WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 496

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

PASSED March 8, 2003

In Effect 90 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fuel excise tax with motor fuel excise tax as of specified date, after which gasoline and special fuel excise tax is repealed; defining certain motor carrier road tax terms; requiring motor carrier road tax to be equal to the motor fuel excise tax; changing frequency for filing motor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 taxes imposed by this chapter: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter; (2) the business registration tax imposed by article twelve of this chapter; (3) the minimum severance tax on coal imposed by article twelve-b of this chapter; (4) the corporate license tax imposed by article twelve-c of this chapter; (5) the business and occupation tax imposed by article thirteen of this chapter; (6) the severance tax imposed by article thirteen-a of this chapter; (7) the telecommunications tax imposed by article thirteen-b of this chapter; (8) the gasoline and special fuels excise tax imposed by article fourteen of this chapter; (9) the motor fuel excise tax imposed by article fourteen-c of this chapter; (10) the motor carrier road tax imposed by article fourteen-a of this chapter; (11) the interstate fuel tax agreement authorized by article fourteen-b of this chapter; (12) the consumers sales and service tax imposed by article fifteen of this chapter; (13) the use tax imposed by article fifteen-a of this chapter; (14) the tobacco products excise tax imposed by article seventeen of this chapter; (15) the soft drinks tax imposed by article nineteen of this chapter; (16) the personal income tax imposed
by article twenty-one of this chapter; (17) the business
franchise tax imposed by article twenty-three of this
chapter; (18) the corporation net income tax imposed by
article twenty-four of this chapter; and (19) the health care
provider tax imposed by article twenty-seven of this
chapter.

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

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

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

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

(a) The provisions of this article apply to the inheritance
and transfer taxes, the estate tax, and interstate compro-
mise and arbitration of inheritance and death taxes, the
business registration tax, the annual tax on incomes of
certain carriers, the minimum severance tax on coal, the
Corporate license tax, the business and occupation tax, the
severance tax, the telecommunications tax, the interstate
fuel tax, the consumers sales and service tax, the use tax,
the tobacco products excise tax, the soft drinks tax, the
personal income tax, the business franchise tax, the
corporation net income tax, the gasoline and special fuel excise tax, the motor fuel excise tax, the motor carrier road tax, the health care provider tax, and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f of this article for timely filing and payment to the tax commissioner or state tax department are the same methods utilized for timely filing and payment with the sheriff.

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

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

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

(a) Refunds or credits of overpayments. – In the case of overpayment of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer’s liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.
(b) **Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax.** – Any person who seeks a refund or credit of gasoline and special fuel excise taxes under the provisions of section ten, eleven or twelve, article fourteen of this chapter, section nine or eleven, article fourteen-a of this chapter, or of motor fuel excise tax under section nine, article fourteen-c of this chapter shall file his or her claim for refund or credit in accordance with the provisions of the applicable sections. The ninety-day time period for determination of claims for refund or credit provided in subsection (d) of this section does not apply to these claims for refund or credit: Provided, That claims for refund or credit of the motor fuel excise tax under section nine, article fourteen-c, of this chapter are subject to the ninety-day time period provided in subsection (d) of this section: Provided, however, That claims for refund or credit of the motor fuel excise tax under section nine, article fourteen-c of this chapter made by the United States government or unit or agency thereof, any municipal government or any agency thereof, or any county board of education made pursuant to subdivisions one, two, three, four, five and six, subsection (c), section nine, article fourteen-c of this chapter will be subject to a thirty-day time period.

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

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

(1) If the taxpayer is not satisfied with the tax commissioner’s determination of taxpayer’s claim for refund or credit, or if the tax commissioner has not determined the taxpayer’s claim within ninety days after the claim was
filed, or six months in the case of claims for refund or credit of the taxes imposed by articles twenty-one, twenty-three and twenty-four of this chapter, after the filing thereof, the taxpayer may file, with the tax commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of taxpayer's claim: Provided, however, That after the thirty-first day of December, two thousand two, the taxpayer shall file the petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter.

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

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

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

(f) Decision of the court. – Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.
(g) **Refund made or credit established.** – The tax commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The auditor shall issue his or her warrant on the treasurer for any refund requested under this subsection payable to the taxpayer entitled to the refund, and the treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid: *Provided,* That refunds of personal income tax may also be paid out of the fund established pursuant to section ninety-three, article twenty-one of this chapter.

