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WEST VIRGINIA LEGISLATURE
Regular Session, 2003



ENROLLED

Committee Substitute for

SENATE BILL NO. 496

(By Senators Tomblin, Mr. President, and Sprouse, By
Request of the Executive)



PASSED March 8, 2003

In Effect 90 days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 496

(BY SENATORS TOMBLIN, MR. PRESIDENT
AND SPROUSE, BY REQUEST OF THE EXECUTIVE)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fourteen, article ten of said chapter; to amend article fourteen of said chapter by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three, five, nine and eleven, article fourteen-a of said chapter; to amend and reenact section two, article fourteen-b of said chapter; to further amend said chapter by adding thereto a new article, designated article fourteen-c; to amend and reenact section eighteen, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eighteen-

b; to amend and reenact section thirteen, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto a new section, designated thirteen-a, all relating generally to the levy, collection and administration of West Virginia motor fuels excise tax; making tax crimes and penalties act applicable to West Virginia motor fuels excise tax as of specified date; making West Virginia tax procedure and administration act applicable to West Virginia motor fuels excise tax effective as of specified date; applying overpayments, credits and refunds to West Virginia motor fuels excise tax effective as of effective date; replacing gasoline and special fuel excise tax with motor fuel excise tax as of specified date, after which gasoline and special fuel excise tax is repealed; defining certain motor carrier road tax terms; requiring motor carrier road tax to be equal to the motor fuel excise tax; changing frequency for filing motor carrier road tax reports; providing credit against motor carrier road tax for payment of motor fuels excise tax; authorizing refunds of the motor fuels tax; defining certain terms in interstate fuel tax agreement; enacting motor fuels excise tax; defining terms; authorizing promulgation of rules and forms; authorizing exchange of information; levying motor fuels excise tax; establishing rate of motor fuels excise tax; establishing points at which the tax is imposed; imposing tax on unaccounted for motor fuel losses; imposing back-up tax on taxable use of untaxed fuel; establishing exemptions from tax; designating persons to be licensed; establishing license application procedure; authorizing permissive supplier to collect tax; establishing bond requirements; grounds for issuance and for denial of license; requiring notice of discontinuance of business; providing for permitting license cancellation under certain circumstances; records of license applicants and licensees; specifying when tax returns and tax payments are due; requiring remittance of tax by suppliers and permissive suppliers; providing for notice of cancellation and reissuance of license; identifying information required on tax return; specifying deductions and discounts allowed to suppliers and permissive suppliers;

specifying duties of suppliers and permissive suppliers as trustee; requiring returns and allowing discounts to importers; requiring information returns by terminal operators; requiring information returns by motor fuel transporters; requiring return by exporters; identifying information required on returns; authorizing refund of taxes erroneously collected or for gallonage exported or lost through casualty or evaporation; providing method for claiming and paying refunds; incorporating provisions of tax crimes and penalties act and West Virginia tax procedure and administration act into motor fuels excise tax; specifying information required on shipping documents; requiring import confirmation number; prohibiting improper sale or use of untaxed motor fuels; providing remedy for refusal to allow inspection or taking of fuel sample; prohibiting engaging in business without a license; prohibiting certain persons from obtaining license; providing civil remedy for filing false returns and for failure to file returns; providing criminal penalties for willful commission of prohibited acts; imposing penalties for unlawful importing, transportation, delivery, storage or sale of motor fuel; providing for enforcement of assessment; imposing record-keeping requirements; providing for inspection of records; providing commissioner authority to inspect; specifying marking requirements for dyed diesel fuel storage facilities; providing for disposition of tax collected; and specifying that sections pertaining to sales and use taxes on gasoline and special fuel are, after a specified date, repealed and replaced by new sections continuing sales and use taxes on motor fuel and harmonizing these taxes with new motor fuel excise tax.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three and fourteen, article ten of said chapter be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section thirty-one; that

sections two, three, five, nine and eleven, article fourteen-a of said chapter be amended and reenacted; that section two, article fourteen-b of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article fourteen-c; that section eighteen, article fifteen of said chapter be amended and reenacted; that article fifteen of said chapter be amended by adding thereto a new section, designated section eighteen-b; that section thirteen, article fifteen-a of said chapter be amended and reenacted; and that article fifteen-a of said chapter be further amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article apply to the following
2 taxes imposed by this chapter: (1) The inheritance and
3 transfer taxes and estate taxes imposed by article eleven
4 of this chapter; (2) the business registration tax imposed
5 by article twelve of this chapter; (3) the minimum sever-
6 ance tax on coal imposed by article twelve-b of this
7 chapter; (4) the corporate license tax imposed by article
8 twelve-c of this chapter;(5) the business and occupation
9 tax imposed by article thirteen of this chapter; (6) the
10 severance tax imposed by article thirteen-a of this chapter;
11 (7) the telecommunications tax imposed by article
12 thirteen-b of this chapter; (8) the gasoline and special fuels
13 excise tax imposed by article fourteen of this chapter; (9)
14 the motor fuel excise tax imposed by article fourteen-c of
15 this chapter; (10) the motor carrier road tax imposed by
16 article fourteen-a of this chapter; (11) the interstate fuel
17 tax agreement authorized by article fourteen-b of this
18 chapter; (12) the consumers sales and service tax imposed
19 by article fifteen of this chapter; (13) the use tax imposed
20 by article fifteen-a of this chapter; (14) the tobacco
21 products excise tax imposed by article seventeen of this
22 chapter; (15) the soft drinks tax imposed by article nine-
23 teen of this chapter; (16) the personal income tax imposed

24 by article twenty-one of this chapter; (17) the business
25 franchise tax imposed by article twenty-three of this
26 chapter; (18) the corporation net income tax imposed by
27 article twenty-four of this chapter; and (19) the health care
28 provider tax imposed by article twenty-seven of this
29 chapter.

30 (b) The provisions of this article also apply to the West
31 Virginia tax procedure and administration act in article
32 ten of this chapter, and to any other articles of this chapter
33 when application is expressly provided for by the Legisla-
34 ture.

35 (c) The provisions of this article also apply to the chari-
36 table bingo fee imposed by sections six and six-a, article
37 twenty, chapter forty-seven of this code; the charitable
38 raffle fee imposed by section seven, article twenty-one of
39 said chapter; and the charitable raffle boards and games
40 fees imposed by section three, article twenty-three of said
41 chapter.

42 (d) Each and every provision of this article applies to the
43 articles of this chapter listed in subsections (a), (b) and (c)
44 of this section, with like effect, as if the provisions of this
45 article were applicable only to the tax and were set forth
46 in extenso in this article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to the inheritance
2 and transfer taxes, the estate tax, and interstate compro-
3 mise and arbitration of inheritance and death taxes, the
4 business registration tax, the annual tax on incomes of
5 certain carriers, the minimum severance tax on coal, the
6 corporate license tax, the business and occupation tax, the
7 severance tax, the telecommunications tax, the interstate
8 fuel tax, the consumers sales and service tax, the use tax,
9 the tobacco products excise tax, the soft drinks tax, the
10 personal income tax, the business franchise tax, the

11 corporation net income tax, the gasoline and special fuel
12 excise tax, the motor fuel excise tax, the motor carrier
13 road tax, the health care provider tax, and the tax relief
14 for elderly homeowners and renters administered by the
15 state tax commissioner. This article shall not apply to ad
16 valorem taxes on real and personal property or any other
17 tax not listed in this section, except that in the case of ad
18 valorem taxes on real and personal property, when any
19 return, claim, statement or other document is required to
20 be filed, or any payment is required to be made within a
21 prescribed period or before a prescribed date, and the
22 applicable law requires delivery to the office of the sheriff
23 of a county of this state, the methods prescribed in section
24 five-f of this article for timely filing and payment to the
25 tax commissioner or state tax department are the same
26 methods utilized for timely filing and payment with the
27 sheriff.

28 (b) The provisions of this article apply to the beer barrel
29 tax levied by article sixteen of this chapter and to the wine
30 liter tax levied by section four, article eight, chapter sixty
31 of this code.

32 (c) The provisions of this article also apply to any other
33 article of this chapter when the application is expressly
34 provided for by the Legislature.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds or credits of overpayments.* – In the case of
2 overpayment of any tax (or fee), additions to tax, penalties
3 or interest imposed by this article, or any of the other
4 articles of this chapter, or of this code, to which this article
5 is applicable, the tax commissioner shall, subject to the
6 provisions of this article, refund to the taxpayer the
7 amount of the overpayment or, if the taxpayer so elects,
8 apply the same as a credit against the taxpayer’s liability
9 for the tax for other periods. The refund or credit shall
10 include any interest due the taxpayer under the provisions
11 of section seventeen of this article.

12 (b) *Refunds or credits of gasoline and special fuel excise*
13 *tax or motor carrier road tax.* – Any person who seeks a
14 refund or credit of gasoline and special fuel excise taxes
15 under the provisions of section ten, eleven or twelve,
16 article fourteen of this chapter, section nine or eleven,
17 article fourteen-a of this chapter, or of motor fuel excise
18 tax under section nine, article fourteen-c of this chapter
19 shall file his or her claim for refund or credit in accor-
20 dance with the provisions of the applicable sections. The
21 ninety-day time period for determination of claims for
22 refund or credit provided in subsection (d) of this section
23 does not apply to these claims for refund or credit: *Pro-*
24 *vided,* That claims for refund or credit of the motor fuel
25 excise tax under section nine, article fourteen-c, of this
26 chapter are subject to the ninety-day time period provided
27 in subsection (d) of this section: *Provided, however,* That
28 claims for refund or credit of the motor fuel excise tax
29 under section nine, article fourteen-c of this chapter made
30 by the United States government or unit or agency thereof,
31 any municipal government or any agency thereof, or any
32 county board of education made pursuant to subdivisions
33 one, two, three, four, five and six, subsection (c), section
34 nine, article fourteen-c of this chapter will be subject to a
35 thirty-day time period.

36 (c) *Claims for refund or credit.* – No refund or credit
37 shall be made unless the taxpayer has timely filed a claim
38 for refund or credit with the tax commissioner. A person
39 against whom an assessment or administrative decision
40 has become final is not entitled to file a claim for refund or
41 credit with the tax commissioner as prescribed herein. The
42 tax commissioner shall determine the taxpayer's claim and
43 notify the taxpayer in writing of his or her determination.

44 (d) *Petition for refund or credit; hearing.* –

45 (1) If the taxpayer is not satisfied with the tax commis-
46 sioner's determination of taxpayer's claim for refund or
47 credit, or if the tax commissioner has not determined the
48 taxpayer's claim within ninety days after the claim was

49 filed, or six months in the case of claims for refund or
50 credit of the taxes imposed by articles twenty-one, twenty-
51 three and twenty-four of this chapter, after the filing
52 thereof, the taxpayer may file, with the tax commissioner,
53 either personally or by certified mail, a petition for refund
54 or credit: *Provided*, That no petition for refund or credit
55 may be filed more than sixty days after the taxpayer is
56 served with notice of denial of taxpayer's claim: *Provided*,
57 *however*, That after the thirty-first day of December, two
58 thousand two, the taxpayer shall file the petition with the
59 office of tax appeals in accordance with the provisions of
60 section nine, article ten-a of this chapter.

61 (2) The petition for refund or credit shall be in writing,
62 verified under oath by the taxpayer, or by taxpayer's duly
63 authorized agent having knowledge of the facts, and set
64 forth with particularity the items of the determination
65 objected to, together with the reasons for the objections.

66 (3) When a petition for refund or credit is properly filed,
67 the procedures for hearing and for decision applicable
68 when a petition for reassessment is timely filed shall be
69 followed.

70 (e) *Appeal*. – An appeal from the office of tax appeal's
71 administrative decision upon the petition for refund or
72 credit may be taken by the taxpayer in the same manner
73 and under the same procedure as that provided for judicial
74 review of an administrative decision on a petition for
75 reassessment, but no bond is required of the taxpayer. An
76 appeal from the administrative decision of the office of tax
77 appeals on a petition for refund or credit, if taken by the
78 taxpayer, shall be taken as provided in section nineteen,
79 article ten-a of this chapter.

80 (f) *Decision of the court*. – Where the appeal is to review
81 an administrative decision on a petition for refund or
82 credit, the court may determine the legal rights of the
83 parties but in no event shall it enter a judgment for money.

84 (g) *Refund made or credit established.* – The tax com-
85 missioner shall promptly issue his or her requisition on the
86 treasury or establish a credit, as requested by the tax-
87 payer, for any amount finally administratively or judi-
88 cially determined to be an overpayment of any tax (or fee)
89 administered under this article. The auditor shall issue his
90 or her warrant on the treasurer for any refund requisi-
91 tioned under this subsection payable to the taxpayer
92 entitled to the refund, and the treasurer shall pay the
93 warrant out of the fund into which the amount refunded
94 was originally paid: *Provided*, That refunds of personal
95 income tax may also be paid out of the fund established
96 pursuant to section ninety-three, article twenty-one of this
97 chapter.

98 (h) *Forms for claim for refund or a credit; where return*
99 *constitutes claim.* – The tax commissioner may prescribe
100 by rule or regulation the forms for claims for refund or
101 credit. Notwithstanding the foregoing, where the taxpayer
102 has overpaid the tax imposed by article twenty-one,
103 twenty-three or twenty-four of this chapter, a return
104 signed by the taxpayer which shows on its face that an
105 overpayment of tax has been made constitutes a claim for
106 refund or credit.

107 (i) *Remedy exclusive.* – The procedure provided by this
108 section constitutes the sole method of obtaining any
109 refund, credit or any tax (or fee) administered under this
110 article, it being the intent of the Legislature that the
111 procedure set forth in this article is in lieu of any other
112 remedy, including the uniform declaratory judgments act
113 embodied in article thirteen, chapter fifty-five of this code,
114 and the provisions of section two-a, article one of this
115 chapter.

116 (j) *Applicability of this section.* – The provisions of this
117 section apply to refunds or credits of any tax (or fee),
118 additions to tax, penalties or interest imposed by this
119 article, or any article of this chapter, or of this code, to
120 which this article is applicable.

120 (k) *Erroneous refund or credit.* – If the tax commissioner
121 believes that an erroneous refund has been made or an
122 erroneous credit has been established, he or she may
123 proceed to investigate and make an assessment or institute
124 civil action to recover the amount of the refund or credit,
125 within two years from the date the erroneous refund was
126 paid or the erroneous credit was established, except that
127 the assessment may be issued or civil action brought
128 within five years from the date if it appears that any
129 portion of the refund or credit was induced by fraud or
130 misrepresentation of a material fact.

131 (l) *Limitation on claims for refund or credit.* –

132 (1) *General rule.* – Whenever a taxpayer claims to be
133 entitled to a refund or credit of any tax (or fee), additions
134 to tax, penalties or interest imposed by this article, or any
135 article of this chapter, or of this code, administered under
136 this article, paid into the treasury of this state, the tax-
137 payer shall, except as provided in subsection (d) of this
138 section, file a claim for refund, or credit, within three
139 years after the due date of the return in respect of which
140 the tax (or fee) was imposed, determined by including any
141 authorized extension of time for filing the return, or
142 within two years from the date the tax, (or fee), was paid,
143 whichever of the periods expires the later, or if no return
144 was filed by the taxpayer, within two years from the time
145 the tax (or fee) was paid, and not thereafter.

146 (2) *Extensions of time for filing claim by agreement.* –
147 The tax commissioner and the taxpayer may enter into a
148 written agreement to extend the period within which the
149 taxpayer may file a claim for refund or credit, which
150 period shall not exceed two years. The period agreed upon
151 may be extended for additional periods not in excess of
152 two years each by subsequent agreements in writing made
153 before expiration of the period previously agreed upon.

154 (3) *Special rule where agreement to extend time for*
155 *making an assessment.* – Notwithstanding the provisions

156 of subdivisions (1) and (2) of this subsection, if an agree-
157 ment is made under the provisions of section fifteen of this
158 article extending the time period in which an assessment
159 of tax can be made, then the period for filing a claim for
160 refund or credit for overpayment of the same tax made
161 during the periods subject to assessment under the exten-
162 sion agreement are also extended for the period of the
163 extension agreement plus ninety days.

164 (4) *Overpayment of federal tax.* – Notwithstanding the
165 provisions of subdivisions (1) and (2) of this subsection, in
166 the event of a final determination by the United States
167 Internal Revenue Service or other competent authority of
168 an overpayment in the taxpayer's federal income or estate
169 tax liability, the period of limitation upon claiming a
170 refund reflecting the final determination in taxes imposed
171 by articles eleven, twenty-one and twenty-four of this
172 chapter shall not expire until six months after the determi-
173 nation is made by the United States Internal Revenue
174 Service or other competent authority.

175 (5) *Tax paid to the wrong state.* – Notwithstanding the
176 provisions of subdivisions (1) and (2) of this subsection,
177 when an individual, or the fiduciary of an estate, has in
178 good faith erroneously paid personal income tax, estate
179 tax or sales tax, to this state on income or a transaction
180 which was lawfully taxable by another state and, there-
181 fore, not taxable by this state, and no dispute exists as to
182 the jurisdiction to which the tax should have been paid,
183 then the time period for filing a claim for refund, or credit,
184 for the tax erroneously paid to this state does not expire
185 until ninety days after the tax is lawfully paid to the other
186 state.

187 (6) *Exception for gasoline and special fuel excise tax,*
188 *motor fuel excise tax and motor carrier road tax.* – This
189 subsection does not apply to refunds or credits of gasoline
190 and special fuel excise tax, motor carrier road tax, or
191 motor fuel excise tax sought under the provisions of article
192 fourteen, fourteen-a or fourteen-c of this chapter.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-31. Repeal of article.

1 Each and every provision of this article is repealed for
2 all tax periods beginning on and after the first day of
3 January, two thousand four: *Provided*, That tax liabilities
4 arising for taxable periods ending before the first day of
5 January, two thousand four, are determined, paid, admin-
6 istered, assessed and collected as if the tax imposed by this
7 article had not been repealed, and the rights and duties of
8 the taxpayer and the state of West Virginia are fully and
9 completely preserved.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the
3 tax commissioner of the state of West Virginia or his or her
4 duly authorized agent.

5 (2) "Gallon" means two hundred thirty-one cubic inches
6 of liquid measurement, by volume: *Provided*, That the
7 commissioner may by rule prescribe other measurement or
8 definition of gallon.

9 (3) "Gasoline" means any product commonly or commer-
10 cially known as gasoline, regardless of classification,
11 suitable for use as fuel in an internal combustion engine,
12 except special fuel as hereinafter defined: *Provided*, That
13 effective the first day of January, two thousand four,
14 "gasoline" shall have the same meaning as in article
15 fourteen-c of this chapter.

16 (4) "Highway" means every way or place of whatever
17 nature open to the use of the public as a matter of right for
18 the purpose of vehicular travel, which is maintained by
19 this state or some taxing subdivision or unit thereof or the
20 federal government or any of its agencies.

21 (5) "Identification marker" means the decal issued by the
22 commissioner for display upon a particular motor carrier
23 and authorizing a person to operate or cause to be oper-
24 ated a motor carrier upon any highway of the state.

25 (6) "Lease" means any oral or written contract for
26 valuable consideration granting the use of a motor carrier.

27 (7) "Motor carrier" means any vehicle used, designed or
28 maintained for the transportation of persons or property
29 and having two axles and a gross vehicle weight exceeding
30 twenty-six thousand pounds or having three or more axles
31 regardless of weight or is used in combination when the
32 weight of the combination exceeds twenty-six thousand
33 pounds or registered gross vehicle weight: *Provided*, That
34 the gross vehicle weight rating of the vehicles being towed
35 is in excess of ten thousand pounds. The term motor
36 carrier does not include any type of recreational vehicle.

