uses taxes from  
21 interstate motor carriers.

**§11-14B-6. Effect of international fuel tax agreement.**

1 (a) The reporting requirements provided in the  
2 international fuel tax agreement shall take precedence  
3 over the reporting requirements provided in article  
4 fourteen-a of this chapter.

5 (b) Where the international fuel tax agreement and  
6 the provisions of article fourteen-a of this chapter and  
7 any amendments thereto subsequently made address the  
8 same matters, the provisions of the international fuel tax  
9 agreement shall take precedence.

10 (c) The amount of international fuel tax agreement  
11 taxes reported as due and owing by a motor carrier  
12 based in this state shall for purposes of articles nine and  
13 ten of this chapter be treated as taxes due and owing to  
14 the state of West Virginia.

15 (d) Interstate motor fuel users based in another state  
16 which is not a member of the international fuel tax  
17 agreement shall continue to be subject to the provisions  
18 of article fourteen-a of this chapter, and any subsequent  
19 amendments thereto.

**§11-14B-7. Effective date of international fuel tax agreement  
or amendment.**

1 The terms of an international fuel tax agreement, or  
2 an amendment thereto, shall not be effective until they  
3 are stated in writing and a properly executed copy is  
4 filed with the tax commissioner.

**§11-14B-8. Copy of agreement to be maintained by tax commissioner.**

1 A current copy of the international fuel tax agreement  
2 shall be maintained by the tax commissioner. A current  
3 copy of the international fuel tax agreement and any  
4 amendment thereto shall be published in the state  
5 register.

**§11-14B-9. Exchange of information.**

1 (a) The tax commissioner may, as required by the  
2 terms of any agreement executed under section four of  
3 this article, forward to the proper officers of any party to  
4 such agreement any information in the tax commis-  
5 sioner's possession relative to the manufacture, receipt,  
6 sale, use, transportation or shipment of motor fuels by  
7 any person.

8 (b) The tax commissioner may disclose to the proper  
9 officers of any party to an agreement executed under  
10 section four of this article the location of offices, motor  
11 vehicles and other real and personal property of users of  
12 motor fuels.

13 (c) Information which the tax commissioner is  
14 authorized to disclose under this article, which is  
15 confidential information under article ten of this chapter  
16 when in the possession of the tax commissioner, shall be  
17 treated as confidential information by the recipient  
18 thereof and that information may be used only for tax  
19 administration purposes.

20 (d) In the event of any inconsistency between the  
21 disclosure of information rules specified in this article  
22 and the confidentiality rules provided in article ten of  
23 this chapter, the language of this article shall control.

**§11-14B-10. Audits.**

1 (a) The international fuel tax agreement may provide  
2 for each state to audit the records of motor carriers  
3 based in that state to determine if the motor fuel taxes  
4 due each state are properly reported and paid. When a

5 base state performs a motor fuel use tax audit on an  
6 interstate motor carrier based in that state, it shall  
7 forward the findings of such audit to each state in which  
8 the interstate motor carrier has taxable use of motor  
9 fuels.

10 (b) No international fuel tax agreement entered into  
11 under this article may preclude the tax commissioner  
12 from auditing the records of any person covered by the  
13 provisions of this article.

**§11-14B-11. Disposition of moneys; international fuel tax  
agreement clearing fund.**

1 (a) *International fuel tax agreement clearing fund.* —  
2 All amounts collected under the international fuel tax  
3 agreement shall be deposited daily by the tax commis-  
4 sioner into the international fuel tax agreement clearing  
5 fund which is hereby created in the state treasury.

6 (b) *Distributions.* — The tax commissioner shall  
7 distribute funds in the international fuel tax agreement  
8 clearing fund as follows:

9 (1) Payments due and owing to member jurisdictions  
10 under the international fuel tax agreement shall be  
11 distributed as provided in the agreement.

12 (2) Refunds for over payment of motor fuel taxes by a  
13 West Virginia based interstate motor carrier shall be  
14 made from the fund.

15 (3) The tax commissioner shall periodically reconcile  
16 the international fuel tax agreement clearing fund and,  
17 after reconciliation, transfer to the state road fund all  
18 deposits in the clearing fund of motor fuel use taxes  
19 imposed by articles fourteen-a and fifteen-a of this  
20 chapter.

21 (c) *Investment of funds.* — Funds in the international  
22 fuel tax agreement clearing fund shall be invested in the  
23 same manner as funds in the state road fund and all  
24 earnings from these investments shall be deposited in the  
25 state treasury and credited to the state road fund:

26 *Provided*, That these investments shall not affect or  
27 interfere with distributions from the fund in accordance  
28 with the terms of the international fuel tax agreement.

**§11-14B-12. Regulations.**

1 The tax commissioner may adopt rules for the  
2 implementation, administration or enforcement of an  
3 international fuel tax agreement. These rules shall be  
4 promulgated in accordance with the provisions of article  
5 three, chapter twenty-nine-a of this code.

**§11-14B-13. Legal remedies.**

1 The legal remedies of any person served with an order  
2 or assessment under this article shall be those provided  
3 in this code to taxpayers in this state.

**§11-14B-14. General procedure and administration.**

1 (a) All of the provisions of the “West Virginia Tax  
2 Procedure and Administration Act” set forth in article  
3 ten of this chapter, including amendments thereto, apply  
4 to motor fuel taxes collected under an international fuel  
5 tax agreement.

6 (b) In the event of any inconsistency between the  
7 provisions of article ten of this chapter and the terms of  
8 the international fuel tax agreement, the terms of the  
9 international fuel tax agreement shall control.

**§11-14B-15. Criminal penalties.**

1 All of the provisions of the “West Virginia Tax Crimes  
2 and Penalties Act” set forth in article nine of this  
3 chapter, including amendments thereto, apply to the  
4 international fuel tax agreement taxes collectible under  
5 this article.

**§11-14B-16. Reimbursement of expenses of tax commissioner.**

1 The division of motor vehicles shall reimburse the tax  
2 commissioner for costs incurred by the tax commissioner  
3 to implement agreements entered into under this section  
4 and for any additional expenses as may be incurred by

5 the tax commissioner to collect motor fuel use taxes  
6 under these agreements, when these expenses are not  
7 provided for in the tax division's annual budget  
8 appropriation. For the fiscal year of the state that begins  
9 on the first day of July, one thousand nine hundred  
10 ninety-four, the reimbursement amount shall be six  
11 hundred twenty thousand dollars. The amount of  
12 reimbursement shall be renegotiated each fiscal year  
13 thereafter.

**§11-14B-17. Severability.**

1 If any provision of this article or the application  
2 thereof shall for any reason be adjudged by any court of  
3 competent jurisdiction to be invalid, that judgment shall  
4 not affect, impair or invalidate the remainder of this  
5 article, but shall be confined in its operation to the  
6 provision of this article directly involved in the contro-  
7 versy in which such judgment was rendered and the  
8 material facts therein, and the applicability of the  
9 provision to other persons or circumstances shall not be  
10 affected by the judgment.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Ernest C. Moore  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *30th* day of *March*, 1994.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/94

Time 1:10pm