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

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

(j) **Applicability of this section.** – The provisions of this section apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.
Erroneous refund or credit. – If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within five years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

Limitation on claims for refund or credit. –

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

Extensions of time for filing claim by agreement. –

The tax commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

Special rule where agreement to extend time for making an assessment. – Notwithstanding the provisions
of subdivisions (1) and (2) of this subsection, if an agree-
ment is made under the provisions of section fifteen of this
article extending the time period in which an assessment
of tax can be made, then the period for filing a claim for
refund or credit for overpayment of the same tax made
during the periods subject to assessment under the exten-
sion agreement are also extended for the period of the
extension agreement plus ninety days.

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

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

(6) Exception for gasoline and special fuel excise tax,
motor fuel excise tax and motor carrier road tax. – This
subsection does not apply to refunds or credits of gasoline
and special fuel excise tax, motor carrier road tax, or
motor fuel excise tax sought under the provisions of article
fourteen, fourteen-a or fourteen-c of this chapter.
ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-31. Repeal of article.

Each and every provision of this article is repealed for all tax periods beginning on and after the first day of January, two thousand four: Provided, That tax liabilities arising for taxable periods ending before the first day of January, two thousand four, are determined, paid, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of the taxpayer and the state of West Virginia are fully and completely preserved.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.


For purposes of this article:

(1) “Commissioner” or “tax commissioner” means the tax commissioner of the state of West Virginia or his or her duly authorized agent.

(2) “Gallon” means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.

(3) “Gasoline” means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined: Provided, That effective the first day of January, two thousand four, “gasoline” shall have the same meaning as in article fourteen-c of this chapter.

(4) “Highway” means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit thereof or the federal government or any of its agencies.
(5) "Identification marker" means the decal issued by the commissioner for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the state.

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

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

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

(9) "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated any motor carrier.

(10) "Person" means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.
(11) "Pool operation" means any operation whereby two or more taxpayers combine to operate or cause to be operated a motor carrier or motor carriers upon any highway in this state.

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

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

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

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

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

(17) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.
(18) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

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

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

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

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

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

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

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

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

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

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

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

(f) In addition to the tax commissioner's powers set forth in sections five-a and five-b, article ten of this chapter, and as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner has the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and the court shall thereupon issue a subpoena duces tecum to the party to appear before the
§11-14A-9. Credits against tax.

1 Every taxpayer subject to the road tax herein imposed is entitled to a credit on the tax equivalent to the amount of tax per gallon of gasoline or special fuel imposed by article fourteen of this chapter on all gasoline or special fuel purchased by the taxpayer for fuel in each motor carrier which it operates or causes to be operated within this state, and upon which gasoline or special fuel the tax imposed by the laws of this state has been paid: Provided, That the credit is not allowed for any gasoline or special fuel taxes for which any taxpayer has applied or received a refund of gasoline or special fuel tax under article fourteen of this chapter: Provided, however, That effective the first day of January, two thousand four, every taxpayer subject to the road tax herein imposed is entitled to a credit against the tax equivalent to the amount of the flat rate of tax per gallon of motor fuel imposed by article fourteen-c of this chapter on all motor fuel purchased by the taxpayer and used as motor fuel in motor carriers which it operates or causes to be operated within this state, and upon which the motor fuel tax imposed by the laws of this state has been paid: Provided further, That no credit is allowed for any motor fuel taxes for which the taxpayer has applied or received a refund of motor fuel tax under article fourteen-c of this chapter. Evidence of the payment of the tax in the form as required by the commissioner shall be furnished by the taxpayer claiming the credit allowed in this section. When the amount of the credit provided for in this section exceeds the amount of the tax for which the taxpayer is liable in the same quarter, the excess shall, upon written request by the taxpayer, be allowed as a credit on the tax for which the taxpayer would be otherwise liable for any of the four succeeding quarters.
§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article and article fourteen of this chapter, the amount of the credit accrued for gallons of gasoline or special fuel purchased in this state but consumed outside of this state, if the taxpayer by duly filed claim requests the commissioner to issue a refund and if the commissioner is satisfied that the taxpayer is entitled to the refund and that the taxpayer has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, That effective the first day of January, two thousand four, the refunds authorized in this section shall be made from the funds collected under the provisions of this article and from the flat rate of tax imposed under section five, article fourteen-c of this chapter: Provided, however, That the commissioner shall not approve a claim for refund when the claim for a refund is filed after thirteen months from the close of the quarter in which the tax was paid or the credit, as provided for in section nine of this article, was allowed: Provided further, That the refund shall not be made until after audit of the claimant's records by the commissioner or until after a continuous surety bond or cash bond has been furnished by the claimant, as hereinafter provided, in an amount fixed by the commissioner, conditioned to pay all road taxes due hereunder: And provided further, That the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on gasoline or special fuel used as fuel in this state as provided by article fourteen of this chapter: And provided further, That effective the first day of January, two thousand four, the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on motor fuel used in this state as provided by article fourteen-c of this chapter. The right to receive any refund under the provisions of this article is not assignable.
and any attempt at assignment thereof is void and of no
effect. The claim for refund or credit shall also be subject
to the provisions of section fourteen, article ten of this
chapter.