37 (8) "Motor fuel" means motor fuel as defined in article
38 fourteen-c of this chapter effective the first day of Janu-
39 ary, two thousand four.

40 (9) "Operation" means any operation of any motor
41 carrier, whether loaded or empty, whether for compensa-
42 tion or not, and whether owned by or leased to the person
43 who operates or causes to be operated any motor carrier.

44 (10) "Person" means and includes any individual, firm,
45 partnership, limited partnership, joint venture, associa-
46 tion, company, corporation, organization, syndicate,
47 receiver, trust or any other group or combination acting as
48 a unit, in the plural as well as the singular number, and
49 means and includes the officers, directors, trustees or
50 members of any firm, partnership, limited partnership,
51 joint venture, association, company, corporation, organi-
52 zation, syndicate, receiver, trust or any other group or
53 combination acting as a unit, in the plural as well as the
54 singular number, unless the intention to give a more
55 limited meaning is disclosed by the context.

56 (11) "Pool operation" means any operation whereby two
57 or more taxpayers combine to operate or cause to be
58 operated a motor carrier or motor carriers upon any
59 highway in this state.

60 (12) "Purchase" means and includes any acquisition of
61 ownership of property or of a security interest for a
62 consideration.

63 (13) "Recreational vehicles" means vehicles such as
64 motor homes, pickup trucks with attached campers and
65 buses, when used exclusively for personal pleasure by an
66 individual. In order to qualify as a recreational vehicle,
67 the vehicle shall not be used in connection with any
68 business endeavor.

69 (14) "Road tractor" means every motor carrier designed
70 and used for drawing other vehicles and not constructed as
71 to carry any load thereon either independently or any part
72 of the weight of a vehicle or load so drawn.

73 (15) "Sale" means any transfer, exchange, gift, barter or
74 other disposition of any property or security interest for a
75 consideration.

76 (16) "Special fuel" means any gas or liquid, other than
77 gasoline, used or suitable for use as fuel in an internal
78 combustion engine. The term "special fuel" includes
79 products commonly known as natural or casinghead
80 gasoline but shall not include any petroleum product or
81 chemical compound such as alcohol, industrial solvent,
82 heavy furnace oil, lubricant, etc., not commonly used nor
83 practicably suited for use as fuel in an internal combustion
84 engine: *Provided*, That effective the first day of January,
85 two thousand four, "special fuel" has the same meaning as
86 in article fourteen-c of this chapter.

87 (17) "Tax" includes, within its meaning, interest, addi-
88 tions to tax and penalties, unless the intention to give it a
89 more limited meaning is disclosed by the context.

90 (18) "Taxpayer" means any person liable for any tax,
91 interest, additions to tax or penalty under the provisions
92 of this article.

93 (19) "Tractor truck" means every motor carrier designed
94 and used primarily for drawing other vehicles and not
95 constructed as to carry a load other than a part of the
96 weight of the vehicle and load so drawn.

97 (20) "Truck" means every motor carrier designed, used or
98 maintained primarily for the transportation of property
99 and having more than two axles.

**§11-14A-3. Imposition of tax; amount; tax in addition to all
other taxes.**

1 Every person who operates or causes to be operated on
2 any highway in this state any motor carrier shall pay a
3 road tax on each motor carrier equivalent to the amount of
4 tax per gallon of gasoline or special fuel imposed by article
5 fourteen of this chapter, calculated on each gallon of
6 gasoline or special fuel used as fuel in each motor carrier's
7 operations in this state: *Provided*, That effective the first
8 day of January, two thousand four, the tax imposed by this
9 section shall be equal to the amount of the flat rate of tax
10 per gallon of motor fuel imposed by article fourteen-c of
11 this chapter and calculated on each gallon of motor fuel
12 used as fuel in each motor carrier's operations in this state.

13 The tax imposed by this article is in addition to all other
14 taxes of whatever character imposed upon any person by
15 any other provisions of law.

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

1 (a) Every taxpayer subject to the tax imposed by this
2 article, or by article fourteen-c of this article, except as
3 provided in subsections (b) and (c) of this section, shall on
4 or before the twenty-fifth day of January, April, July and
5 October of every calendar year make to the commissioner

6 reports of its operations during the quarter ending the last
7 day of the preceding month as the commissioner requires
8 and other reports from time to time as the commissioner
9 considers necessary. For good cause shown, the commis-
10 sioner may extend the time for filing the reports for a
11 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 day
14 of July of one calendar year and ends on the thirtieth day
15 of June of the next succeeding calendar year and during
16 the fiscal year consumes in its operation only gasoline or
17 special fuel upon which the tax imposed by article four-
18 teen of this chapter has been paid shall, in lieu of filing the
19 quarterly reports required by subsection (a), file an annual
20 report for the fiscal year on or before the last day of July
21 each calendar year: *Provided*, That effective the first day
22 of January, two thousand four, every motor carrier which
23 operates exclusively in this state during a fiscal year that
24 begins on the first day of July of one calendar year and
25 ends on the thirtieth day of June of the next succeeding
26 calendar year and during the fiscal year consumes in its
27 operation only motor fuel upon which the tax imposed by
28 article fourteen-c of this chapter has been paid shall, in
29 lieu of filing the quarterly reports required by subsection
30 (a), file an annual report for the fiscal year on or before the
31 last day of July of each calendar year. For good cause
32 shown, the commissioner may extend the time for filing
33 the report for a period of thirty days.

34 (c) Two or more taxpayers regularly engaged in the
35 transportation of passengers on through buses on through
36 tickets in pool operation may, at their option and upon
37 proper notice to the commissioner, make joint reports of
38 their entire operations in this state in lieu of the separate
39 reports required by subsection (a) of this section. The
40 taxes imposed by this article are calculated on the basis of
41 the joint reports as though the taxpayers were a single
42 taxpayer; and the taxpayers making the reports are jointly

43 and severally liable for the taxes shown to be due. The
44 joint reports shall show the total number of highway miles
45 traveled in this state and the total number of gallons of
46 gasoline or special fuel purchased in this state by the
47 reporting taxpayers. Credits to which the taxpayers
48 making a joint return are entitled are not allowed as
49 credits to any other taxpayer; but taxpayers filing joint
50 reports shall permit all taxpayers engaged in this state in
51 pool operations with them to join in filing joint reports.

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

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

67 (f) In addition to the tax commissioner's powers set forth
68 in sections five-a and five-b, article ten of this chapter,
69 and as a further means of obtaining the records, books and
70 papers of a taxpayer or any other person and ascertaining
71 the amount of taxes and reports due under this article, the
72 commissioner has the power to examine witnesses under
73 oath; and if any witness shall fail or refuse at the request
74 of the commissioner to grant access to the books, records
75 and papers, the commissioner shall certify the facts and
76 names to the circuit court of the county having jurisdiction
77 of the party and the court shall thereupon issue a sub-
78 poena duces tecum to the party to appear before the

79 commissioner, at a place designated within the jurisdiction
80 of the court, on a day fixed.

§11-14A-9. Credits against tax.

1 Every taxpayer subject to the road tax herein imposed is
2 entitled to a credit on the tax equivalent to the amount of
3 tax per gallon of gasoline or special fuel imposed by article
4 fourteen of this chapter on all gasoline or special fuel
5 purchased by the taxpayer for fuel in each motor carrier
6 which it operates or causes to be operated within this
7 state, and upon which gasoline or special fuel the tax
8 imposed by the laws of this state has been paid: *Provided*,
9 That the credit is not allowed for any gasoline or special
10 fuel taxes for which any taxpayer has applied or received
11 a refund of gasoline or special fuel tax under article
12 fourteen of this chapter: *Provided, however*, That effective
13 the first day of January, two thousand four, every taxpayer
14 subject to the road tax herein imposed is entitled to a
15 credit against the tax equivalent to the amount of the flat
16 rate of tax per gallon of motor fuel imposed by article
17 fourteen-c of this chapter on all motor fuel purchased by
18 the taxpayer and used as motor fuel in motor carriers
19 which it operates or causes to be operated within this
20 state, and upon which the motor fuel tax imposed by the
21 laws of this state has been paid: *Provided further*, That no
22 credit is allowed for any motor fuel taxes for which the
23 taxpayer has applied or received a refund of motor fuel tax
24 under article fourteen-c of this chapter. Evidence of the
25 payment of the tax in the form as required by the commis-
26 sioner shall be furnished by the taxpayer claiming the
27 credit allowed in this section. When the amount of the
28 credit provided for in this section exceeds the amount of
29 the tax for which the taxpayer is liable in the same
30 quarter, the excess shall, upon written request by the
31 taxpayer, be allowed as a credit on the tax for which the
32 taxpayer would be otherwise liable for any of the four
33 succeeding quarters.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

1 (a) The commissioner is hereby authorized to refund
2 from the funds collected under the provisions of this
3 article and article fourteen of this chapter, the amount of
4 the credit accrued for gallons of gasoline or special fuel
5 purchased in this state but consumed outside of this state,
6 if the taxpayer by duly filed claim requests the commis-
7 sioner to issue a refund and if the commissioner is satisfied
8 that the taxpayer is entitled to the refund and that the
9 taxpayer has not applied for a refund of the tax imposed
10 by article fourteen of this chapter: *Provided*, That effective
11 the first day of January, two thousand four, the refunds
12 authorized in this section shall be made from the funds
13 collected under the provisions of this article and from the
14 flat rate of tax imposed under section five, article
15 fourteen-c of this chapter: *Provided, however*, That the
16 commissioner shall not approve a claim for refund when
17 the claim for a refund is filed after thirteen months from
18 the close of the quarter in which the tax was paid or the
19 credit, as provided for in section nine of this article, was
20 allowed: *Provided further*, That the refund shall not be
21 made until after audit of the claimant's records by the
22 commissioner or until after a continuous surety bond or
23 cash bond has been furnished by the claimant, as hereinaf-
24 ter provided, in an amount fixed by the commissioner,
25 conditioned to pay all road taxes due hereunder: *And*
26 *provided further*, That the credit or refund shall in no case
27 be allowed to reduce the amount of tax to be paid by a
28 taxpayer below the amount due as tax on gasoline or
29 special fuel used as fuel in this state as provided by article
30 fourteen of this chapter: *And provided further*, That
31 effective the first day of January, two thousand four, the
32 credit or refund shall in no case be allowed to reduce the
33 amount of tax to be paid by a taxpayer below the amount
34 due as tax on motor fuel used in this state as provided by
35 article fourteen-c of this chapter. The right to receive any
36 refund under the provisions of this article is not assignable

37 and any attempt at assignment thereof is void and of no
38 effect. The claim for refund or credit shall also be subject
39 to the provisions of section fourteen, article ten of this
40 chapter.

41 A taxpayer shall furnish a continuous surety bond or a
42 cash bond in an amount fixed by the commissioner, but the
43 amount shall not be less than the total refunds due or to be
44 paid within one year: *Provided*, That if a continuous surety
45 bond is filed, an annual notice of renewal shall be filed
46 thereafter: *Provided, however*, That if the continuous
47 surety bond includes the requirement that the commis-
48 sioner is to be notified of cancellation at least sixty days
49 prior to the surety bond being canceled, an annual notice
50 of renewal is not required. The bond, whether a continu-
51 ous surety bond or a cash bond, is conditioned upon
52 compliance with the requirements of this article and shall
53 be payable to this state in the form required by the com-
54 missioner.

55 (b) The surety must be authorized to engage in business
56 within this state. The cash bond or the continuous surety
57 bond is conditioned upon faithful compliance with the
58 provisions of this article, including the filing of the returns
59 and payment of all tax prescribed by this article. The cash
60 bond or the continuous surety bond shall be approved by
61 the commissioner as to sufficiency and form, and shall
62 indemnify the state against any loss arising from the
63 failure of the taxpayer to pay for any cause whatever the
64 motor carrier road tax or the motor fuel excise tax im-
65 posed by article fourteen-c of this chapter. Any surety on
66 a continuous surety bond furnished hereunder shall be
67 relieved, released and discharged from all liability accru-
68 ing on the bond after the expiration of sixty days from the
69 date the surety shall have lodged, by certified mail, with
70 the commissioner a written request to be discharged.
71 Discharge from a continuous surety bond shall not relieve,
72 release or discharge the surety from liability already
73 accrued, or which shall accrue before the expiration of the
74 sixty-day period. Whenever any surety seeks discharge as

75 provided in this section, it is the duty of the principal of
76 the bond to supply the commissioner with another contin-
77 uous surety bond or a cash bond prior to the expiration of
78 the original bond. Failure to provide such other bond
79 results in no refund being paid until after completion of an
80 audit of the taxpayer's records as provided in subsection
81 (a) of this section and the commissioner may cancel any
82 registration card and identification marker previously
83 issued to the person.

84 (c) Any taxpayer that has furnished a cash bond shall be
85 relieved, released and discharged from all liability accru-
86 ing on the cash bond after the expiration of sixty days
87 from the date the taxpayer shall have lodged, by certified
88 mail, with the commissioner a written request to be
89 discharged and the amount of the cash bond refunded:
90 *Provided*, That the commissioner may retain all or part of
91 the bond until the commissioner may perform an audit of
92 the taxpayer's business or three years, whichever first
93 occurs. Discharge from the cash bond shall not relieve,
94 release or discharge the taxpayer from liability already
95 accrued, or which shall accrue before the expiration of the
96 sixty-day period. Whenever any taxpayer seeks discharge
97 as provided in this section, it is the duty of the taxpayer to
98 provide the commissioner with another cash bond or a
99 continuous surety bond prior to the expiration of the
100 original cash bond. Failure to provide another bond
101 results in no refund being paid until after completion of an
102 audit of the taxpayer's records as provided in subsection
103 (a) of this section.

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-2. Definitions.

1 (a) "Commercial motor vehicle": (1) As used with respect
2 to the international registration plan, has the meaning the
3 term "apportionable vehicle" has under that plan; and (2)
4 as used with respect to the international fuel tax agree-
5 ment, has the meaning the term "qualified motor vehicle"
6 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) "Gasoline" has the same meaning as the term is
10 defined in article fourteen-c of this chapter.

11 (d) "International fuel tax agreement" means the inter-
12 national agreement for the collection and distribution of
13 fuel use taxes paid by motor carriers, developed under the
14 auspices of the national governors' association.

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

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

24 (g) "Special fuel" has the same meaning as the term is
25 defined in article fourteen-c of this chapter.

26 (h) "State" means any of the forty-eight contiguous
27 states and the District of Columbia, and any other juris-
28 diction which imposes a motor fuel use tax and is a
29 member of the international fuel tax agreement.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART 1. GENERAL PROVISIONS.

§11-14C-1. Short title; nature of tax.

1 (a) This article shall be known and may be cited as the
2 "West Virginia Motor Fuels Excise Tax Act."

3 (b) All taxes levied under this article, or imposed under
4 any other article of this chapter but collected under this
5 article, are imposed upon the ultimate consumer but are
6 precollected as prescribed in this article. The levies and

7 assessments imposed on licensees as provided in this
8 article are imposed on them as agents of this state for the
9 precollection of the tax. The taxes levied under this article
10 shall be collected and paid at those times, in the manner,
11 and by those persons specified in this article.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed
3 herein.

4 (1) "Agricultural purposes" means the activities of:

5 (A) Cultivating the soil, including the planting and
6 harvesting of crops, for the commercial production of food,
7 fiber, and ornamental woodland products;

8 (B) Using land for breeding and management of farm
9 livestock, including dairy, apiary, equine or poultry
10 husbandry; and

11 (C) Using land for the practice of horticulture including
12 the growing of Christmas trees, orchards and nursery
13 stock: *Provided*, That agricultural purposes shall not
14 include commercial forestry, growing of timber for
15 commercial purposes, or any other activity that normally
16 would not be included in subdivisions (A), (B) or (C) of this
17 definition.

18 (2) "Aircraft" includes any airplane or helicopter.

19 (3) "Alcohol" means motor fuel grade ethanol or a
20 mixture of motor fuel-grade ethanol and methanol,
21 excluding denaturant and water that is a minimum of
22 ninety-eight percent ethanol or methanol by volume.

23 (4) "Article" or "this article" means article fourteen-c,
24 chapter eleven of this code.

25 (5) "Assessment" means a written determination by the
26 commissioner of the amount of taxes owed by a taxpayer.

27 (6) "Aviation fuel" means aviation gasoline or aviation
28 jet fuel.

29 (7) "Aviation gasoline" means motor fuel designed for
30 use in the operation of aircraft other than jet aircraft, and
31 sold or used for that purpose.

32 (8) "Aviation jet fuel" means motor fuel designed for use
33 in the operation of jet or turbo-prop aircraft, and sold or
34 used for that purpose.

35 (9) "Biodiesel fuel" means any motor fuel or mixture of
36 motor fuels that is derived, in whole or in part, from
37 agricultural products or animal fats, or the wastes of such
38 products or fats, and is advertised as, offered for sale as,
39 suitable for use or used as motor fuel in an internal
40 combustion engine.

41 (10) "Blended fuel" means a mixture composed of
42 gasoline or diesel fuel and another liquid, including, but
43 not limited to, gasoline blend stocks, gasohol, ethanol,
44 methanol, fuel grade alcohol, diesel fuel enhancers and
45 resulting blends, other than a de minimus amount of a
46 product such as carburetor detergent or oxidation inhibi-
47 tor, that can be used as a motor fuel in a highway vehicle.

48 (11) "Blender" means a person who produces blended
49 motor fuel outside the bulk transfer/terminal system.

50 (12) "Blending" means the mixing of one or more petro-
51 leum products, with or without another product, regard-
52 less of the original character of the product blended, if the
53 product obtained by the blending is capable of use in the
54 generation of power for the propulsion of a motor vehicle,
55 an airplane, or a marine vessel. Blending does not include
56 mixing that occurs in the process of refining by the
57 original refiner of crude petroleum or the blending of
58 products known as lubricating oil in the production of
59 lubricating oils and greases.

60 (13) "Bulk plant" means a motor fuel storage and
61 distribution facility that is not a terminal and from which
62 motor fuel may be removed at a rack.

63 (14) "Bulk transfer" means any transfer of motor fuel
64 from one location to another by pipeline tender or marine
65 delivery within a bulk transfer/terminal system, including,
66 but not limited to, all of the following:

67 (A) A marine vessel movement of motor fuel from a
68 refinery or terminal to a terminal;

69 (B) Pipeline movements of motor fuel from a refinery or
70 terminal to a terminal;

71 (C) Book transfer of motor fuel within a terminal be-
72 tween licensed suppliers prior to completion of removal
73 across the rack; and

74 (D) Two-party exchange between licensed suppliers or
75 between licensed suppliers and permissive suppliers.

76 (15) "Bulk user" means a person who maintains storage
77 facilities for motor fuel and uses part or all of the stored
78 motor fuel to operate a motor vehicle, watercraft or
79 aircraft.

80 (16) "Bulk transfer/terminal system" means the motor
81 fuel distribution system consisting of refineries, pipelines,
82 marine vessels, and terminals. Motor fuel in a refinery, a
83 pipeline, a terminal, or a marine vessel transporting motor
84 fuel to a refinery or terminal is in the bulk trans-
85 fer/terminal system. Motor fuel in a motor fuel storage
86 facility including, but not limited to, a bulk plant that is
87 not part of a refinery or terminal, in the motor fuel supply
88 tank of any engine or motor vehicle, in a marine vessel
89 transporting motor fuel to a motor fuel storage facility
90 that is not in the bulk transfer/terminal system, or in any
91 tank car, rail car, trailer, truck, or other equipment
92 suitable for ground transportation is not in the bulk
93 transfer/terminal system.

94 (17) "Carrier" means any operator of a pipeline or
95 marine vessel engaged in the business of transporting
96 motor fuel above the terminal rack.

97 (18) "Code" means the code of West Virginia of one
98 thousand nine hundred thirty-one, as amended.

99 (19) "Commercial watercraft" means a watercraft
100 employed in the business of commercial fishing, transport-
101 ing persons or property for compensation or hire, or any
102 other trade or business.

103 (20) "Commissioner" or "tax commissioner" means the
104 West Virginia state tax commissioner, or his or her dele-
105 gate.

106 (21) "Compressed natural gas" means natural gas that
107 has been compressed and dispensed into motor fuel storage
108 containers and is advertised as, offered for sale as, suitable
109 for use as, or used as an engine motor fuel.

110 (22) "Corporate or partnership officer" means an officer
111 or director of a corporation, partner of a partnership, or
112 member of a limited liability company, who as an officer,
113 director, partner or member is under a duty to perform on
114 behalf of the corporation, partnership, or limited liability
115 company the tax collection, accounting, or remitting
116 obligations.

117 (23) "Dead storage" is the amount of motor fuel that
118 cannot be pumped out of a motor fuel storage tank because
119 the motor fuel is below the mouth of the draw pipe. The
120 amount of motor fuel in dead storage is two hundred
121 gallons for a tank with a capacity of less than ten thousand
122 gallons and four hundred gallons for a tank with a capac-
123 ity of ten thousand gallons or more.

124 (24) "Denaturants" means and includes gasoline, natural
125 gasoline, gasoline components, or toxic or noxious materi-
126 als added to motor fuel grade ethanol to make it unsuit-

127 able for beverage use, but not unsuitable for automotive
128 use.

129 (25) "Designated inspection site" means any state
130 highway inspection station, weigh station, agricultural
131 inspection station, mobile station, or other location
132 designated by the commissioner to be used as a motor fuel
133 inspection site.

134 (26) "Destination state" means the state, territory, or
135 foreign country to which motor fuel is directed for delivery
136 into a storage facility, a receptacle, a container, or a type
137 of transportation equipment for the purpose of resale or
138 use. The term shall not include a tribal reservation of any
139 recognized native American tribe.

140 (27) "Diesel fuel" means any liquid that is advertised as,
141 offered for sale as, sold for use as, suitable for use as or
142 used as a motor fuel in a diesel-powered highway vehicle
143 or watercraft. The term includes #1 fuel oil, #2 fuel oil,
144 undyed diesel fuel and kerosene, but shall not include
145 gasoline or aviation fuel.

146 (28) "Distributor" means a person who acquires motor
147 fuel from a licensed supplier, permissive supplier, or from
148 another licensed distributor for subsequent sale or use.

149 (29) "Diversion" means transporting motor fuel outside
150 a reasonably direct route from the source to the destina-
151 tion state.

152 (30) "Division" or "state tax division" means the tax
153 division of the West Virginia department of tax and
154 revenue.

155 (31) "Dyed diesel fuel" means diesel fuel that meets the
156 dyeing and marking requirements of section 4082, Title 26,
157 United States Code, regardless of how the diesel fuel was
158 dyed.

159 (32) "End seller" means the person who sells motor fuel
160 to the ultimate user of the motor fuel.

161 (33) "Export" means to obtain motor fuel in West
162 Virginia for sale or other distribution in another state,
163 territory, or foreign country.

164 (34) "Exporter" means a person that exports motor fuel
165 from this state. The seller is the exporter of motor fuel
166 delivered out-of-state by or for the seller, and the pur-
167 chaser is the exporter of motor fuel delivered out-of-state
168 by or for the purchaser.

169 (35) "Fuel" means motor fuel.

170 (36) "Fuel alcohol" means methanol or motor fuel grade
171 ethanol.

172 (37) "Fuel grade ethanol" means the ASTM standard in
173 effect on the effective date of this article as the D-4806
174 specification for denatured motor fuel grade ethanol for
175 blending with gasoline.

176 (38) "Fuel supply tank" means any receptacle on a motor
177 vehicle from which motor fuel is supplied for the propul-
178 sion of the motor vehicle.

179 (39) "Gallon" means a unit of liquid measure as custom-
180 arily used in the United States containing 231 cubic inches
181 by volume.

182 (40) "Gasohol" means a blended motor fuel composed of
183 gasoline and motor fuel alcohol.

184 (41) "Gasoline" means any product commonly or com-
185 mercially known as gasoline, regardless of classification,
186 that is advertised as, offered for sale as, sold for use as,
187 suitable for use as or used as motor fuel in an internal
188 combustion engine, including gasohol, but does not include
189 special fuel as defined in this section.

190 (42) "Gasoline blend stocks" includes any petroleum
191 product component of gasoline, such as naphtha,
192 reformate, or toluene, listed in Treas. Reg. §48.4081-
193 1(c)(3) that can be blended for use in a motor fuel. How-
194 ever, the term does not include any substance that will be

195 ultimately used for consumer nonmotor fuel use and is sold
196 or removed in drum quantities of fifty-five gallons or less
197 at the time of the removal or sale.

198 (43) "Gross gallons" means the total measured product,
199 exclusive of any temperature or pressure adjustments,
200 considerations or deductions, in U.S. gallons.

201 (44) "Governmental entity" means this state or any
202 political subdivision thereof or the United States or its
203 commissioners, agencies and instrumentalities.

204 (45) "Heating oil" means any combustible liquid, includ-
205 ing, but not limited, to #1 fuel oil, #2 dyed fuel oil and
206 kerosene, that is burned in a boiler, furnace, or stove for
207 heating or for industrial processing purposes.

208 (46) "Highway" means every way or place of whatever
209 nature open to the use of the public for purposes of
210 vehicular travel in this state, including the streets and
211 alleys in towns and cities.

212 (47) "Highway vehicle" means any self-propelled vehicle,
213 trailer or semitrailer that is designed or used for transport-
214 ing persons or property over the public highway, and
215 includes all vehicles subject to registration under article
216 three, chapter seventeen-a of this code.

217 (48) "Import" means to bring motor fuel into this state
218 by motor vehicle, marine vessel, pipeline, or any other
219 means. However, import does not include bringing motor
220 fuel into this state in the motor fuel supply tank of a motor
221 vehicle, if the motor fuel is used to power that motor
222 vehicle.

223 (49) "Importer" means a person that imports motor fuel
224 into this state. The seller is the importer for motor fuel
225 delivered into this state from outside of this state by or for
226 the seller, and the purchaser is the importer for motor fuel
227 delivered into this state from outside of this state by or for
228 the purchaser.

229 (50) "Import verification number" means the number
230 assigned by the commissioner with respect to a single
231 transport vehicle delivery into this state from another
232 state upon request for an assigned number by an importer
233 or the transporter carrying taxable motor fuel into this
234 state for the account of an importer.

235 (51) "In this state" means the area within the borders of
236 West Virginia, including all territory within the borders of
237 West Virginia that is owned by the United States of
238 America.

239 (52) "Invoiced gallons" means the gallons actually billed
240 on an invoice for payment.

241 (53) "Licensee" means any person licensed by the
242 commissioner pursuant to section ten of this article.

243 (54) "Liquid" means any substance that is liquid above
244 its freezing point.

245 (55) "Liquefied natural gas" means natural gas that has
246 been liquefied at -126.1 degrees centigrade and stored in
247 insulated cryogenic tanks for use as an engine motor fuel.

248 (56) "Motor carrier" means any vehicle used, designated
249 or maintained for the transportation of persons or prop-
250 erty and having two axles and a gross vehicle weight
251 exceeding twenty-six thousand pounds or having three or
252 more axles regardless of weight or is used in combination
253 when the weight of the combination exceeds twenty-six
254 thousand pounds or registered gross vehicle weight, and
255 any aircraft, barge or other watercraft or railroad locomo-
256 tive transporting passengers or freight in or through this
257 state: *Provided*, That the gross vehicle weight rating of the
258 vehicles being towed is in excess of ten thousand pounds.
259 The term motor carrier does not include any type of
260 recreational vehicle.

261 (57) "Motor fuel" means gasoline, blended fuel, aviation
262 fuel and any special fuel.

263 (58) "Motor fuel transporter" means a person who
264 transports motor fuel outside the bulk transfer/terminal
265 system by means of a transport vehicle, a railroad tank
266 car, or a marine vessel.

267 (59) "Motor vehicle" means automobiles, motor carriers,
268 motor trucks, motorcycles and all other vehicles or equip-
269 ment, engines or machines which are operated or propelled
270 by combustion of motor fuel.

271 (60) "Net gallons" means the amount of motor fuel
272 measured in gallons when adjusted to a temperature of
273 sixty degrees fahrenheit and a pressure of fourteen and
274 seven-tenths pounds pressure per square inch.

275 (61) "Permissive supplier" is a person who may not be
276 subject to the taxing jurisdiction of this state, but who
277 meets both of the following requirements: (A) Is registered
278 under section 4101 of the Internal Revenue Code for
279 transactions in motor fuel in the bulk transfer/terminal
280 system; and (B) a position holder in motor fuel only located
281 in another state or a person who receives motor fuel only
282 in another state pursuant to a two-party exchange:
283 *Provided*, That a person is classified as a supplier if it has
284 or maintains, occupies or uses, within this state, directly or
285 by a subsidiary, an office, distribution house, sales house,
286 warehouse, or other place of business, or any agent (by
287 whatever name called) operating within this state under
288 the authority of the supplier or its subsidiary.

289 (62) "Person" means any individual; firm; cooperative;
290 association; corporation; limited liability corporation;
291 trust; business trust; syndicate; partnership; limited
292 liability partnership; joint venture; receiver; trustee in
293 bankruptcy; club, society or other group or combination
294 acting as a unit; or public body, including, but not limited
295 to, this state, any other state, and any agency, commis-
296 sioner, institution, political subdivision or instrumentality
297 of this state or any other state.

298 (63) "Position holder" means the person who holds the
299 inventory position in motor fuel in a terminal, as reflected
300 on the records of the terminal operator. A person holds
301 the inventory position in motor fuel when that person has
302 a contract with the terminal operator for the use of storage
303 facilities and terminaling services for motor fuel at the
304 terminal. The term includes a terminal operator who owns
305 motor fuel in the terminal.

306 (64) "Principal" means:

307 (A) If a partnership, all its partners;

308 (B) If a corporation, all its officers, directors, and
309 controlling direct or indirect owners;

310 (C) If a limited liability company, all its members; or

311 (D) An individual.

312 (65) "Rack" means a mechanism for delivering motor
313 fuel from a refinery, terminal, marine vessel, or bulk plant
314 into a transport vehicle, railroad tank car, or other means
315 of transfer that is outside the bulk transfer/terminal
316 system.

317 (66) "Railroad locomotive" means any diesel-powered
318 equipment or machinery that rides on railroad rails, and
319 includes a switching engine.

320 (67) "Receive" means any acquisition of ownership or
321 possession of motor fuel.

322 (68) "Refiner" means any person who owns, operates or
323 otherwise controls a refinery.

324 (69) "Refinery" means a facility for the manufacture or
325 reprocessing of finished or unfinished petroleum products
326 usable as motor fuel and from which motor fuel may be
327 removed by pipeline or marine vessel or at a rack.

328 (70) "Removal" means a physical transfer other than by
329 evaporation, loss, or destruction. A physical transfer to a

330 transport vehicle or other means of conveyance outside the
331 bulk transfer/terminal system is complete upon delivery
332 into the means of conveyance.

333 (71) "Retailer" means a person who sells motor fuel at
334 retail or dispenses motor fuel at a retail location.

335 (72) "Special fuel" means any gas or liquid, other than
336 gasoline, used or suitable for use as motor fuel in an
337 internal combustion engine or motor to propel any form of
338 vehicle, machine, or mechanical contrivance, and includes
339 products commonly known as natural or casing-head
340 gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel,
341 transmix, and all forms of motor fuel commonly or com-
342 mercially known or sold as butane, propane, liquefied
343 natural gas, liquefied petroleum gas, compressed natural
344 gas product, or a combination of liquefied petroleum gas
345 and a compressed natural gas product. "Special fuel" does
346 not include any petroleum product or chemical compound
347 such as alcohol, industrial solvent, heavy furnace oil, or
348 lubricant, unless blended in or sold for use as motor fuel in
349 an internal combustion engine.

350 (73) "State" or "this state" means the state of West
351 Virginia.

352 (74) "Supplier" means a person that is:

353 (A) Subject to the general taxing jurisdiction of this
354 state;

355 (B) Registered under section 4101 of the Internal Reve-
356 nue Code for transactions in motor fuel in the bulk trans-
357 fer/terminal distribution system; and

358 (C) One of the following:

359 (i) A position holder in motor fuel in a terminal or
360 refinery in this state and may concurrently also be a
361 position holder in motor fuel in another state; or

362 (ii) A person who receives motor fuel in this state pursu-
363 ant to a two-party exchange.

364 A terminal operator shall not be considered a supplier
365 based solely on the fact that the terminal operator handles
366 motor fuel consigned to it within a terminal.

367 (75) "Tax" or "this tax" is the motor fuel excise tax
368 imposed by this article fourteen-c and includes within its
369 meaning interest, additions to tax and penalties, unless the
370 context requires a more limited meaning.

371 (76) "Taxpayer" means any person required to file a
372 return for the tax imposed by this article or any person
373 liable for payment of the tax imposed by this article.

374 (77) "Terminal" means a motor fuel storage and distribu-
375 tion facility to which a terminal control number has been
376 assigned by the Internal Revenue Service, to which motor
377 fuel is supplied by pipeline or marine vessel, and from
378 which motor fuel may be removed at a rack.

379 (78) "Terminal operator" means a person who owns,
380 operates or otherwise controls a terminal.

381 (79) "Transmix" means: (A) The buffer or interface
382 between two different products in a pipeline shipment; or
383 (B) a mix of two different products within a refinery or
384 terminal that results in an off-grade mixture.

385 (80) "Transport vehicle" means a vehicle designed or
386 used to carry motor fuel over the highway and includes a
387 straight truck, a straight truck/trailer combination and a
388 semitrailer combination rig.

389 (81) "Trustee" means a person who is licensed as a
390 supplier or a permissive supplier and receives tax pay-
391 ments from and on behalf of another pursuant to section
392 twenty-four of this article.

393 (82) "Two-party exchange" means a transaction in which
394 motor fuel is transferred from one licensed supplier or

395 permissive supplier to another licensed supplier or permis-
396 sive supplier pursuant to an exchange agreement, and:

397 (A) Includes a transfer from the person who holds the
398 inventory position in taxable motor fuel in the terminal as
399 reflected on the records of the terminal operator;

400 (B) Is completed prior to removal of the product from the
401 terminal by the receiving exchange partner; and

402 (C) Is recorded on the terminal operator's books and
403 records with the receiving exchange partner as the sup-
404 plier that removes the motor fuel across the terminal rack
405 for purposes of reporting the transaction to this state.

406 (83) "Use" means the actual consumption or receipt of
407 motor fuel by any person into a motor vehicle, aircraft, or
408 watercraft.

409 (84) "Watercraft" means any vehicle used on waterways.

§11-14C-3. Rules; forms.

1 The commissioner may promulgate rules in accordance
2 with article three, chapter twenty-nine-a of this code that
3 are necessary to effectuate and enforce this article. The
4 commissioner may also prescribe forms necessary to
5 effectuate and enforce this article, and provide other
6 necessary guidelines on the administration of this article.

**§11-14C-4. Exchange of information; criminal penalty for
unauthorized disclosure.**

1 (a) The commissioner may enter into written agreements
2 with duly constituted tax officials of other states and of
3 the United States for the inspection of tax returns, the
4 making of audits, the exchange of information relating to
5 taxes administered by the commissioner pursuant to this
6 article, and providing information relative to the produc-
7 tion, manufacture, refining, compounding, receipt, sale,
8 use, transportation, or shipment by any person of motor
9 fuel.

10 (b) The commissioner may divulge tax information to the
11 commissioner of the division of highways: *Provided*, That
12 the information disclosure requirements of section five-d,
13 article ten of this chapter are satisfied.

14 (c) The commissioner may provide to any person a list of
15 licensees. The list shall state the name, business address
16 and, if available, telephone number of each licensee on the
17 list.

18 (d) Any person to whom tax information is divulged
19 pursuant to this section is subject to the prohibitions and
20 penalties prescribed in article ten of this chapter as though
21 that person was an employee of the state tax division.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to twenty and one-half cents
3 per invoiced gallon plus a variable component comprised
4 of either the tax imposed by section eighteen-b, article
5 fifteen of this chapter or the tax imposed under section
6 thirteen-a, article fifteen-a of this chapter, as applicable:
7 *Provided*, That the motor fuel excise tax shall take effect
8 the first day of January, two thousand four: *Provided*,
9 *however*, That on and after the first day of August, two
10 thousand seven, the flat rate portion of the motor fuel
11 excise tax shall be fifteen and one-half cents per gallon:
12 *Provided further*, That the variable component shall be
13 equal to five percent of the average wholesale price of the
14 motor fuel: *And provided further*, That the average
15 wholesale price shall be no less than ninety-seven cents per
16 invoiced gallon and is computed as hereinafter prescribed
17 in this section;

18 (b) *Determination of average wholesale price.* –

19 (1) To simplify determining the average wholesale price
20 of all motor fuel, the tax commissioner shall, effective with

21 the period beginning the first day of the month of the
22 effective date of this section and each first day of January
23 thereafter, determine the average wholesale price of motor
24 fuel for each annual period on the basis of sales data
25 gathered for the preceding period of the first day of July
26 through the thirty-first day of October. Notification of the
27 average wholesale price of motor fuel shall be given by the
28 tax commissioner at least thirty days in advance of each
29 first day of January by filing notice of the average whole-
30 sale price in the state register, and by any other means as
31 the tax commissioner considers reasonable: *Provided*, That
32 notice of the average wholesale price of motor fuel for the
33 first period shall be timely given if filed in the state
34 register on the effective date of this section.

35 (2) The “average wholesale price” means the single,
36 statewide average per gallon wholesale price, rounded to
37 the third decimal (thousandth of a cent), exclusive of state
38 and federal excise taxes on each gallon of motor fuel, as
39 determined by the tax commissioner from information
40 furnished by suppliers, importers and distributors of motor
41 fuel in this state, or other information regarding wholesale
42 selling prices as the tax commissioner may gather, or a
43 combination of information: *Provided*, That in no event
44 shall the average wholesale price be determined to be less
45 than ninety-seven cents per gallon of motor fuel.

46 (3) All actions of the tax commissioner in acquiring data
47 necessary to establish and determine the average whole-
48 sale price of motor fuel, in providing notification of his or
49 her determination prior to the effective date of any change
50 in rate, and in establishing and determining the average
51 wholesale price of motor fuel, may be made by the tax
52 commissioner without compliance with the provisions of
53 article three, chapter twenty-nine-a of this code.

54 (4) In any administrative or court proceeding brought to
55 challenge the average wholesale price of motor fuel as
56 determined by the tax commissioner, his or her determina-

57 tion is presumed to be correct and shall not be set aside
58 unless it is clearly erroneous.

59 (c) There is hereby levied a floorstocks tax on motor fuel
60 held in storage outside the bulk transfer/terminal system
61 as of the close of the business day preceding the first day
62 of January, two thousand four, and upon which the tax
63 levied by this section has not been paid. For the purposes
64 of this section, "close of the business day" means the time
65 at which the last transaction has occurred for that day.
66 The floorstocks tax is payable by the person in possession
67 of the motor fuel on the first day of January, two thousand
68 four. The amount of the floorstocks tax on motor fuel is
69 equal to the sum of the tax rate specified in subsection (a)
70 of this section multiplied by the gallons in storage as of the
71 close of the business day preceding the first day of Janu-
72 ary, two thousand four.