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

(b) The surety must be authorized to engage in business
within this state. The cash bond or the continuous surety
bond is conditioned upon faithful compliance with the
provisions of this article, including the filing of the returns
and payment of all tax prescribed by this article. The cash
bond or the continuous surety bond shall be approved by
the commissioner as to sufficiency and form, and shall
indemnify the state against any loss arising from the
failure of the taxpayer to pay for any cause whatever the
motor carrier road tax or the motor fuel excise tax im-
posed by article fourteen-c of this chapter. Any surety on
a continuous surety bond furnished hereunder shall be
relieved, released and discharged from all liability accru-
ing on the bond after the expiration of sixty days from the
date the surety shall have lodged, by certified mail, with
the commissioner a written request to be discharged.
Discharge from a continuous surety bond shall not relieve,
release or discharge the surety from liability already
accrued, or which shall accrue before the expiration of the
sixty-day period. Whenever any surety seeks discharge as
provided in this section, it is the duty of the principal of
the bond to supply the commissioner with another contin-
uous surety bond or a cash bond prior to the expiration of
the original bond. Failure to provide such other bond
results in no refund being paid until after completion of an
audit of the taxpayer's records as provided in subsection
(a) of this section and the commissioner may cancel any
registration card and identification marker previously
issued to the person.

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

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.


(a) "Commercial motor vehicle": (1) As used with respect
to the international registration plan, has the meaning the
term "apportionable vehicle" has under that plan; and (2)
as used with respect to the international fuel tax agree-
ment, has the meaning the term "qualified motor vehicle"
has under that agreement.
(b) “Fuel use tax” means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

c) “Gasoline” has the same meaning as the term is defined in article fourteen-c of this chapter.

d) “International fuel tax agreement” means the international agreement for the collection and distribution of fuel use taxes paid by motor carriers, developed under the auspices of the national governors’ association.

e) “International registration plan” means the interstate agreement for the apportionment of vehicle registration fees paid by motor carriers developed by the American association of motor vehicle administrators.

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

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

(h) “State” means any of the forty-eight contiguous states and the District of Columbia, and any other jurisdiction which imposes a motor fuel use tax and is a 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.

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

(b) All taxes levied under this article, or imposed under any other article of this chapter but collected under this article, are imposed upon the ultimate consumer but are precollected as prescribed in this article. The levies and
assessments imposed on licensees as provided in this article are imposed on them as agents of this state for the precollection of the tax. The taxes levied under this article shall be collected and paid at those times, in the manner, and by those persons specified in this article.

§11-14C-2. Definitions.

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

(1) “Agricultural purposes” means the activities of:

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

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

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

(2) “Aircraft” includes any airplane or helicopter.

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

(4) “Article” or “this article” means article fourteen-c, chapter eleven of this code.

(5) “Assessment” means a written determination by the commissioner of the amount of taxes owed by a taxpayer.
(6) "Aviation fuel" means aviation gasoline or aviation jet fuel.

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

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

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

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

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

(12) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.
(13) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

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

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

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

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

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

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

(16) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, a pipeline, a terminal, or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.
(17) "Carrier" means any operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

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

(19) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business.

(20) "Commissioner" or "tax commissioner" means the West Virginia state tax commissioner, or his or her delegate.

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

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

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

(24) "Denaturants" means and includes gasoline, natural gasoline, gasoline components, or toxic or noxious materials added to motor fuel grade ethanol to make it unsuit-
27  able for beverage use, but not unsuitable for automotive
use.

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

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

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

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

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

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

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

(32) "End seller" means the person who sells motor fuel
to the ultimate user of the motor fuel.
(33) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory, or foreign country.

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

(35) "Fuel" means motor fuel.

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

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

(38) "Fuel supply tank" means any receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(39) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches by volume.

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

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

(42) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c)(3) that can be blended for use in a motor fuel. However, the term does not include any substance that will be
ultimately used for consumer nonmotor fuel use and is sold
or removed in drum quantities of fifty-five gallons or less
at the time of the removal or sale.