73 (1) Persons in possession of taxable motor fuel in storage
74 outside the bulk transfer/terminal system as of the close of
75 the business day preceding the first day of January, two
76 thousand four, shall:

77 (A) Take an inventory at the close of the business day
78 preceding the first day of January, two thousand four, to
79 determine the gallons in storage for purposes of determin-
80 ing the floorstocks tax;

81 (B) Report no later than the thirty-first day of January,
82 two thousand four, the gallons on forms provided by the
83 commissioner; and

84 (C) Remit the tax levied under this section no later than
85 the first day of June, two thousand four.

86 (2) In the event the tax due is paid to the commissioner
87 on or before the thirty-first day of January, two thousand
88 four, the person remitting the tax may deduct from their
89 remittance five percent of the tax liability due.

90 (3) In the event the tax due is paid to the commissioner
91 after the first day of June, two thousand four, the person
92 remitting the tax shall pay, in addition to the tax, a
93 penalty in the amount of five percent of the tax liability
94 due.

95 (4) In determining the amount of floorstocks tax due
96 under this section, the amount of motor fuel in dead
97 storage may be excluded. There are two methods for
98 calculating the amount of motor fuel in dead storage:

99 (A) If the tank has a capacity of less than ten thousand
100 gallons, the amount of motor fuel in dead storage is two
101 hundred gallons and if the tank has a capacity of ten
102 thousand gallons or more, the amount of motor fuel in
103 dead storage is four hundred gallons; or

104 (B) Use the manufacturer's conversion table for the tank
105 after measuring the number of inches between the bottom
106 of the tank and the bottom of the mouth of the drainpipe:
107 *Provided*, That the distance between the bottom of the
108 tank and the bottom of the mouth of the draw pipe is
109 presumed to be six inches.

110 (d) Every licensee who, on the effective date of any rate
111 change, has in inventory any motor fuel upon which the
112 tax or any portion thereof has been previously paid shall
113 take a physical inventory and file a report thereof with the
114 commissioner, in the format as required by the commis-
115 sioner, within thirty days after the effective date of the
116 rate change, and shall pay to the commissioner at the time
117 of filing the report any additional tax due under the
118 increased rate.

§11-14C-6. Point of imposition of motor fuels tax.

1 (a) The tax levied pursuant to section five of this article
2 is imposed at the time motor fuel is imported into this
3 state, other than by a bulk transfer, is measured by
4 invoiced gallons received outside this state at a refinery,
5 terminal or bulk plant for delivery to a destination in this

6 state and is payable by the person importing the motor
7 fuel unless otherwise specified in this section.

8 (b) Except as provided in subsection (a) of this section,
9 the tax levied pursuant to section five of this article is
10 measured by invoiced gallons of motor fuel removed, other
11 than by a bulk transfer:

12 (1) From the bulk transfer/terminal system within this
13 state;

14 (2) From the bulk transfer/terminal system outside this
15 state for delivery to a location in this state as represented
16 on the shipping papers: *Provided*, That the supplier
17 imports the motor fuel for the account of the supplier; and

18 (3) Upon sale or transfer in a terminal or refinery in this
19 state to any person not holding a supplier's license and
20 payable by the person selling or transferring the motor
21 fuel.

22 (c) The tax levied pursuant to section five of this article
23 upon motor fuel removed from a refinery or terminal in
24 this state shall be collected by the supplier, as shown in the
25 records of the terminal operator, acting as trustee, from
26 the person removing the motor fuel from the facility.

27 (d) The tax levied pursuant to section five of this article
28 shall not apply to motor fuel imported into this state in the
29 motor fuel supply tank or tanks of a motor vehicle, other
30 than in the motor fuel supply tank of a vehicle being
31 hauled: *Provided*, That the person owning or operating as
32 a motor carrier is not relieved of any taxes imposed by
33 article fourteen-a of this chapter.

34 (e) The tax imposed pursuant to section five of this
35 article at the point that blended motor fuel is made in
36 West Virginia outside the bulk transfer/terminal system is
37 payable by the blender. The number of gallons of blended
38 motor fuel on which the tax is payable is the difference, if
39 any, between the number of gallons of blended motor fuel

40 made and the number of gallons of previously taxed motor
41 fuel used to make the blended motor fuel.

42 (f) The terminal operator of a terminal in this state is
43 jointly and severally liable with the supplier for the tax
44 levied pursuant to section five of this article and shall
45 remit payment to this state at the same time and on the
46 same basis as a supplier under section twenty-two of this
47 article upon:

48 (1) The removal of motor fuel from the terminal on
49 account of any supplier who is not licensed in this state:
50 *Provided*, That the terminal operator is relieved of liability
51 if the terminal operator establishes all of the following:

52 (A) The terminal operator has a valid terminal operator's
53 license issued for the facility from which the motor fuel is
54 withdrawn;

55 (B) The terminal operator has a copy of a valid license
56 from the supplier as required by the commissioner; and

57 (C) The terminal operator has no reason to believe that
58 any information is false; or

59 (2) The removal of motor fuel that is not dyed and
60 marked in accordance with Internal Revenue Service
61 requirements, if the terminal operator provides any person
62 with any bill of lading, shipping paper, or similar docu-
63 ment indicating that the motor fuel is dyed and marked in
64 accordance with the Internal Revenue Service require-
65 ments.

§11-14C-7. Tax on unaccounted for motor fuel losses; liability.

1 (a) There is hereby annually levied a tax at the rate
2 specified by section five of this article on taxable unac-
3 counted for motor fuel losses at a terminal in this state.
4 "Taxable unaccounted for motor fuel losses" means the
5 number of net gallons of unaccounted for motor fuel losses
6 that exceed one half of one percent of the number of net

7 gallons removed from the terminal during the year by a
8 bulk transfer or at the terminal rack. "Unaccounted for
9 motor fuel losses" means the difference between: (1) The
10 amount of motor fuel in inventory at the terminal at the
11 beginning of the year plus the amount of motor fuel
12 received by the terminal during the year; and (2) the
13 amount of motor fuel in inventory at the terminal at the
14 end of the year plus the amount of motor fuel removed
15 from the terminal during the year. Accounted for motor
16 fuel losses which have been approved by the commissioner
17 or motor fuel losses constituting part of a transmix shall
18 not constitute unaccounted for motor fuel losses.

19 (b) The terminal operator whose motor fuel is unac-
20 counted for is liable for the tax levied by this section.
21 Motor fuel received by a terminal operator and not shown
22 on an informational return filed by the terminal operator
23 with the commissioner as having been removed from the
24 terminal is presumed to be unaccounted for motor fuel
25 losses. A terminal operator may rebut this presumption by
26 establishing that motor fuel received at a terminal, but not
27 shown on an informational return as having been removed
28 from the terminal, was an accounted for loss or constitutes
29 part of a transmix.

§11-14C-8. Backup tax; liability.

1 (a) The tax levied pursuant to section five of this article
2 is levied on the following:

3 (1) Dyed diesel fuel that is used to operate a highway
4 vehicle for a taxable use other than a use exempt under 26
5 U.S.C. §4082;

6 (2) Motor fuel that was allowed an exemption from the
7 motor fuel tax and was then used or consumed on a
8 highway; and

9 (3) Motor fuel that is used to operate a highway vehicle
10 after an application for a refund of tax paid on the motor

11 fuel is made or allowed on the basis that the motor fuel
12 was used for an off-highway purpose.

13 (b) The operator of a highway vehicle that uses untaxed
14 or refunded motor fuel that is taxable under this section is
15 liable for the tax. If the highway vehicle that uses the
16 motor fuel is owned by or leased to a motor carrier, the
17 operator of the highway vehicle and the motor carrier are
18 jointly and severally liable for the tax. If the end seller of
19 motor fuel taxable under this section knew or had reason
20 to know that the motor fuel would be used for a purpose
21 that is taxable under this section, the operator of the
22 highway vehicle and the end seller are jointly and sever-
23 ally liable for the tax.

24 (c) The tax liability levied by this section is in addition to
25 any other penalty imposed pursuant to this article.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions for flat rate.* — Sales of motor fuel
2 to the following, or as otherwise stated in this subsection,
3 is exempt per se from the flat rate of the tax levied by
4 section five of this article and the flat rate shall not be
5 paid at the rack:

6 (1) All motor fuel exported from this state to any other
7 state or nation: *Provided*, That the supplier collects and
8 remits to the destination state or nation the appropriate
9 amount of tax due on the motor fuel transported to that
10 state or nation: *Provided, however*, That this exemption
11 shall not apply to any motor fuel which is transported and
12 delivered outside this state in the motor fuel supply tank
13 of a highway vehicle;

14 (2) Sales of aircraft fuel;

15 (3) All sales of dyed special fuel; and

16 (4) Sales of propane.

17 (b) *Per se exemptions for variable component.* — Sales
18 of motor fuel to the following are exempt per se from the
19 variable component of the tax levied by section five of this
20 article and the variable component shall not be paid at the
21 rack:

22 All motor fuel exported from this state to any other state
23 or nation: *Provided*, That the supplier collects and remits
24 to the destination state or nation the appropriate amount
25 of tax due on the motor fuel transported to that state or
26 nation: *Provided, however*, That this exemption shall not
27 apply to any motor fuel which is transported and delivered
28 outside this state in the motor fuel supply tank of a
29 highway vehicle.

30 (c) *Refundable exemptions for flat rate.* — Any person
31 having a right or claim to any of the following exemptions
32 to the flat rate of the tax levied by section five of this
33 article that is set forth in this subsection shall first pay the
34 tax levied by this article and then apply to the tax com-
35 missioner for a refund:

36 (1) The United States or any agency thereof;

37 (2) Any county government or unit or agency thereof;

38 (3) Any municipal government or any agency thereof;

39 (4) Any county boards of education;

40 (5) Any urban mass transportation authority created
41 pursuant to the provisions of article twenty-seven, chapter
42 eight of this code;

43 (6) Any municipal, county, state or federal civil defense
44 or emergency service program pursuant to a government
45 contract for use in conjunction therewith, or to any person
46 on whom is imposed a requirement to maintain an inven-
47 tory of motor fuel for the purpose of the program: *Pro-*
48 *vided*, That motor fueling facilities used for these purposes
49 are not capable of fueling motor vehicles and the person in
50 charge of the program has in his or her possession a letter

51 of authority from the tax commissioner certifying his or
52 her right to the exemption: *Provided, however,* That in
53 order for this exemption to apply, motor fuel sold under
54 subdivisions (1) through (6) of this subsection shall be used
55 in vehicles or equipment owned and operated by the
56 respective government entity or government agency or
57 authority and purchased for delivery in bulk quantities of
58 five hundred gallons or more;

59 (7) All gallons of motor fuel purchased by a licensed
60 exporter and subsequently exported from this state to any
61 other state or nation: *Provided,* That the exporter has paid
62 the applicable motor fuel tax to the destination state or
63 nation prior to claiming this refund: *Provided, however,*
64 That a refund shall not be granted on any motor fuel
65 which is transported and delivered outside this state in the
66 motor fuel supply tank of a highway vehicle;

67 (8) All gallons of motor fuel used and consumed in
68 stationary off-highway turbine engines;

69 (9) All gallons of special fuel used for heating any public
70 or private dwelling, building or other premises;

71 (10) All gallons of special fuel used for boilers;

72 (11) All gallons of motor fuel used as a dry cleaning
73 solvent or commercial or industrial solvent;

74 (12) All gallons of motor fuel used as lubricants, ingredi-
75 ents or components of any manufactured product or
76 compound;

77 (13) All gallons of motor fuel sold for use or used as a
78 motor fuel for commercial watercraft;

79 (14) All gallons of special fuel sold for use or consumed
80 in railroad diesel locomotives;

81 (15) All gallons of motor fuel purchased in quantities of
82 twenty-five gallons or more for use as a motor fuel for

83 internal combustion engines not operated upon highways
84 of this state;

85 (16) All gallons of motor fuel purchased in quantities of
86 twenty-five gallons or more and used to power a power
87 take-off unit on a motor vehicle. When a motor vehicle
88 with auxiliary equipment uses motor fuel and there is no
89 auxiliary motor for the equipment or separate tank for a
90 motor, the person claiming the refund may present to the
91 tax commissioner a statement of his or her claim and is
92 allowed a refund for motor fuel used in operating a power
93 take-off unit on a cement mixer truck or garbage truck
94 equal to twenty-five percent of the tax levied by this
95 article paid on all motor fuel used in such a truck;

96 (17) Motor fuel used by any person regularly operating
97 any vehicle under a certificate of public convenience and
98 necessity or under a contract carrier permit for transporta-
99 tion of persons, when purchased in an amount of twenty-
100 five gallons or more: *Provided*, That the amount refunded
101 is equal to six cents per gallon: *Provided, however*, That
102 the gallons of motor fuel shall have been consumed in the
103 operation of urban and suburban bus lines, and the
104 majority of passengers use the bus for traveling a distance
105 not exceeding forty miles, measured one way, on the same
106 day between their places of abode and their places of
107 work, shopping areas or schools; and

108 (18) All gallons of motor fuel that are not otherwise
109 exempt under subsection (a) of this section and that are
110 purchased and used by any bona fide volunteer fire
111 department, nonprofit ambulance service or emergency
112 rescue service that has been certified by the municipality
113 or county wherein the bona fide volunteer fire department,
114 nonprofit ambulance service or emergency rescue service
115 is located.

116 (d) *Refundable exemptions for variable rate.* – Any of the
117 following persons may claim an exemption to the variable
118 rate of the tax levied by section five of this article on the

119 purchase and use of motor fuel by first paying the tax
120 levied by this article and then applying to the tax commis-
121 sioner for a refund.

122 (1) The United States or any agency thereof;

123 (2) This state and its institutions;

124 (3) Any county government or unit or agency thereof;

125 (4) Any municipal government or any agency thereof;

126 (5) Any county boards of education;

127 (6) Any urban mass transportation authority created
128 pursuant to the provisions of article twenty-seven, chapter
129 eight of this code;

130 (7) Any municipal, county, state or federal civil defense
131 or emergency service program pursuant to a government
132 contract for use in conjunction therewith, or to any person
133 on whom is imposed a requirement to maintain an inven-
134 tory of motor fuel for the purpose of the program: *Pro-*
135 *vided*, That fueling facilities used for these purposes are
136 not capable of fueling motor vehicles and the person in
137 charge of the program has in his or her possession a letter
138 of authority from the tax commissioner certifying his or
139 her right to the exemption;

140 (8) Any bona fide volunteer fire department, nonprofit
141 ambulance service or emergency rescue service that has
142 been certified by the municipality or county wherein the
143 bona fide volunteer fire department, nonprofit ambulance
144 service or emergency rescue service is located; or

145 (9) All gallons of motor fuel purchased by a licensed
146 exporter and subsequently exported from this state to any
147 other state or nation: *Provided*, That the exporter has paid
148 the applicable motor fuel tax to the destination state or
149 nation prior to claiming this refund: *Provided, however*,
150 That a refund shall not be granted on any motor fuel

151 which is transported and delivered outside this state in the
152 motor fuel supply tank of a highway vehicle.

153 (e) The provision in subdivision (9), subsection (a),
154 section nine, article fifteen of this chapter that exempts as
155 a sale for resale those sales of gasoline and special fuel by
156 a distributor or importer to another distributor shall not
157 apply to sales of motor fuel under this article.

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

1 (a) A person shall obtain the appropriate license or
2 licenses issued by the commissioner before conducting the
3 activities of:

4 (1) A supplier which includes a refiner;

5 (2) A permissive supplier;

6 (3) An importer;

7 (4) An exporter;

8 (5) A terminal operator;

9 (6) A blender;

10 (7) A motor fuel transporter; or

11 (8) A distributor.

12 (b) A person who is engaged in more than one activity for
13 which a license is required shall have a separate license for
14 each activity, except as otherwise determined by the
15 commissioner.

§11-14C-11. License application procedure.

1 (a) To obtain a license under this article, an applicant
2 shall file an application with the commissioner on a form
3 provided by the commissioner. The application shall
4 include the applicant's name, address, federal employer

5 identification number, and any other information required
6 by the commissioner.

7 (b) An applicant for a license as a supplier, permissive
8 supplier, terminal operator, importer, blender, or distribu-
9 tor, shall satisfy the following requirements:

10 (1) If the applicant is a corporation, the applicant shall
11 either be incorporated in this state or authorized to
12 transact business in this state;

13 (2) If the applicant is a limited liability company, the
14 applicant shall either be organized in this state or autho-
15 rized to transact business in this state;

16 (3) If the applicant is a limited liability partnership, the
17 applicant shall either be formed in this state or authorized
18 to transact business in this state; and

19 (4) If the applicant is an individual or a general partner-
20 ship, the applicant shall designate an agent for service of
21 process and provide the agent's name and address.

22 (c) An applicant for a license as a supplier, permissive
23 supplier, terminal operator, or blender shall have a federal
24 certificate of registry issued under 26 U.S.C. §4101 that
25 authorizes the applicant to enter into federal tax-free
26 transactions in taxable motor fuel in the terminal transfer
27 system. An applicant that is required to have a federal
28 certificate of registry shall include the registration number
29 of the certificate on the application for a license under this
30 section. An applicant for a license as an importer, an
31 exporter, or a distributor who has a federal certificate of
32 registry issued under 26 U.S.C. §4101 shall include the
33 registration number of the certificate on the application
34 for a license under this section.

35 (d) An applicant for a license as an importer or distribu-
36 tor shall list on the application each state from which the
37 applicant intends to import motor fuel and, if required by
38 a state listed, shall be licensed or registered for motor fuel

39 tax purposes in that state. If a state listed requires the
40 applicant to be licensed or registered, the applicant shall
41 provide the applicant's license or registration number of
42 that state. A licensee who intends to import motor fuel
43 from a state not listed on its application for an importer's
44 license or a distributor's license shall provide the commis-
45 sioner written notice of the action before importing motor
46 fuel from that state. The notice shall include the informa-
47 tion that is required on the license application.

48 (e) An applicant for a license as an exporter shall desig-
49 nate an agent located in West Virginia for service of
50 process and provide the agent's name and address. An
51 applicant for a license as an exporter or distributor shall
52 list on the application each state to which the applicant
53 intends to export motor fuel received in West Virginia by
54 means of a transfer that is outside the terminal transfer
55 system and, if required by a state listed, shall be licensed
56 or registered for motor fuel tax purposes in that state. If
57 a state listed requires the applicant to be licensed or
58 registered, the applicant shall provide the applicant's
59 license or registration number of that state. A licensee
60 who intends to export motor fuel to a state not listed on its
61 application for an exporter's license or a distributor's
62 license shall provide the commissioner written notice of
63 the action before exporting motor fuel to that state. The
64 notice shall include the information required on the license
65 application.

66 (f) An applicant for a license as a motor fuel transporter
67 shall list on the application each state from which and to
68 which the applicant intends to transport motor fuel and,
69 if required by a state listed, shall be licensed or registered
70 for motor fuel tax purposes in that state. If a state listed
71 requires the applicant to be licensed or registered, the
72 applicant shall provide the applicant's license or registra-
73 tion number of that state. A licensee who intends to
74 transport motor fuel from or to a state not listed on its
75 application for a motor fuel transporter's license shall

76 provide the commissioner written notice of the action
77 before transporting motor fuel from or to that state. The
78 notices shall include the information that is required on the
79 license application.

**§11-14C-12. Permissive supplier requirements on out-of-state
removals.**

1 (a) A person may elect to obtain a permissive supplier
2 license to collect the tax levied by section five of this
3 article for motor fuel that is removed at a terminal in
4 another state and has West Virginia as the destination
5 state.

6 (b) A licensed permissive supplier shall comply with all
7 of the following requirements with respect to motor fuel
8 that is removed by that licensed permissive supplier at a
9 terminal located in another state and has West Virginia as
10 the destination state:

11 (1) Collect the tax due this state on the motor fuel;

12 (2) Waive any defense that this state lacks jurisdiction to
13 require the supplier to collect the tax due this state on the
14 motor fuel under this article;

15 (3) Report and pay the tax due on the motor fuel in the
16 same manner as if the removal had occurred at a terminal
17 located in West Virginia;

18 (4) Keep records of the removal of the motor fuel and
19 submit to audits concerning the motor fuel as if the
20 removal had occurred at a terminal located in West
21 Virginia; and

22 (5) Report sales by the supplier not engaged in business
23 in this state to a person who is not licensed in the state
24 where the removal occurred if the destination state is West
25 Virginia.

26 (c) A licensed permissive supplier acknowledges that this
27 state imposes the requirements listed in subsection (b) of

28 this section under its general police power and submits to
29 the jurisdiction of this state only for purposes related to
30 the administration of this article.

§11-14C-13. Bond requirements.

1 (a) There shall be filed with an application for a license
2 required by section eleven of this article either a cash bond
3 or a continuous surety bond in the amount or amounts
4 specified in this section: *Provided*, That if a continuous
5 surety bond is filed, an annual notice of renewal shall be
6 filed thereafter: *Provided, however*, That if the continuous
7 surety bond includes the requirements that the commis-
8 sioner is to be notified of cancellation at least sixty days
9 prior to the continuous surety bond being canceled, an
10 annual notice of renewal is not required. The bond,
11 whether a cash bond or a continuous surety bond, shall be
12 conditioned upon compliance with the requirements of this
13 article, be payable to this state, and be in the form re-
14 quired by the commissioner. The amount of the bond is as
15 follows:

16 (1) For a supplier license, the amount shall be no less
17 than one hundred thousand dollars nor greater than two
18 million dollars;

19 (2) For a permissive supplier license, the amount shall be
20 no less than one hundred thousand dollars nor greater than
21 two million dollars;

22 (3) For a terminal operator license, the amount shall be
23 no less than one hundred thousand dollars nor greater than
24 two million dollars;

25 (4) For an importer license for a person, other than a
26 supplier, that imports by transport vehicle or another
27 means of transfer outside the bulk transfer/terminal
28 system motor fuel removed from a terminal located in
29 another state in which: (A) The state from which the motor
30 fuel is imported does not require the seller of the motor
31 fuel to collect a motor fuel excise tax on the removal either

32 at that state's rate or the rate of the destination state; and
33 (B) the seller of the motor fuel is not a permissive supplier,
34 the amount shall be no less than one hundred thousand
35 dollars nor greater than two million dollars;

36 (5) For an importer license for a person that imports by
37 transport vehicle or another means outside the bulk
38 transfer/terminal system motor fuel removed from a
39 terminal located in another state in which: (A) The state
40 from which the motor fuel is imported requires the seller
41 of the motor fuel to collect a motor fuel excise tax on the
42 removal either at that state's rate or the rate of the desti-
43 nation state; or (B) the seller of the motor fuel is a permis-
44 sive supplier, the amount shall be a minimum of two
45 thousand dollars or an amount equal to three months tax
46 liability, whichever is greater: *Provided*, That the amount
47 shall not exceed three hundred thousand dollars: *Provided*,
48 *however*, That when required by the commissioner to file
49 a cash bond or a continuous surety bond in an additional
50 amount, the licensee shall comply with the commissioner's
51 notification within thirty days after receiving that notifi-
52 cation;

53 (6) For a license as both a distributor and an importer as
54 described in subdivision (4) of this subsection, the amount
55 shall be no less than one hundred thousand dollars nor
56 greater than two million dollars;

57 (7) For a license as both a distributor and an importer as
58 described in subdivision (5) of this subsection, the amount
59 shall be a minimum of two thousand dollars or an amount
60 equal to three months tax liability, whichever is greater:
61 *Provided*, That the amount shall not exceed three hundred
62 thousand dollars: *Provided, however*, That when required
63 by the commissioner to file a cash bond or a continuous
64 surety bond in an additional amount, the licensee shall
65 comply with the commissioner's notification within thirty
66 days after receiving that notification;

67 (8) For an exporter license, the amount shall be a mini-
68 mum of two thousand dollars or an amount equal to three
69 months tax liability, whichever is greater: *Provided*, That
70 the amount shall not exceed three hundred thousand
71 dollars: *Provided, however*, That when required by the
72 commissioner to file a cash bond or a continuous surety
73 bond in an additional amount, the licensee shall comply
74 with the commissioner's notification within thirty days
75 after receiving that notification;

76 (9) For a blender license, the amount shall be a minimum
77 of two thousand dollars or an amount equal to three
78 months tax liability, whichever is greater: *Provided*, That
79 the amount shall not exceed three hundred thousand
80 dollars: *Provided, however*, That when required by the
81 commissioner to file a cash bond or a continuous surety
82 bond in an additional amount, the licensee shall comply
83 with the commissioner's notification within thirty days
84 after receiving that notification;

85 (10) For a distributor license, the amount shall be a
86 minimum of two thousand dollars or an amount equal to
87 three months tax liability, whichever is greater: *Provided*,
88 That the amount shall not exceed three hundred thousand
89 dollars: *Provided, however*, That when required by the
90 commissioner to file a cash bond or a continuous surety
91 bond in an additional amount, the licensee shall comply
92 with the commissioner's notification within thirty days
93 after receiving that notification;

94 (11) For a motor fuel transporter license, there shall be
95 no bond; and

96 (12) An applicant for a licensed activity listed under
97 subdivisions (1) through (10) of this subsection may in lieu
98 of posting either the cash bond or continuous surety bond
99 required by this subsection (a) provide proof of financial
100 responsibility acceptable to the commissioner: *Provided*,
101 That the proof of financial responsibility shall demon-
102 strate the absence of circumstances indicating risk with

103 the collection of taxes from the applicant: *Provided*,
104 *however*, That the following shall constitute proof of
105 financial responsibility:

106 (A) Proof of five million dollars net worth shall consti-
107 tute evidence of financial responsibility in lieu of posting
108 the required bond;

109 (B) Proof of two million five hundred thousand dollars
110 net worth constitutes financial responsibility in lieu of
111 posting fifty per cent of the required bond; and

112 (C) Proof of one million two hundred fifty thousand
113 dollars net worth constitutes financial responsibility in
114 lieu of posting twenty-five per cent of the required bond.
115 Net worth is calculated on a business, not individual basis.

116 (13) In lieu of providing either cash bond, a continuance
117 surety bond or proof of financial responsibility acceptable
118 to the commissioner, an applicant for a licensed activity
119 listed under this subsection that has established with the
120 state tax division a good filing record that is accurate,
121 complete and timely for the preceding eighteen months
122 shall be granted a waiver of the requirement to file either
123 a cash bond or continuance surety bond: *Provided*, That
124 when a licensee that has been granted a waiver of the
125 requirement to file a bond violates a provision of this
126 article, the licensee shall file the applicable bond as stated
127 in this subsection.

128 (14) Any licensee who disagrees with the commissioner's
129 decision requiring new or additional security may seek a
130 hearing by filing a petition with the office of tax appeals
131 in accordance with the provisions of section nine, article
132 ten-a of this chapter: *Provided*, That the hearing shall be
133 provided within thirty days after receipt by the office of
134 tax appeals of the petition for the hearing.

135 (b) The surety must be authorized to engage in business
136 within this state. The cash bond and the continuous surety
137 bond are conditioned upon faithful compliance with the

138 provisions of this article, including the filing of the returns
139 and payment of all tax prescribed by this article. The cash
140 bond and the continuous surety bond shall be approved by
141 the commissioner as to sufficiency and form, and shall
142 indemnify the state against any loss arising from the
143 failure of the taxpayer to pay for any cause whatever the
144 motor fuel excise tax levied by this article.

145 (c) Any surety on a continuous surety bond furnished
146 hereunder shall be relieved, released and discharged from
147 all liability accruing on the bond after the expiration of
148 sixty days from the date the surety shall have lodged, by
149 certified mail, with the commissioner a written request to
150 be discharged. Discharge from the continuous surety bond
151 shall not relieve, release or discharge the surety from
152 liability already accrued, or which shall accrue before the
153 expiration of the sixty-day period. Whenever any surety
154 seeks discharge as herein provided, it is the duty of the
155 principal of the bond to supply the commissioner with
156 another continuous surety bond or a cash bond prior to the
157 expiration of the original bond. Failure to provide a new
158 continuous surety bond or a cash bond shall result in the
159 commissioner canceling each license and registration
160 previously issued to the person.

161 (d) Any taxpayer that has furnished a cash bond hereun-
162 der shall be relieved, released and discharged from all
163 liability accruing on the cash bond after the expiration of
164 sixty days from the date the taxpayer shall have lodged, by
165 certified mail, with the commissioner a written request to
166 be discharged and the amount of the cash bond refunded:
167 *Provided*, That the commissioner may retain all or part of
168 the cash bond until such time as the commissioner may
169 perform an audit of the taxpayer's business or three years,
170 whichever first occurs. Discharge from the cash bond
171 shall not relieve, release or discharge the taxpayer from
172 liability already accrued, or which shall accrue before the
173 expiration of the sixty-day period. Whenever any tax-
174 payer seeks discharge as herein provided, it is the duty of

175 the taxpayer to provide the commissioner with another
176 cash bond or a continuous surety bond prior to the expira-
177 tion of the original cash bond. Failure to provide either a
178 new cash bond or a continuous surety bond shall result in
179 the commissioner canceling each license and registration
180 previously issued to the taxpayer.

§11-14C-14. Grounds for denial of license.

1 (a) The commissioner may refuse to issue a license under
2 this article if the applicant or any principal of the appli-
3 cant that is a business entity has:

4 (1) Had a license or registration issued under prior law or
5 this article canceled by the commissioner for cause;

6 (2) Had a motor fuel license or registration issued by
7 another state canceled for cause;

8 (3) Had a federal certificate of registry issued under
9 section 4101 of the Internal Revenue Code, or a similar
10 federal authorization, revoked;

11 (4) Been convicted of any offense involving fraud or
12 misrepresentation; or

13 (5) Been convicted of any other offense that indicates
14 that the applicant may not comply with this article if
15 issued a license.

§11-14C-15. Issuance of license.

1 Upon approval of an application, the commissioner shall
2 issue to the applicant the appropriate license or licenses
3 for each place of business of the applicant. Each licensee
4 shall display the license issued under this article in a
5 conspicuous place at each of the licensee's places of
6 business. A license is not transferable and remains in
7 effect until surrendered or canceled.

**§11-14C-16. Notice of discontinuance, sale or transfer of busi-
ness.**

1 (a) A licensee who discontinues the business for which
2 was issued a license authorized by this article shall notify
3 the commissioner in writing within fifteen days of discon-
4 tinuance and shall surrender the license to the commis-
5 sioner. The notice shall state the effective date of the
6 discontinuance and, if the licensee has transferred the
7 business or otherwise relinquished control to another
8 person by sale or otherwise, the date of the sale or transfer
9 and the name and address of the person to whom the
10 business is transferred or relinquished. The notice shall
11 also include any other information required by the com-
12 missioner.

13 (b) All taxes for which the licensee is liable under this
14 article but are not yet due are due on the date of the
15 discontinuance. If the licensee has transferred the busi-
16 ness to another person and does not give the notice re-
17 quired by this section, the person to whom the business
18 was transferred is jointly and severally liable for the
19 amount of any tax owed by the licensee to this state on the
20 date the business was transferred. The liability of the
21 person to whom the business was transferred shall not
22 exceed the value of the property acquired from the li-
23 censee.

§11-14C-17. License cancellation.

1 (a) The commissioner may cancel the license of any
2 person licensed under this article, upon written notice sent
3 by registered mail to the licensee's last known address, or
4 to the licensee's designated agent for service of process,
5 appearing in the commissioner's files, for any of the
6 following reasons:

7 (1) Filing by the licensee of a false report of the data or
8 information required by this article;

9 (2) Failure, refusal, or neglect of the licensee to file a
10 report or information required by this article;

11 (3) Failure of the licensee to pay the full amount of the
12 tax due or pay any penalties or interest due as required by
13 this article;

14 (4) Failure of the licensee to keep accurate records of the
15 quantities of motor fuel received, produced, refined,
16 manufactured, compounded, sold, or used in West Vir-
17 ginia;

18 (5) Failure to file a new or additional cash bond or
19 continuous surety bond upon request of the commissioner
20 pursuant to section thirteen of this article;

21 (6) Conviction of the licensee or a principal of the
22 licensee for any act prohibited under this article;

23 (7) Failure, refusal, or neglect of a licensee to comply
24 with any other provision of this article or any rule promul-
25 gated pursuant to this article; or

26 (8) A change in the ownership or control of the business.

27 (b) Upon cancellation of any license for any cause listed
28 in subsection (a) of this section, the tax levied under this
29 article becomes due and payable on all untaxed motor fuel
30 held in storage or otherwise in the possession of the
31 licensee and all motor fuel sold, delivered, or used prior to
32 the cancellation on which the tax has not been paid.

33 (c) The commissioner may cancel any license upon the
34 written request of the licensee.

35 (d) Upon cancellation of any license and payment by the
36 licensee of all taxes due, including all penalties accruing
37 due to any failure by the licensee to comply with the
38 provisions of this article, the commissioner shall cancel
39 and surrender the bond, filed by the licensee: *Provided,*
40 That the requirements of section thirteen of this article are
41 satisfied.

**§11-14C-18. Records and lists of license applicants and licens-
ees.**

1 (a) The Commissioner shall maintain a record of:

2 (1) All applicants for a license under this article;

3 (2) All persons to whom a license has been issued under
4 this article; and

5 (3) All persons holding a current license issued under this
6 article, by license category.

7 (b) The commissioner shall provide a list of licensees to
8 any person who requests a copy. The list shall state the
9 name, business address, and, if available, telephone
10 number of each licensee on the list and may include other
11 information determined appropriate by the commissioner.

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

§11-14C-19. When tax return and payment are due.

1 (a) The tax levied by this article shall be paid by each
2 taxpayer on or before the last day of the calendar month
3 by check, bank draft, or money order payable to the
4 commissioner for the amount of tax due, if any, for the
5 preceding month: *Provided*, That the commissioner may
6 require all or certain taxpayers to file tax returns and
7 payments electronically. The return required by the
8 commissioner shall accompany the payment of tax:
9 *Provided, however*, That if no tax is due, the return
10 required by the commissioner shall be completed and filed
11 before the last day of the calendar month for the preceding
12 month.

13 (b) The following shall file a monthly return as required
14 by this section:

15 (1) A terminal operator;

16 (2) A supplier;

17 (3) An importer;

18 (4) A blender;

- 19 (5) A person incurring liability under section eight of this
20 article for the backup tax on motor fuel;
- 21 (6) A permissive supplier;
- 22 (7) A motor fuel transporter; and
- 23 (8) An exporter.

§11-14C-20. Remittance of tax to supplier or permissive supplier.

1 (a) Each licensed distributor and licensed importer shall
2 remit to the supplier or permissive supplier, as applicable,
3 of the motor fuel the tax levied by section five of this
4 article and due on motor fuel removed at a terminal rack:
5 *Provided*, That at the election of a licensed distributor or
6 licensed importer, the supplier or permissive supplier shall
7 not require the licensed distributor or licensed importer to
8 pay tax levied by section five of this article until two days
9 before the date the supplier or permissive supplier is
10 required to pay the tax to this state: *Provided, however*,
11 That an election under this subsection is subject to the
12 condition that remittances by the licensed distributor or
13 licensed importer of all tax due to the supplier or permis-
14 sive supplier shall be paid by electronic funds transfer two
15 days before the date of the remittance by the supplier or
16 permissive supplier to the commissioner. An election
17 under this subsection may be terminated by the supplier or
18 permissive supplier if the licensed distributor or licensed
19 importer does not make timely payments to the supplier or
20 permissive supplier as required by this subsection.

21 (b) A licensed exporter shall remit tax due on motor fuel
22 removed at a terminal rack to the supplier of the motor
23 fuel. The date by which an exporter shall remit tax is
24 governed by the law of the destination state of the ex-
25 ported motor fuel: *Provided*, That if the laws of the
26 destination state prohibit the collection of the destination
27 state's tax, the tax levied by section five of this article
28 shall be collected.

29 (c) All tax payments received by a supplier or permissive
30 supplier shall be held in trust by the supplier or permissive
31 supplier until the supplier or permissive supplier remits
32 the tax payment to this state or to another state, and the
33 supplier or permissive supplier shall constitute the trustee
34 for the tax payments.

35 (d) The license of a licensed distributor, exporter or
36 importer who fails to pay the full amount of tax required
37 by this article is subject to cancellation.

**§11-14C-21. Notice of cancellation or reissuance of licenses;
effect of notice.**

1 (a) If the commissioner cancels the license of a distribu-
2 tor or importer, the commissioner shall notify all suppliers
3 and permissive suppliers of the cancellation. If the
4 commissioner issues a license to a distributor or importer
5 whose license was previously canceled, the commissioner
6 shall notify all suppliers and permissive suppliers of the
7 issuance.

8 (b) A supplier or permissive supplier who sells motor fuel
9 to a distributor or importer after receiving notice from the
10 commissioner that the commissioner has canceled the
11 distributor's or importer's license is jointly and severally
12 liable with the distributor or importer for any tax due on
13 motor fuel sold to the distributor or importer subsequent
14 to receipt of the notice: *Provided*, That the supplier or
15 permissive supplier is not liable for tax due on motor fuel
16 sold to a previously unlicensed distributor or importer
17 after the supplier or permissive supplier receives notice
18 from the commissioner that the commissioner has issued
19 another license to the distributor or importer.

20 (c) If the commissioner cancels the license of a supplier
21 or permissive supplier, the commissioner shall notify all
22 licensed distributors, exporters and importers of the
23 cancellation. If the commissioner issues a license to a
24 supplier or permissive supplier whose license was previ-

25 ously canceled, the commissioner shall notify all licensed
26 distributors, exporters, and importers of the issuance.

27 (d) A licensed distributor, exporter or importer who
28 purchases motor fuel from a supplier or permissive
29 supplier after receiving notice from the commissioner that
30 the commissioner has canceled the supplier's or permissive
31 supplier's license is jointly and severally liable with the
32 supplier or permissive supplier for any tax due on motor
33 fuel purchased from the supplier or permissive supplier
34 after receiving the notice: *Provided*, That a licensed
35 distributor that purchases motor fuel from a supplier or
36 permissive supplier whose license has been canceled shall
37 file a tax return on or before the last day of the month
38 following the month in which the purchase occurred. The
39 return shall include the following information and any
40 other information required by the commissioner:

41 (1) The number of invoiced gallons of tax paid motor
42 fuel, sorted by type of motor fuel, terminal code, name of
43 seller, point of origin and carrier; and

44 (2) The number of invoiced gallons of untaxed motor
45 fuel, sorted by type of motor fuel, terminal code, name of
46 seller, point of origin and carrier.

47 The licensed distributor, exporter or importer is not
48 liable for tax due on motor fuel purchased from a previ-
49 ously unlicensed supplier or permissive supplier after the
50 licensee receives notice from the commissioner that the
51 commissioner has issued another license to the supplier or
52 permissive supplier.