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

(44) “Governmental entity” means this state or any
political subdivision thereof or the United States or its
commissioners, agencies and instrumentalities.

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

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

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

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

(49) “Importer” means a person that imports motor fuel
into this state. The seller is the importer for motor fuel
delivered into this state from outside of this state by or for
the seller, and the purchaser is the importer for motor fuel
delivered into this state from outside of this state by or for
the purchaser.
(50) "Import verification number" means the number assigned by the commissioner with respect to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

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

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

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

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

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

(56) "Motor carrier" means any vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

(57) "Motor fuel" means gasoline, blended fuel, aviation fuel and any special fuel.
(58) "Motor fuel transporter" means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

(59) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

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

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

(62) "Person" means any individual; firm; cooperative; association; corporation; limited liability corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including, but not limited to, this state, any other state, and any agency, commission, institution, political subdivision or instrumentality of this state or any other state.
“Position holder” means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

“Principal” means:

(A) If a partnership, all its partners;

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

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

(D) An individual.

“Rack” means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel, or bulk plant into a transport vehicle, railroad tank car, or other means of transfer that is outside the bulk transfer/terminal system.

“Railroad locomotive” means any diesel-powered equipment or machinery that rides on railroad rails, and includes a switching engine.

“Receive” means any acquisition of ownership or possession of motor fuel.

“Refiner” means any person who owns, operates or otherwise controls a refinery.

“Refinery” means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

“Removal” means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a
transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

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

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

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

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

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

(B) Registered under section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently also be a position holder in motor fuel in another state; or
(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

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

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

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

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

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

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

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

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

(82) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or
permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement, and:

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

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

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

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

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

§11-14C-3. Rules; forms.

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

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

(a) The commissioner may enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, the exchange of information relating to taxes administered by the commissioner pursuant to this article, and providing information relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by any person of motor fuel.
(b) The commissioner may divulge tax information to the commissioner of the division of highways: Provided, That the information disclosure requirements of section five-d, article ten of this chapter are satisfied.

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

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

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

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

(b) Determination of average wholesale price. –

(1) To simplify determining the average wholesale price of all motor fuel, the tax commissioner shall, effective with
the period beginning the first day of the month of the
effective date of this section and each first day of January
thereafter, determine the average wholesale price of motor
fuel for each annual period on the basis of sales data
gathered for the preceding period of the first day of July
through the thirty-first day of October. Notification of the
average wholesale price of motor fuel shall be given by the
tax commissioner at least thirty days in advance of each
first day of January by filing notice of the average whole-
sale price in the state register, and by any other means as
the tax commissioner considers reasonable: Provided, That
notice of the average wholesale price of motor fuel for the
first period shall be timely given if filed in the state
register on the effective date of this section.

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

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

(4) In any administrative or court proceeding brought to
challenge the average wholesale price of motor fuel as
determined by the tax commissioner, his or her determina-
tion is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, and upon which the tax levied by this section has not been paid. For the purposes of this section, “close of the business day” means the time at which the last transaction has occurred for that day. The floorstocks tax is payable by the person in possession of the motor fuel on the first day of January, two thousand four. The amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this section multiplied by the gallons in storage as of the close of the business day preceding the first day of January, two thousand four.

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

(A) Take an inventory at the close of the business day preceding the first day of January, two thousand four, to determine the gallons in storage for purposes of determining the floorstocks tax;

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

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

(2) In the event the tax due is paid to the commissioner on or before the thirty-first day of January, two thousand four, the person remitting the tax may deduct from their remittance five percent of the tax liability due.
(3) In the event the tax due is paid to the commissioner after the first day of June, two thousand four, the person remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax liability due.

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

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

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

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

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

(a) The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, other than by a bulk transfer, is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this
state and is payable by the person importing the motor
fuel unless otherwise specified in this section.

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

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

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

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

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

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

e) The tax imposed pursuant to section five of this
article at the point that blended motor fuel is made in
West Virginia outside the bulk transfer/terminal system is
payable by the blender. The number of gallons of blended
motor fuel on which the tax is payable is the difference, if
any, between the number of gallons of blended motor fuel
made and the number of gallons of previously taxed motor fuel used to make the blended motor fuel.

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

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

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

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

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

(2) The removal of motor fuel that is not dyed and marked in accordance with Internal Revenue Service requirements, if the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the motor fuel is dyed and marked in accordance with the Internal Revenue Service requirements.