**§11-14C-22. Information required on return filed by supplier or
permissive supplier.**

1 The return of each supplier and permissive supplier shall
2 list all of the following information and any other infor-
3 mation required by the commissioner:

4 (a) The number of gross gallons of tax-paid motor fuel

5 received by the supplier or permissive supplier during the
6 month, sorted by type of motor fuel, seller, point of origin,
7 destination state, and carrier;

8 (b) The number of gross gallons of motor fuel removed at
9 a terminal rack during the month from the account of the
10 supplier, sorted by type of motor fuel, person receiving the
11 motor fuel, terminal code, and carrier;

12 (c) The number of gross gallons of motor fuel removed
13 during the month for export, sorted by type of motor fuel,
14 person receiving the motor fuel, terminal code, destination
15 state, and carrier;

16 (d) The number of gross gallons of motor fuel removed
17 during the month from a terminal located in another state
18 for conveyance to West Virginia, as indicated on the
19 shipping document for the motor fuel, sorted by type of
20 motor fuel, person receiving the motor fuel, terminal code,
21 and carrier;

22 (e) The number of gross gallons of motor fuel the supplier
23 or permissive supplier sold during the month to a govern-
24 mental entity whose use of motor fuel is exempt from the
25 tax, sorted by type of motor fuel, carrier, and governmen-
26 tal entity receiving the motor fuel, terminal code.

**§11-14C-23. Deductions and discounts allowed a supplier and
a permissive supplier when filing a return.**

1 (a) The supplier or permissive supplier may deduct from
2 the next monthly return those tax payments that were not
3 remitted for the previous month to the supplier or permis-
4 sive supplier by any licensed distributor or any licensed
5 importer who removed motor fuel on which the tax is due
6 from the supplier's or permissive supplier's terminal. The
7 licensed supplier or permissive supplier is eligible to take
8 this deduction if the licensed supplier or permissive
9 supplier notifies the state within ten business days after a
10 return is due of any licensed distributor or importer who
11 did not pay to the supplier or permissive supplier the tax

12 due by the time the supplier or permissive supplier filed
13 the monthly return: *Provided*, That when a licensed
14 distributor or licensed importer fails to remit the tax to the
15 licensed supplier or permissive supplier, the licensed
16 supplier or permissive supplier is not eligible to take the
17 deduction for any tax payments that accrue after the ten
18 business day period referenced above for delinquent
19 distributors or importers. The notice shall be transmitted
20 to the state in the form required by the commissioner. A
21 supplier or permissive supplier is not liable for the tax a
22 licensee owes but fails to pay. If a licensee pays to a
23 supplier or permissive supplier the tax owed, but the
24 payment occurs after the supplier or permissive supplier
25 has deducted the amount of the tax on a return, the
26 supplier or permissive supplier shall remit the payment to
27 the commissioner with the next monthly return filed
28 subsequent to receipt of the tax.

29 (b) A supplier or permissive supplier who timely files a
30 return with the payment due may deduct, from the amount
31 of tax payable with the return, an administrative discount
32 of one tenth of one percent of the amount of tax payable to
33 this state, not to exceed five thousand dollars per month.

34 (c) For sales from permissive suppliers or suppliers to
35 licensed distributors, a supplier or permissive supplier
36 shall deduct three fourths of one percent of the tax due
37 from the licensed distributor as a discount to that licensed
38 distributor. The discount given to the licensed distributor
39 shall be reported on the supplier or the permissive sup-
40 plier's next monthly return. This discount only applies to
41 sales from permissive suppliers and suppliers to licensed
42 distributors, and shall not apply to any other transactions,
43 including, but not limited to, licensed distributor to
44 licensed distributor transactions: *Provided*, That if the
45 permissive supplier and/or supplier is also a licensed
46 distributor, this discount shall not apply.

§11-14C-24. Duties of supplier or permissive supplier as trustee.

1 (a) All tax payments due to this state that are received by
2 a supplier or permissive supplier shall be held by the
3 supplier or permissive supplier as trustee in trust for this
4 state, and the supplier or permissive supplier has a fidu-
5 ciary duty to remit to the commissioner the amount of tax
6 received. A supplier or permissive supplier is liable for the
7 taxes paid to it.

8 (b) A supplier or permissive supplier shall notify a
9 licensed distributor, licensed exporter, or licensed im-
10 porter who received motor fuel from the supplier or
11 permissive supplier during a reporting period of the
12 number of taxable gallons received. The supplier or
13 permissive supplier shall give this notice after the end of
14 each reporting period and before the licensee is required to
15 remit the amount of tax due on the motor fuel.

16 (c) A supplier or permissive supplier of motor fuel at a
17 terminal shall notify the commissioner within the time
18 period established by the commissioner of any licensed
19 distributors, licensed exporters, or licensed importers who
20 did not pay the tax due when the supplier or permissive
21 supplier filed its return. The notice shall be transmitted to
22 the commissioner in the form required by the commis-
23 sioner.

24 (d) A supplier or permissive supplier who receives a
25 payment of tax shall not apply the payment of tax to a
26 debt that the person making the payment owes for motor
27 fuel purchased from the supplier or permissive supplier.

§11-14C-25. Returns and discounts of importers.

1 (a) The monthly return of an importer shall contain the
2 following information for the period covered by the return
3 and any other information required by the commissioner:

4 (1) The number of gross gallons of imported motor fuel
5 acquired from a supplier or permissive supplier who
6 collected the tax due this state on the motor fuel;

7 (2) The number of gross gallons of imported motor fuel
8 acquired from a person who did not collect the tax due this
9 state on the motor fuel, listed by type of motor fuel, source
10 state, person, and terminal;

11 (3) The number of gross gallons of imported motor fuel
12 acquired from a bulk plant outside this state, listed by
13 bulk plant name, address and type of motor fuel; and

14 (4) The import confirmation number, as may be required
15 under section thirty-five of this article, of each import that
16 is reported under subdivision (2) or subdivision (3) of this
17 subsection, as applicable, and was removed from a termi-
18 nal or bulk plant.

19 (b) An importer that imports by transport vehicle or
20 another means of transfer outside the terminal transfer
21 system motor fuel removed from a terminal located in
22 another state in which: (1) The state from which the motor
23 fuel is imported does not require the seller of the motor
24 fuel to collect a motor fuel excise tax on the removal either
25 at that state's rate or the rate of the destination state; and
26 (2) the seller of the motor fuel is not a licensed supplier or
27 permissive supplier, who timely files a return with the
28 payment due may deduct, from the amount of tax payable
29 with the return, an administrative discount of one tenth of
30 one percent of the amount of tax payable by the importer
31 to this state, not to exceed five thousand dollars per
32 month.

§11-14C-26. Informational returns of terminal operators.

1 (a) A terminal operator shall file with the commissioner
2 a monthly information return showing the amount of
3 motor fuel received and removed from the terminal during
4 the month. The return is due by the last day of the month
5 following the month covered by the return. The return
6 shall contain the following information and any other
7 information required by the commissioner:

8 (1) The beginning and ending inventory which pertains

9 to the applicable reporting month;

10 (2) The number of gross gallons of motor fuel received in
11 inventory at the terminal during the month and each
12 position holder for the motor fuel;

13 (3) The number of gross gallons of motor fuel removed
14 from inventory at the terminal during the month and, for
15 each removal, the position holder for the motor fuel and
16 the destination state of the motor fuel; and

17 (4) The number of gross gallons of motor fuel gained or
18 lost at the terminal during the month.

19 The tax commissioner may accept the Federal ExSTARS
20 terminal operator report provided to the Internal Revenue
21 Service in lieu of the required state terminal operator
22 report.

§11-14C-27. Informational returns of motor fuel transporters.

1 (a) A person who transports by marine vessel, railroad
2 tank car, or transport vehicle, motor fuel that is imported
3 into West Virginia or exported from West Virginia shall
4 file a monthly information return with the commissioner
5 that shows motor fuel received or delivered for import or
6 export by the transporter during the month. This require-
7 ment does not apply to a distributor who is not required to
8 be licensed as a motor fuel transporter.

9 (b) The return required by this section is due by the last
10 day of the month following the month covered by the
11 return. The return shall contain the following information
12 and any other information required by the commissioner:

13 (1) The name, address and terminal control number of
14 each person or terminal from whom the transporter
15 received motor fuel outside West Virginia for delivery in
16 West Virginia, the invoiced gallons of motor fuel received,
17 the date the motor fuel was received, and the name and
18 address of the purchaser of the motor fuel; and

19 (2) The name, address and terminal control number of
20 each person or terminal from whom the transporter
21 received motor fuel in West Virginia for delivery outside
22 West Virginia, the invoiced gallons of motor fuel delivered,
23 the date the motor fuel was delivered, and the destination
24 state of the motor fuel.

§11-14C-28. Exports.

1 (a) A person who exports motor fuel from West Virginia
2 shall file a monthly return with the commissioner identify-
3 ing the exports. The return is due by the last day of the
4 month following the month covered by the return. The
5 return shall serve as a claim for a refund for tax paid to
6 this state on exported motor fuel.

7 (b) The return shall contain the following information
8 and any other information required by the commissioner:

9 (1) The number of invoiced gallons of motor fuel ex-
10 ported during the month;

11 (2) The destination state of the motor fuel exported
12 during the month; and

13 (3) A certification that the tax has been paid to the
14 destination state of the motor fuel exported during the
15 month.

§11-14C-29. Identifying information required on return.

1 When a transaction with a person licensed under this
2 article is required to be reported on a return, the return
3 must state the licensee's name; address, and, if available,
4 license number and telephone number as stated on the lists
5 compiled by the commissioner under section nineteen of
6 this article.

PART 5. REFUNDS.

**§11-14C-30. Refund of taxes erroneously collected, etc.; refund
for gallonage exported or lost through casualty**

or evaporation; change of rate; petition for refund.

1 (a) The commissioner is hereby authorized to refund
2 from the funds collected under the provisions of this
3 article any tax, interest, additions to tax or penalties
4 which have been erroneously collected from any person.

5 (b) Any supplier, distributor, producer, retail dealer,
6 exporter or importer, while the owner of motor fuel in this
7 state, that loses any gallons of motor fuel through fire,
8 lightning, breakage, flood or other casualty, which gallons
9 having been previously included in the tax by or for that
10 person, may claim a refund of a sum equal to the amount
11 of the flat rate of the tax levied by section five of this
12 article paid upon the gallons lost.

13 (c) Any dealer as defined in section two, article eleven-c,
14 chapter forty-seven of the code, and any bulk plant in this
15 state that purchases or receives motor fuel in this state
16 upon which the tax levied by section five of this article has
17 been paid, is entitled to an annual refund of the flat rate of
18 the tax levied by section five of this article for gallons lost
19 through evaporation: *Provided*, That only the owner of the
20 bulk plant that is also the owner of the fuel in the bulk
21 plant may claim this refund for gallons lost through
22 evaporation. The refund is computed at the flat rate of tax
23 levied per gallon under this article on all gallons of motor
24 fuel actually lost due to evaporation, not exceeding one
25 half of one percent of the adjusted total accountable
26 gallons, computed as determined by the commissioner.

27 (d) Every supplier, distributor or producer, retail dealer,
28 exporter or importer is entitled to a refund of the flat rate
29 of the tax levied by section five of this article from this
30 state of the amount resulting from a change of rate
31 decreasing the tax under the provisions of this article on
32 motor fuel on hand and in inventory on the effective date
33 of the rate change, which motor fuel has been included in

34 any previous computation by which the tax levied by this
35 article has been paid.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to subsection
2 (b), section nine of this article shall present to the commis-
3 sioner a petition accompanied by the original or duplicate
4 original sales slip or invoice from the distributor or
5 producer or retail dealer, as the case may be, showing the
6 amount of the purchases, together with evidence of
7 payment thereof, and a statement stating how the motor
8 fuel was used: *Provided*, That sales slips or invoices
9 marked "duplicate" are not acceptable: *Provided, how-*
10 *ever*, That certified copies of sales slips or invoices are
11 acceptable: *Provided further*, That copies of sales slips and
12 invoices may be used with any application for refund made
13 under authority of subdivision (9), subsection (c), section
14 nine of this article when the gasoline is used to operate
15 tractors and gas engines or threshing machines for agricul-
16 tural purposes.

17 (b) Any person claiming a refund pursuant to section
18 thirty of this article shall file a petition in writing with the
19 commissioner. The petition shall be in the form and with
20 supporting records as required by the commissioner and
21 made under the penalty of perjury.

22 (c) The right to receive any refund under the provisions
23 of this section is not assignable and any assignment
24 thereof is void and of no effect. No payment of any refund
25 may be made to any person other than the original person
26 entitled. The commissioner shall cause a refund to be
27 made under the authority of this section only when the
28 claim for refund is filed with the commissioner within the
29 following time periods:

30 (1) A petition for refund under section thirty of this
31 article, other than for evaporation loss, shall be filed with
32 the commissioner within three years from the end of the

33 month in which the tax was erroneously or illegally paid
34 or the gallons were exported or lost by casualty, or in
35 which a change of rate took effect;

36 (2) A petition for refund under section thirty of this
37 article for evaporation loss shall be filed within three years
38 from the end of the year in which the evaporation oc-
39 curred;

40 (3) A petition for refund under subsection (c), section
41 nine of this article shall be filed with the commissioner
42 within six months from the month of purchase or delivery
43 of the motor fuel: *Provided*, That any application for
44 refund made under authority of subdivision (9), subsection
45 (c), section nine of this article when the gasoline is used to
46 operate tractors and gas engines or threshing machines for
47 agricultural purposes shall be filed within twelve months
48 from the month of purchase or delivery of the motor fuel:
49 *Provided, however*, That all persons authorized to claim a
50 refund under the authority of subdivision (12), subsection
51 (c), section nine of this article to claim a refundable
52 exemption shall do so no later than the thirty-first day of
53 August for the purchases of motor fuel made during the
54 preceding fiscal year ending the thirtieth day of June.

55 (d) Any petition for a refund not timely filed is not
56 construed to be or constitute a moral obligation of the
57 state of West Virginia for payment. Every petition for
58 refund is subject to the provisions of section fourteen,
59 article ten of this chapter.

60 (e) The commissioner may make any investigation
61 considered necessary before refunding to a person the tax
62 levied by section five of this article. The commissioner
63 may also subject to audit the records related to a refund of
64 the tax levied by section five of this article.

§11-14C-32. Payment of refund.

1 Whenever it appears to the satisfaction of the commis-
2 sioner that any person is entitled to a refund for taxes paid

3 pursuant to section five of this article, the commissioner
4 shall forthwith certify the amount of the refund.

PART 6. ENFORCEMENT AND ADMINISTRATION.

§11-14C-33. General procedure and administration; crimes and penalties.

1 (a) Each and every provision of the “West Virginia Tax
2 Procedure and Administration Act” set forth in article ten
3 of this chapter applies to the taxes levied by this article,
4 except as otherwise expressly provided in this article, with
5 like effect as if that act were applicable only to the taxes
6 levied by this article and were set forth in extenso in this
7 article.

8 (b) Each and every provision of the “West Virginia Tax
9 Crimes and Penalties Act” set forth in article nine of this
10 chapter applies to the taxes levied by this article with like
11 effect as if that act were applicable only to the taxes levied
12 by this article and were set forth in extenso in this article.

13 (c) To the extent that any provision of this article is in
14 conflict with either article nine or article ten of this
15 chapter, the provision of this article shall control.

§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.

1 (a) A person shall not transport in this state any motor
2 fuel by barge, watercraft, railroad tank car or transport
3 vehicle unless the person has a shipping document for the
4 motor fuel that complies with this section. A terminal
5 operator or operator of a bulk plant shall give a shipping
6 document to the person who operates the barge,
7 watercraft, railroad tank car or transport vehicle into
8 which motor fuel is loaded at the terminal rack or bulk
9 plant rack.

10 (b) The shipping document issued by the terminal
11 operator or operator of a bulk plant shall contain the

12 following information and any other information required
13 by the commissioner:

14 (1) Identification, including address, of the terminal or
15 bulk plant from which the motor fuel was received;

16 (2) Date the motor fuel was loaded;

17 (3) Invoiced gallons loaded;

18 (4) Destination state of the motor fuel, as represented by
19 the purchaser of the motor fuel or the purchaser's agent;

20 (5) In the case of aviation jet fuel, the shipping document
21 shall be marked with the phrase "Aviation Jet Fuel, Not
22 for On-road Use" or a similar phrase;

23 (6) In the case of dyed diesel fuel, the shipping document
24 shall be marked with the phrase "Dyed Diesel Fuel,
25 Nontaxable Use Only, Penalty for Taxable Use" or a
26 similar phrase; and

27 (7) If the document is issued by a terminal operator, the
28 gross gallons loaded and a statement indicating the name
29 of the supplier that is responsible for the tax due on the
30 motor fuel.

31 (c) A terminal operator or bulk plant operator may rely
32 on the representation made by the purchaser of motor fuel
33 or the purchaser's agent concerning the destination state
34 of the motor fuel. A purchaser is liable for any tax due as
35 a result of the purchaser's diversion of motor fuel from the
36 represented destination state.

37 (d) A person to whom a shipping document was issued
38 shall:

39 (1) Carry the shipping document in the means of convey-
40 ance for which it was issued when transporting the motor
41 fuel described;

42 (2) Show the shipping document upon request to any
43 law-enforcement officer, representative of the commis-

44 sioner and any other authorized individual when trans-
45 porting the motor fuel described;

46 (3) Deliver motor fuel to the destination state printed on
47 the shipping document unless the person:

48 (A) Notifies the commissioner before transporting the
49 motor fuel into a state other than the printed destination
50 state that the person has received instructions after the
51 shipping document was issued to deliver the motor fuel to
52 a different destination state;

53 (B) Receives from the commissioner a confirmation
54 number authorizing the diversion; and

55 (C) Writes on the shipping document the change in
56 destination state and the confirmation number for the
57 diversion; and

58 (4) Gives a copy of the shipping document to the person
59 to whom the motor fuel is delivered.

60 (e) The person to whom motor fuel is delivered by barge,
61 watercraft, railroad tank car or transport vehicle shall not
62 accept delivery of the motor fuel if the destination state
63 shown on the shipping document for the motor fuel is a
64 state other than West Virginia: *Provided*, That delivery
65 may be accepted if the destination state is other than West
66 Virginia if the document contains a diversion number
67 authorized by the commissioner. The person to whom the
68 motor fuel is delivered shall examine the shipping docu-
69 ment to determine that West Virginia is the destination
70 state, and shall retain a copy of the shipping document: (1)
71 At the place of business where the motor fuel was deliv-
72 ered for ninety days following the date of delivery; and (2)
73 at the place or another place for at least three years
74 following the date of delivery. The person who accepts
75 delivery of motor fuel in violation of this subsection and
76 any person liable for the tax on the motor fuel pursuant to
77 section five of this article is jointly and severally liable for
78 any tax due on the motor fuel.

79 (f) Any person who transports motor fuel in a barge,
80 watercraft, railroad tank car or transport vehicle without
81 a shipping document or with a false or an incomplete
82 shipping document, or delivers motor fuel to a destination
83 state other than the destination state shown on the ship-
84 ping document, is subject to the following civil penalty.

85 (1) If the motor fuel is transported in a barge, watercraft
86 or transport vehicle, the civil penalty shall be payable by
87 the person in whose name the means of conveyance is
88 registered.

89 (2) If the motor fuel is transported in a railroad tank car,
90 the civil penalty shall be payable by the person responsible
91 for shipping the motor fuel in the railroad tank car.

92 (3) The amount of the civil penalty for a first violation is
93 five thousand dollars.

94 (4) The amount of the civil penalty for each subsequent
95 violation is ten thousand dollars.

96 (5) Civil penalties prescribed under this section are
97 assessed, collected and paid in the same manner as the
98 motor fuel excise tax imposed by this article.

§11-14C-35. Import confirmation number; civil penalty.

1 (a) The commissioner may require an importer who
2 acquires motor fuel for import from a person who is not a
3 supplier or a permissive supplier to obtain an import
4 confirmation number from the commissioner before
5 importing the motor fuel. The importer shall write the
6 import confirmation number on the shipping document
7 issued for the motor fuel. If required by the commissioner,
8 the importer shall obtain a separate import confirmation
9 number for each delivery of motor fuel into West Virginia.

10 (b) An importer who does not obtain an import confirma-
11 tion number when required by this section is subject to the
12 following civil penalty.

13 (1) For the first violation, the amount is five thousand
14 dollars.

15 (2) For each subsequent violation the amount is ten
16 thousand dollars.

17 (c) The civil penalty is payable by the person in whose
18 name the transport vehicle is registered.

19 (d) Civil penalties prescribed under this section are
20 assessed, collected and paid in the same manner as the
21 motor fuel excise tax imposed by this article.

**§11-14C-36. Improper sale or use of untaxed motor fuel; civil
penalty.**

1 (a) Any person who commits any of the following viola-
2 tions is subject to the civil penalty specified in subsection
3 (b) of this section:

4 (1) Sells or stores any dyed diesel fuel for use in a
5 highway vehicle that is licensed or required to be licensed
6 as such, unless that use is allowed under the authority of
7 26 U.S.C. §4082;

8 (2) Willfully alters or attempts to alter the strength or
9 composition of any dye or marker in any dyed diesel fuel;

10 (3) Uses dyed diesel fuel in a highway vehicle unless that
11 use is allowed under the authority of 26 U.S.C. §4082;

12 (4) Acquires, sells or stores any motor fuel for use in a
13 watercraft, aircraft, or highway vehicle that is licensed or
14 required to be licensed unless the tax levied by section five
15 of this article has been paid; or

16 (5) Uses any motor fuel in a watercraft, aircraft, or
17 highway vehicle that is licensed or required to be licensed
18 unless the tax levied by section five of this article has been
19 paid.

20 (b) The amount of the civil penalty for the first two
21 violations of this section in a calendar year, as described

22 in subsection (a) of this section, is ten dollars per gallon of
23 motor fuel based upon the maximum capacity of the motor
24 fuel storage tank, container or storage tank of the highway
25 vehicle, watercraft or aircraft in which the motor fuel is
26 found or one thousand dollars, whichever is greater:
27 *Provided*, That for each subsequent violation in the same
28 calendar year, the penalty is fifteen dollars per gallon
29 based upon the maximum capacity of the motor fuel
30 storage tank, container or storage tank of the highway
31 vehicle, watercraft or aircraft in which the motor fuel is
32 found or two thousand dollars, whichever is greater.

33 (c) Each violation is subject to a separate civil penalty.

34 (d) Civil penalties prescribed under this section shall be
35 assessed, collected and paid in the same manner as the
36 motor fuel tax.

**§11-14C-37. Refusal to allow inspection or taking of fuel sam-
ple; civil penalty.**

1 (a) Any person who refuses to allow an inspection
2 authorized by section forty-seven of this article or to allow
3 the taking of a fuel sample authorized by section forty-
4 seven of this article is subject to a civil penalty of five
5 thousand dollars for each refusal. If the refusal is for a
6 sample to be taken from a vehicle, the person operating the
7 vehicle and the owner of the vehicle are jointly and
8 severally liable for payment of the civil penalty. If the
9 refusal is for a sample to be taken from any other storage
10 tank or container, the owner of the storage tank or con-
11 tainer and the owner of the motor fuel in the storage tank
12 or container, if different from the owner of the storage
13 tank or container, are jointly and severally liable for
14 payment of the civil penalty.

15 (b) Civil penalties prescribed under this section shall be
16 assessed, collected and paid in the same manner as the
17 motor fuel tax.

§11-14C-38. Engaging in business without a license; civil penalty.

1 (a) Any person who engages in any business activity for
2 which a license is required by this article without having
3 first obtained and subsequently retained such a valid
4 license is subject to the following civil penalty.

5 (1) For the first violation the amount is five thousand
6 dollars.

7 (2) For each subsequent violation the amount is ten
8 thousand dollars.

9 (b) Civil penalties prescribed under this section shall be
10 assessed, collected and paid in the same manner as the
11 motor fuel tax.

§11-14C-39. Preventing a person from obtaining a license; civil penalty.

1 (a) Any terminal operator, supplier, or position holder in
2 a terminal who, by use of coercion, threat, intimidation or
3 any other means of interference, intentionally prevents any
4 person from applying for or obtaining a license issued
5 under this article is subject to the following civil penalty.

6 (1) For the first violation the amount is five thousand
7 dollars.

8 (2) For each subsequent violation the amount is ten
9 thousand dollars.

10 (b) Civil penalties prescribed under this section shall be
11 assessed, collected and paid in the same manner as the
12 motor fuel tax.

§11-14C-40. Filing a false return; failure to file return; civil penalty.

1 (a) Any person liable for a tax levied under this article
2 who files a false return, report or document under the
3 provisions of this article with the intent to evade the tax

4 levied by section five of this article is subject to a civil
5 penalty equal to the total amount of tax evaded, or not
6 collected, by the filing of a return, report or document.
7 The civil penalty is in addition to the amount of the tax
8 evaded or not collected.

9 (b) Any person liable for a tax levied under this article
10 who fails to file, even if no tax is due, within thirty days
11 after it is due any return required by this article is subject
12 to a civil penalty of fifty dollars for each month, or part
13 thereof, the return is not filed. The civil penalty is in
14 addition to the amount of tax not correctly returned.

15 (c) Any person required to file a return under this article
16 who fails to file within thirty days after it is due is subject
17 to a civil penalty of fifty dollars for each month, or part
18 thereof, the return is not filed.

19 (d) Civil penalties prescribed under this section shall be
20 assessed, collected and paid in the same manner as the
21 motor fuel tax.

§11-14C-41. Willful commission of prohibited acts; criminal penalties.

1 (a) Any person who willfully commits any of the follow-
2 ing offenses is guilty of a misdemeanor, and upon convic-
3 tion thereof, shall be fined not less than five thousand
4 dollars nor more than twenty-five thousand dollars, or
5 imprisoned in the county or regional jail not more than one
6 year, or both fined and imprisoned:

7 (1) Fails to obtain a license required by this article prior
8 to performing an act for which the license is required;

9 (2) Fails to pay to this state no more than thirty days
10 after the date the tax is due the tax levied by this article;

11 (3) Makes a false statement in an application, return,
12 ticket, invoice, statement, or any other document required
13 under this article;

14 (4) Fails to file no more than thirty days after it is due
15 any return required by this article;

16 (5) Fails to maintain any record required by this article;

17 (6) Makes a false statement in an application for a
18 refund;

19 (7) Refuses to allow the commissioner to examine the
20 person's books and records concerning motor fuel;

21 (8) Fails to make a required disclosure of the correct
22 amount of fuel sold or used in this state;

23 (9) Fails to file a replacement or additional cash bond or
24 continuous surety bond as required under this article;

25 (10) Fails to show or give a shipping document as
26 required under this article;

27 (11) Refuses to allow a licensed distributor, licensed
28 exporter, or licensed importer to defer payment of tax to
29 the licensed supplier or permissive supplier, as required by
30 section twenty of this article;

31 (12) Uses, delivers, or sells any aviation fuel for use or
32 intended for use in highway vehicles or watercraft;

33 (13) Interferes with or refuses to permit seizures autho-
34 rized under section forty-two of this article;

35 (14) Delivers motor fuel from a transport vehicle to the
36 fuel supply tank of a highway vehicle;

37 (15) Dispenses into the supply tank of a highway vehicle,
38 watercraft or aircraft any motor fuel on which tax levied
39 by section five of this article has not been paid;

40 (16) Allows to be dispensed into the supply tank of a
41 highway vehicle, watercraft or aircraft any motor fuel on
42 which tax levied by section five of this article has not been
43 paid;

44 (17) Purchases motor fuel from an unlicensed distributor,
45 unlicensed importer or unlicensed supplier; or

46 (18) Uses twenty-five or less gallons of dyed diesel fuel
47 for a use that the user knows or has reason to know is a
48 taxable use of the motor fuel, or sells twenty-five or less
49 gallons of dyed diesel fuel to a person who the seller knows
50 or has reason to know will use the motor fuel for a taxable
51 purpose.

52 (b) Any person who willfully commits any of the follow-
53 ing offenses with the intent either to evade or circumvent
54 the tax levied by section five of this article or to assist any
55 other person in efforts to evade or circumvent the tax
56 levied by section five of this article is guilty of a felony,
57 and upon conviction thereof, shall be fined not less than
58 twenty-five thousand dollars nor more than fifty thousand
59 dollars, or imprisoned in a state correctional facility not
60 less than one nor more than five years, or both fined and
61 imprisoned:

62 (1) Alters, manipulates, replaces, or in any other manner
63 tampers or interferes with, or causes to be altered, manip-
64 ulated, replaced, tampered or interfered with, a totalizer
65 attached to motor fuel pumps to measure the dispensing of
66 motor fuel;

67 (2) Fails to pay motor fuels taxes and diverts the tax
68 proceeds for other purposes;

69 (3) As a licensee or the agent or representative of a
70 licensee, converts or attempts to convert motor fuel tax
71 proceeds for the use of the licensee or the licensee's agent
72 or representative, with the intent to defraud this state;

73 (4) Collects motor fuel taxes when not authorized or
74 licensed by the commissioner to do so;

75 (5) Imports motor fuel into this state in contravention of
76 this article;

77 (6) Conspires with any other person or persons to engage
78 in an act, plan, or scheme to defraud this state of motor
79 fuels tax proceeds;

80 (7) Uses in excess of twenty-five gallons of any dyed
81 diesel fuel for a use that the user knows or has reason to
82 know is a taxable use of the motor fuel, or sells in excess
83 of twenty-five gallons of any dyed diesel fuel to a person
84 who the seller knows or has reason to know will use the
85 motor fuel for a taxable purpose;

86 (8) Alters or attempts to alter the strength or composition
87 of any dye or marker in any dyed diesel fuel intended to be
88 used for a taxable purpose; or

89 (9) Fails to remit to the commissioner any tax levied
90 pursuant to this article, if the person has added, or repre-
91 sented that he or she has added, the tax to the sales price
92 for the motor fuel and has collected the amount of the tax.

93 (c) Each offense is subject to a separate criminal penalty.

**§11-14C-42. Unlawful importing, transportation, delivery,
storage or sale of motor fuel; sale to enforce
assessment.**

1 (a) Upon the discovery of any motor fuel illegally
2 imported into, or illegally transported, delivered, stored or
3 sold in, this state, the commissioner shall order the tank or
4 other storage receptacle in which the motor fuel is located
5 to be seized and locked or sealed until the tax, interest,
6 penalties and additions levied under this article are
7 assessed and paid.

8 (b) If the assessment for the tax is not paid within thirty
9 days, the commissioner is hereby authorized, in addition
10 to the other remedies authorized in this article, to sell the
11 motor fuel and use the proceeds of the sale to satisfy the
12 assessment due, with any funds that exceed the assessment
13 and costs of the sale being returned to the owner of the
14 motor fuel: *Provided*, That the sale of seized property be

15 conducted in accordance with the requirements estab-
16 lished in article ten of this chapter.

17 (c) All motor fuel and any property, tangible or intangi-
18 ble, which is found upon the person or in any vehicle
19 which the person is using, including the vehicle itself, to
20 aid the person in the transportation or sale of illegally
21 transported, delivered, stored, sold, imported or acquired
22 motor fuel, and any property found in the immediate
23 vicinity of any place where the illegally transported,
24 delivered, stored, sold, imported or acquired motor fuel is
25 located, including motor vehicles, tanks, and other storage
26 devices, used to aid in the illegal transportation or sale of
27 motor fuel, is considered contraband and shall be forfeited
28 to this state.

§11-14C-43. Record-keeping requirements.

1 (a) Each person required to be licensed under section ten
2 of this article and each bulk user and retailer shall keep
3 and maintain all records pertaining to motor fuel received,
4 produced, manufactured, refined, compounded, used, sold
5 or delivered, together with delivery tickets, invoices, bills
6 of lading, and other pertinent records and papers as
7 required by the commissioner for the reasonable adminis-
8 tration of this article.

9 (b) The records required by this section to be retained
10 shall be kept and maintained for a period to include the
11 commissioner's current calendar year and the previous
12 three calendar years.

§11-14C-44. Inspection of records.

1 (a) The commissioner may, during the usual business
2 hours of the day, examine records, books, papers, storage
3 tanks and any other equipment of any person required to
4 maintain records for the purpose of ascertaining the
5 quantity of motor fuel received, produced, manufactured,
6 refilled, compounded, used, sold, shipped, or delivered, to
7 verify the truth and accuracy of any statement, report or

8 return or to ascertain whether or not the tax levied by this
9 article has been paid.

10 (b) If a person required to maintain records is open for
11 business during hours which the commissioner may not
12 consider usual business hours, the commissioner may
13 examine the person's books and records during the per-
14 son's normal business hours, which are those hours when
15 the person is open for business at any of the person's
16 places of business. If the person does not maintain the
17 books and records on the premises, the commissioner may
18 inspect the books and records where they are maintained,
19 irrespective of the working hours at the location, as long
20 as one of the person's places of business maintains hours
21 at the time of day during which the commissioner asserts
22 his or her inspection powers.

23 (c) While performing inspections authorized by section
24 forty-five of this article, the commissioner may also
25 inspect the books and records kept to determine any motor
26 fuel tax liability under this article.

§11-14C-45. Authority to inspect.

1 (a) The commissioner, upon presenting appropriate
2 credentials to the owner, operator, or agent in charge, is
3 authorized to enter any place and to conduct inspections
4 in accordance with this section. Inspections shall be
5 performed in a reasonable manner and at times that are
6 reasonable under the circumstances, taking into consider-
7 ation the normal business hours of the place to be in-
8 spected.

9 (b) Inspections may be conducted at any place where
10 taxable motor fuel or motor fuel dyes or markers are, or
11 may be, produced, altered, or stored, or at any site where
12 evidence of production, alteration, or storage is discovered.

13 (c) The commissioner may physically inspect, examine,
14 and otherwise search any tank, reservoir, or other con-
15 tainer that can or may be used for the production, storage,

16 or transportation of motor fuel, motor fuel dyes or mark-
17 ers. Inspection may also be made of any equipment used
18 for, or in connection with, the production, storage, or
19 transportation of motor fuel, motor fuel dyes or markers,
20 including equipment used for the dyeing or marking of
21 motor fuel.

22 (d) The commissioner may stop, inspect and issue
23 citations to operators of motor vehicles for violations of
24 this article at sites where motor fuel is, or may be, pro-
25 duced, stored, or loaded into or consumed by motor
26 vehicles. The commissioner may enter into agreements
27 with other agencies of this state to provide assistance in
28 stopping and inspecting motor vehicles for violations of
29 this article.

30 (e) Inspections may occur at any terminal, motor fuel
31 storage facility that is not a terminal, retail motor fuel
32 facility, highway rest stop, and designated inspection site.

33 (f) The commissioner may, on the premises or at a
34 designated inspection site, take and remove samples of
35 motor fuel in reasonable quantities as necessary to deter-
36 mine the composition of the motor fuel.

37 (g) Nothing contained in this section is construed to
38 prohibit the issuance of a citation for the violation of the
39 provisions of this article on the open highway or other
40 than the spot check areas where the violation of this
41 article is discovered when the motor vehicle is lawfully
42 stopped for any other criminal violation of the laws of this
43 state.

§11-14C-46. Marking requirements for dyed diesel fuel storage facilities.

1 (a) A person who is a retailer of dyed diesel fuel or who
2 stores dyed diesel fuel for use by that person or another
3 person shall mark each visible storage tank and each
4 dispensing device with the phrase "Dyed Diesel Fuel,
5 Nontaxable Use Only, Penalty for Taxable Use," or a

6 similar phrase that clearly indicates that the diesel fuel is
7 not to be used to operate a highway vehicle.

8 (b) The marking requirements of this section shall not
9 apply to a storage facility that contains fuel used only in
10 a heating, crop-drying, or manufacturing process, and is
11 installed in a manner that makes use of the fuel for any
12 other purpose improbable.

§11-14C-47. Disposition of tax collected.

1 (a) The commissioner, for the administration, auditing
2 and enforcement of this article, is authorized to retain and
3 expend one half of one percent of the tax collected pursu-
4 ant to the provisions of this article: *Provided*, That in any
5 fiscal year in which the tax collected pursuant to the
6 provisions of this article exceed three hundred million
7 dollars, the commissioner is authorized to retain and
8 expend for the administration, auditing and enforcement
9 of this article an additional one per cent of the tax in
10 excess of the three hundred million dollars that is col-
11 lected.

12 (b) All remaining tax collected under the provisions of
13 this article after deducting the amount of any refunds
14 lawfully paid shall be paid into the state road fund and
15 used only for the purpose of construction, reconstruction,
16 maintenance and repair of highways, matching of federal
17 moneys available for highway purposes and payment of
18 the interest and sinking fund obligations on state bonds
19 issued for highway purposes.

ARTICLE 15. CONSUMERS SALES TAX.

**§11-15-18. Tax on gasoline and special fuel; section repealed
January 1, 2004.**

1 (a) *General.* – All sales of gasoline or special fuel by
2 distributors or importers, except when to another distribu-
3 tor for resale in this state, when delivery is made in this
4 state, is subject to the tax imposed by this article, notwith-

5 standing any provision of this article to the contrary.
6 Sales of gasoline or special fuel by a person who paid the
7 tax imposed by this article on his or her purchases of fuel,
8 shall not thereafter be again taxed under the provisions of
9 this article. This section is construed so that all gallons of
10 gasoline or special fuel sold and delivered, or delivered, in
11 this state are taxed one time.

12 (b) *Measure of tax.* – The measure of tax on sales of
13 gasoline or special fuel by distributors or importers is the
14 average wholesale price as defined and determined in
15 subsection (c), section thirteen, article fifteen-a of this
16 chapter. For purposes of maintaining revenue for high-
17 ways, and recognizing that the tax imposed by this article
18 is generally imposed on gross proceeds from sales to
19 ultimate consumers, whereas the tax on gasoline and
20 special fuel is imposed on the average wholesale price of
21 gasoline and special fuel; in no case, for the purposes of
22 taxation under this article, shall the average wholesale
23 price be considered to be less than ninety-seven cents per
24 gallon of gasoline or special fuel for all gallons of gasoline
25 and special fuel sold during the reporting period, notwith-
26 standing any provision of this article to the contrary.

27 (c) *Definitions.* – For purposes of this section:

28 (1) “Aircraft” includes any airplane or helicopter that
29 lands in this state on a regular or routine basis, and
30 transports passengers or freight.

31 (2) “Aircraft fuel” means gasoline and special fuel
32 suitable for use in any aircraft engine.

33 (3) “Distributor” means and includes every person:

34 (A) Who produces, manufactures, processes or otherwise
35 alters gasoline or special fuel in this state for use or for
36 sale;

37 (B) Who engages in this state in the sale of gasoline or
38 special fuel for the purpose of resale or for distribution; or

39 (C) Who receives gasoline or special fuel into the cargo
40 tank of a tank wagon in this state for use or sale by the
41 person.

42 (4) "Gasoline" means and includes any product com-
43 monly or commercially known as gasoline, regardless of
44 classification, suitable for use as fuel in an internal
45 combustion engine, except special fuel as defined in this
46 section, including any product obtained by blending
47 together any one or more products, with or without other
48 products, if the resultant product is capable of the same
49 use.

50 (5) "Importer" means and includes every person, resident
51 or nonresident, other than a distributor, who receives
52 gasoline or special fuel outside this state for use, sale or
53 consumption within this state, but shall not include the
54 fuel in the supply tank of a motor vehicle that is not a
55 motor carrier.

56 (6) "Motor carrier" means and includes: (A) Any passen-
57 ger vehicle which has seats for more than nine passengers
58 in addition to the driver, any road tractor, tractor truck or
59 any truck having more than two axles, which is operated
60 or caused to be operated, by any person on any highway in
61 this state using gasoline or special fuel; and (B) any
62 aircraft, barge or other watercraft or locomotive trans-
63 porting passengers or freight in or through this state.

64 (7) "Motor vehicle" means and includes automobiles,
65 motor carriers, motor trucks, motorcycles and all other
66 vehicles or equipment, engines or machines which are
67 operated or propelled by combustion of gasoline or special
68 fuel.

69 (8) "Retail dealer of gasoline or special fuel" means and
70 includes any person not a distributor, who sells gasoline or
71 special fuel from a fixed location in this state to users.

72 (9) "Special fuel" means and includes any gas or liquid,
73 other than gasoline, used or suitable for use as fuel in an

74 internal combustion engine. The term "special fuel"
75 includes products commonly known as natural or
76 casinghead gasoline and includes gasoline and special fuel
77 for heating any private residential dwelling, building or
78 other premises; but shall not include any petroleum
79 product or chemical compound such as alcohol, industrial
80 solvent, heavy furnace oil, lubricant, etc., not commonly
81 used nor practicably suited for use as fuel in an internal
82 combustion engine.

83 (10) "Supply tank" means any receptacle on a motor
84 vehicle from which gasoline or special fuel is supplied for
85 the propulsion of the vehicle or equipment located thereon,
86 exclusive of a cargo tank. A supply tank includes a
87 separate compartment of a cargo tank used as a supply
88 tank, and any auxiliary tank or receptacle of any kind or
89 cargo tank, from which gasoline or special fuel is supplied
90 for the propulsion of the vehicle, whether or not the tank
91 or receptacle is directly connected to the fuel supply line
92 of the vehicle.

93 (11) "Tank wagon" means and includes any motor
94 vehicle or vessel with a cargo tank or cargo tanks ordi-
95 narily used for making deliveries of gasoline or special
96 fuel, or both, for sale or use.

97 (12) "Taxpayer" means any person liable for the tax
98 imposed by this article.

99 (13) "User" means any person who purchases gasoline or
100 special fuel for use or consumption.

101 (d) *Tax due.* – The tax on sales of gasoline and special
102 fuel shall be paid by each taxpayer on or before the
103 twenty-fifth day of each month, by check, bank draft,
104 certified check or money order, payable to the tax commis-
105 sioner for the amount of tax due for the preceding month,
106 notwithstanding any provision of this article to the
107 contrary.

108 (e) *Monthly return.* – On or before the twenty-fifth day
109 of each month, the taxpayer shall make and file a return
110 for the preceding month showing the information as the
111 tax commissioner requires, notwithstanding any provision
112 of this article to the contrary.

113 (f) *Compliance.* – To facilitate ease of administration
114 and compliance by taxpayers, the tax commissioner may
115 require distributors, importers and other persons liable for
116 the tax imposed by this article on sales of gasoline or
117 special fuel, to file a combined return and make a com-
118 bined payment of the tax due under this article on sales of
119 gasoline and special fuel, and the tax due under article
120 fourteen of this chapter, on gasoline and special fuel. In
121 order to encourage use of a combined return each month
122 and the making of a single payment each month for both
123 taxes, the due date of the return and tax due under article
124 fourteen of this chapter is hereby changed from the last
125 day of each month to the twenty-fifth day of each month,
126 notwithstanding any provision in article fourteen of this
127 chapter to the contrary.

128 (g) *Dedication of tax to highways.* – All tax collected
129 under the provisions of this section after deducting the
130 amount of any refunds lawfully paid, shall be deposited in
131 the “road fund” in the state treasurer’s office, and used
132 only for the purpose of construction, reconstruction,
133 maintenance and repair of highways, and payment of
134 principal and interest on state bonds issued for highway
135 purposes: *Provided*, That notwithstanding any provision
136 to the contrary, any tax collected on the sale of aircraft
137 fuel shall be deposited in the state treasurer’s office and
138 transferred to the state aeronautical commission to be used
139 for the purpose of matching federal funds available for the
140 reconstruction, maintenance and repair of public airports
141 and airport runways.

142 (h) *Construction.* – This section is not construed as
143 taxing any sale of gasoline or special fuel which this state

144 is prohibited from taxing under the constitution of this
145 state or the constitution or laws of the United States.

146 (i) *Effective date.* –

147 This section shall have no force or effect after the thirty-
148 first day of December, two thousand three: *Provided*, That
149 tax liabilities arising for periods ending before the first
150 day of January, two thousand four, shall be determined,
151 paid, administered, assessed and collected as if this section
152 had not been repealed, and the rights and duties of the
153 taxpayer and the state of West Virginia are fully and
154 completely preserved.

§11-15-18b. Tax on motor fuel effective January 1, 2004.

1 (a) *General.* – Effective the first day of January, two
2 thousand four, all sales of motor fuel subject to the flat
3 rate of the tax imposed by section five, article fourteen-c
4 of this chapter is subject to the tax imposed by this article
5 which shall comprise the variable component of the tax
6 imposed by section five, article fourteen-c of this chapter,
7 and be collected and remitted at the time the tax imposed
8 by section five, article fourteen-c of this chapter is remit-
9 ted. Sales of motor fuel upon which the tax imposed by
10 this article has been paid shall not thereafter be again
11 taxed under the provisions of this article. This section is
12 construed so that all gallons of motor fuel sold and
13 delivered, or delivered, in this state are taxed one time.

14 (b) *Measure of tax.* – The measure of tax imposed by this
15 article on sales of motor fuel is the average wholesale price
16 as defined and determined in section five, article fourteen-
17 c of this chapter. For purposes of maintaining revenue for
18 highways, and recognizing that the tax imposed by this
19 article is generally imposed on gross proceeds from sales
20 to ultimate consumers, whereas the tax on motor fuel
21 herein is imposed on the average wholesale price of the
22 motor fuel; in no case, for the purposes of taxation under
23 this article, shall the average wholesale price be deter-

24 mined to be less than ninety-seven cents per gallon of
25 motor fuel for all gallons of motor fuel sold during the
26 reporting period, notwithstanding any provision of this
27 article to the contrary.

28 (c) *Definitions.* — For purposes of this article, the terms
29 “gasoline” and “special fuel” are defined as provided in
30 section two, article fourteen-c of this chapter. Other terms
31 used in this section have the same meaning as when used
32 in a similar context in article fourteen-c of the chapter.

33 (d) *Tax return and tax due.* — The tax imposed by this
34 article on sales of motor fuel shall be paid by each tax-
35 payer on or before the last day of the calendar month by
36 check, bank draft, certified check or money order payable
37 to the tax commissioner for the amount of tax due for the
38 preceding month, notwithstanding any provision of this
39 article to the contrary: *Provided*, That the commissioner
40 may require all or certain taxpayers to file tax returns and
41 payments electronically. The return required by the
42 commissioner shall accompany the payment of tax:
43 *Provided, however*, That if no tax is due, the return
44 required by the commissioner shall be completed and filed
45 on or before the last day of the month.

46 (e) *Compliance.* — To facilitate ease of administration
47 and compliance by taxpayers, the tax commissioner shall
48 require persons liable for the tax imposed by this article
49 on sales of motor fuel to file a combined return and make
50 a combined payment of the tax due under this article on
51 sales of motor fuel, and the tax due under article fourteen-
52 c of this chapter, on motor fuel. In order to encourage use
53 of a combined return each month and the making of a
54 single payment each month for both taxes, the due date of
55 the return and tax due under article fourteen-c of this
56 chapter is the last day of each month, notwithstanding any
57 provision in article fourteen-c of this chapter to the
58 contrary.

59 (f) *Dedication of tax to highways.* – All tax collected
60 under the provisions of this section after deducting the
61 amount of any refunds lawfully paid, shall be deposited in
62 the “road fund” in the state treasurer’s office, and used
63 only for the purpose of construction, reconstruction,
64 maintenance and repair of highways, and payment of
65 principal and interest on state bonds issued for highway
66 purposes: *Provided*, That notwithstanding any provision
67 to the contrary, any tax collected on the sale of aviation
68 fuel shall be deposited in the state treasurer’s office and
69 transferred to the state aeronautical commission to be used
70 for the purpose of matching federal funds available for the
71 reconstruction, maintenance and repair of public airports
72 and airport runways.

73 (g) *Construction.* – This section is not construed as taxing
74 any sale of motor fuel which this state is prohibited from
75 taxing under the constitution of this state or the constitu-
76 tion or laws of the United States.

77 (h) *Effective date.* – The provisions of this section take
78 effect on the first day of January, two thousand four.

ARTICLE 15A. USE TAX.

**§11-15A-13. Tax on gasoline and special fuel; section repealed
January 1, 2004.**

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
5 of this article: *Provided*, That the amount of tax due under
6 section two shall in no event be less than five percent of
7 the average wholesale price of gasoline and special fuel
8 and with the price to, in no case, be determined to be less
9 than ninety-seven cents per gallon for all gallons of
10 gasoline and special fuel taxable under section two of this
11 article.

12 (2) *On purchases out-of-state.* – An excise tax is hereby
13 imposed on the use or consumption in this state of gasoline
14 or special fuel purchased outside this state at the rate of
15 five percent of the average wholesale price of gasoline or
16 special fuel, as determined under subsection (c), notwith-
17 standing any provision of this article to the contrary:
18 *Provided*, That gasoline or special fuel contained in the
19 supply tank of a motor vehicle that is not a motor carrier
20 is not taxable, except that gasoline or special fuel im-
21 ported in the supply tank or auxiliary tank of construction
22 equipment, mining equipment, track maintenance equip-
23 ment or other similar equipment, is taxed in the same
24 manner as that in the supply tank of a motor carrier.

25 (b) *Definitions.* – Terms used in this section have the
26 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
33 day of January, annually, thereafter, determine the
34 average wholesale price of gasoline and special fuel for
35 each annual period, on the basis of sales data gathered for
36 the preceding period of the first day of July through the
37 thirty-first day of October. Notification of the average
38 wholesale price of gasoline and special fuel shall be given
39 by the tax commissioner at least thirty days in advance of
40 each first day of January, annual period, by filing notice of
41 the average wholesale price in the state register, and by
42 other means as the tax commissioner considers 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
46 this section.

47 (2) The “average wholesale price” means 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
51 diesel fuel, as determined by the tax commissioner from
52 information furnished by distributors of gasoline or
53 special fuel in this state, or any other information regard-
54 ing wholesale selling prices as the tax commissioner may
55 gather, or a combination of information: *Provided*, That in
56 no event shall the average wholesale price be determined
57 to be less than ninety-seven cents per gallon of gasoline or
58 special fuel.

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

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

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

79 (1) The total amount of gasoline or special fuel used in
80 the operation of the motor carrier within this state is that
81 proportion of the total amount of gasoline and special fuel
82 used in any motor carrier’s operations within and without

83 this state, that the total number of miles traveled within
84 this state bears to the total number of miles traveled
85 within and without this state.

86 (2) A motor carrier shall first determine the gross amount
87 of tax due under this section on the average wholesale
88 value, determined under subsection (c) of this section, of
89 all gasoline and special fuel used in the operation of the
90 motor carrier within this state during the preceding
91 quarter, as if all gasoline and special fuel had been pur-
92 chased outside this state.

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

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

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

115 (f) *Compliance.* – To facilitate ease of administration
116 and compliance by taxpayers, the tax commissioner may
117 require motor carriers liable for the taxes imposed by this

118 article on the use of gasoline or special fuel in the opera-
119 tion of motor carriers within this state, and the tax
120 imposed by article fourteen-a of this chapter on gallons of
121 fuel, to file a combined return and make a combined
122 payment of the tax due under this article and article
123 fourteen-a of this chapter on the fuel. In order to encour-
124 age use of a combined return and the making of a single
125 payment each quarter for both taxes, the due date of the
126 return and tax due under article fourteen-a of this chapter
127 is hereby changed from the last day of January, April, July
128 and October of each calendar year, to the twenty-fifth day
129 of each of those months, notwithstanding any provisions
130 in article fourteen-a of this chapter to the contrary.

131 (g) *Dedication of tax to highways.* – All tax collected
132 under the provisions of this section after deducting the
133 amount of any refunds lawfully paid shall be deposited in
134 the “road fund” in the state treasurer’s office, and used
135 only for the purpose of construction, reconstruction,
136 maintenance and repair of highways, and payment of
137 principal and interest on state bonds issued for highway
138 purposes.

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

144 (i) *Effective date.* –

145 This section shall have no force or effect after the thirty-
146 first day of December, two thousand three: *Provided*, That
147 tax liabilities arising for periods ending before the first
148 day of January, two thousand four, shall be determined,
149 paid, administered, assessed and collected as if this section
150 had not been repealed, and the rights and duties of the
151 taxpayer and the state of West Virginia are fully and
152 completely preserved.

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

§11-15A-13a. Tax on motor fuel effective January 1, 2004.

1 (a) *Imposition of tax.* –
 2 (1) *On deliveries in this state.* — Effective the first day
 3 of January, two thousand four, all motor fuel furnished or
 4 delivered within this state which is subject to the flat rate
 5 of the tax imposed by section five, article fourteen-c of this
 6 chapter is subject to the tax imposed by this article which
 7 shall comprise the variable component of the tax imposed
 8 by the said section five, article fourteen-c, and shall be
 9 collected and remitted at the time the tax imposed by the
 10 said section five, article fourteen-c is remitted: *Provided,*
 11 That the amount of tax due under this article shall in no
 12 event be less than five percent of the average wholesale

13 price of motor fuel as determined in accordance with said
14 section five, article fourteen-c.

15 (2) *On purchases out-of-state subject to motor fuel tax.*
16 – Effective the first day of January, two thousand four, an
17 excise tax is hereby imposed on the importation into this
18 state of motor fuel purchased outside this state when the
19 purchase is subject to the flat rate of the tax imposed by
20 section five, article fourteen-c of this chapter: *Provided,*
21 That the rate of the tax due under this article shall in no
22 event be less than five percent of the average wholesale
23 price of the motor fuel, as determined in accordance with
24 said section five, article fourteen-c: *Provided, however,*
25 That the motor fuel subject to the tax imposed by this
26 article shall comprise the variable component of the tax
27 imposed by the said section five, article fourteen-c, and
28 shall be collected and remitted by the seller at the time the
29 seller remits the tax imposed by the said section five,
30 article fourteen-c.

31 (3) *On other purchases out-of-state.* – An excise tax is
32 hereby imposed on the use or consumption in this state of
33 motor fuel purchased outside this state at the rate of five
34 percent of the average wholesale price of the motor fuel, as
35 determined in accordance with section five, article
36 fourteen-c of this chapter: *Provided,* That motor fuel
37 contained in the fuel supply tank of a motor vehicle that is
38 not a motor carrier shall not be taxable, except that motor
39 fuel imported in the fuel supply tank or auxiliary tank of
40 construction equipment, mining equipment, track mainte-
41 nance equipment or other similar equipment, shall be
42 taxed in the same manner as that in the fuel supply tank
43 of a motor carrier.

44 (b) *Definitions.* – For purposes of this article, the terms
45 “gasoline” and “special fuel” are defined as provided in
46 section two, article fourteen-c of this chapter. Other terms
47 used in this section have the same meaning as when used
48 in a similar context in article fourteen-c of this chapter.

49 (c) *Computation of tax due from motor carriers.* – Every
50 person who operates or causes to be operated a motor
51 carrier in this state shall pay the tax imposed by this
52 section on the average wholesale price of all gallons of
53 motor fuel used in the operation of any motor carrier
54 within this state, under the following rules:

55 (1) The total amount of motor fuel used in the operation
56 of the motor carrier within this state is that proportion of
57 the total amount of motor fuel used in any motor carrier's
58 operations within and without this state, that the total
59 number of miles traveled within this state bears to the
60 total number of miles traveled within and without this
61 state.

62 (2) A motor carrier shall first determine the gross amount
63 of tax due under this section on the average wholesale
64 value, determined under section five, article fourteen-c of
65 this chapter, of all motor fuel used in the operation of the
66 motor carrier within this state during the preceding
67 quarter, as if all gasoline and special fuel had been pur-
68 chased outside this state.

69 (3) Next, the taxpayer shall determine the total tax paid
70 under article fifteen of this chapter on all motor fuel
71 purchased in this state for use in the operation of the
72 motor carrier.

73 (4) The difference between (2) and (3) is the amount of
74 tax due under this article when (2) is greater than (3), or
75 the amount to be refunded or credited to the motor carrier
76 when (3) is greater than (2), which refund or credit is
77 allowed in the same manner and under the same condi-
78 tions as a refund or credit is allowed for the tax imposed
79 by article fourteen-a of this chapter.

80 (d) *Return and payment of tax.* – Tax due under this
81 article on the uses or consumption in this state of motor
82 fuel shall be paid by each taxpayer on or before the
83 twenty-fifth day of January, April, July and October of

84 each year, notwithstanding any provision of this article to
85 the contrary, by check, bank draft, certified check or
86 money order, payable to the tax commissioner, for the
87 amount of tax due for the preceding quarter: *Provided*,
88 That the tax due under this article that comprises the
89 variable component of the tax due under article fourteen-c
90 of this chapter is due on the last day of the month. Every
91 taxpayer shall make and file with his or her remittance, a
92 return showing the information the tax commissioner
93 requires.

94 (e) *Compliance*. – To facilitate ease of administration
95 and compliance by taxpayers, the tax commissioner shall
96 require motor carriers liable for the taxes imposed by this
97 article on the use of motor fuel in the operation of motor
98 carriers within this state, and the tax imposed by article
99 fourteen-a of this chapter on such gallons of motor fuel, to
100 file a combined return and make a combined payment of
101 the tax due under this article and article fourteen-a of this
102 chapter on the fuel. In order to encourage use of a com-
103 bined return and the making of a single payment each
104 quarter for both taxes, the due date of the return and tax
105 due under article fourteen-a of this chapter is the last day
106 of January, April, July and October of each calendar year.

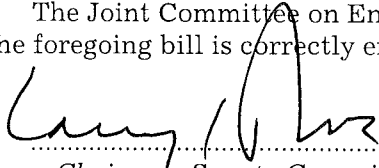
107 (f) *Dedication of tax to highways*. – All tax collected
108 under the provisions of this section after deducting the
109 amount of any refunds lawfully paid shall be deposited in
110 the “road fund” in the state treasurer’s office, and used
111 only for the purpose of construction, reconstruction,
112 maintenance and repair of highways, and payment of
113 principal and interest on state bonds issued for highway
114 purposes.

115 (g) *Construction*. – The tax imposed by this article on
116 the use of motor fuel in this state is not construed as
117 taxing any motor fuel which the state is prohibited from
118 taxing under the constitution of this state or the constitu-
119 tion or laws of the United States.

120 (h) *Effective date.* – The provisions of this section take
121 effect the first day of January, two thousand four.

Enr. Com. Sub. For S. B. No. 496] 104

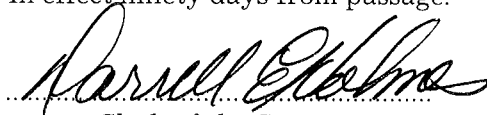
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

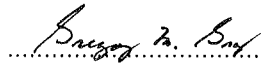

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Chairman Senate Committee

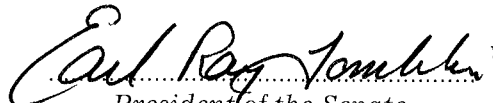

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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.

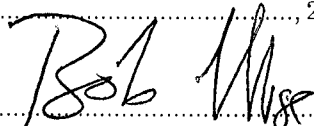

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2003.


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Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10 am