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

(a) There is hereby annually levied a tax at the rate specified by section five of this article on taxable unaccounted for motor fuel losses at a terminal in this state. “Taxable unaccounted for motor fuel losses” means the number of net gallons of unaccounted for motor fuel losses that exceed one half of one percent of the number of net
gallons removed from the terminal during the year by a bulk transfer or at the terminal rack. “Unaccounted for motor fuel losses” means the difference between: (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year; and (2) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel losses which have been approved by the commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted for motor fuel losses.

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

§11-14C-8. Backup tax; liability.

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

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

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

(3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor
fuel is made or allowed on the basis that the motor fuel was used for an off-highway purpose.

(b) The operator of a highway vehicle that uses untaxed or refunded motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the motor fuel is owned by or leased to a motor carrier, the operator of the highway vehicle and the motor carrier are jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the operator of the highway vehicle and the end seller are jointly and severally liable for the tax.

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

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

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

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

(2) Sales of aircraft fuel;

(3) All sales of dyed special fuel; and

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

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

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

1. The United States or any agency thereof;
2. Any county government or unit or agency thereof;
3. Any municipal government or any agency thereof;
4. Any county boards of education;
5. Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;
6. Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: *Provided,* That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter
of authority from the tax commissioner certifying his or her right to the exemption: Provided, however, That in order for this exemption to apply, motor fuel sold under subdivisions (1) through (6) of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority and purchased for delivery in bulk quantities of five hundred gallons or more;

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

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

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

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

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

(12) All gallons of motor fuel used as lubricants, ingredients or components of any manufactured product or compound;

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

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

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for
internal combustion engines not operated upon highways of this state;

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

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

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

(d) Refundable exemptions for variable rate. – Any of the following persons may claim an exemption to the variable rate of the tax levied by section five of this article on the
purchase and use of motor fuel by first paying the tax
levied by this article and then applying to the tax commis-

sioner for a refund.

(1) The United States or any agency thereof;

(2) This state and its institutions;

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

(4) Any municipal government or any agency thereof;

(5) Any county boards of education;

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

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

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

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

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

PART 3. MOTOR FUEL LICENSING.

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

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

(1) A supplier which includes a refiner;
(2) A permissive supplier;
(3) An importer;
(4) An exporter;
(5) A terminal operator;
(6) A blender;
(7) A motor fuel transporter; or
(8) A distributor.

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

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

(a) To obtain a license under this article, an applicant shall file an application with the commissioner on a form provided by the commissioner. The application shall include the applicant's name, address, federal employer
identification number, and any other information required
by the commissioner.

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

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

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

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

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

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

(d) An applicant for a license as an importer or distribu-
tor shall list on the application each state from which the
applicant intends to import motor fuel and, if required by
a state listed, shall be licensed or registered for motor fuel
tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on its application for an importer's license or a distributor's license shall provide the commissioner written notice of the action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

(e) An applicant for a license as an exporter shall designate an agent located in West Virginia for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the applicant intends to export motor fuel received in West Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on its application for an exporter's license or a distributor's license shall provide the commissioner written notice of the action before exporting motor fuel to that state. The notice shall include the information required on the license application.

(f) An applicant for a license as a motor fuel transporter shall list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to transport motor fuel from or to a state not listed on its application for a motor fuel transporter's license shall
provide the commissioner written notice of the action
before transporting motor fuel from or to that state. The
notice shall include the information that is required on the
license application.

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

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

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

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

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

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

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

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

(c) A licensed permissive supplier acknowledges that this
state imposes the requirements listed in subsection (b) of
this section under its general police power and submits to
the jurisdiction of this state only for purposes related to
the administration of this article.

§11-14C-13. Bond requirements.

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

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

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

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

(4) For an importer license for a person, other than a
supplier, that imports by transport vehicle or another
means of transfer outside the bulk transfer/terminal
system motor fuel removed from a terminal located in
another state in which: (A) The state from which the motor
fuel is imported does not require the seller of the motor
fuel to collect a motorfuel excise tax on the removal either
at that state's rate or the rate of the destination state; and
(B) the seller of the motor fuel is not a permissive supplier,
the amount shall be no less than one hundred thousand
dollars nor greater than two million dollars;

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

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

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

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

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

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

(12) An applicant for a licensed activity listed under subdivisions (1) through (10) of this subsection may in lieu of posting either the cash bond or continuous surety bond required by this subsection (a) provide proof of financial responsibility acceptable to the commissioner: Provided, That the proof of financial responsibility shall demonstrate the absence of circumstances indicating risk with
the collection of taxes from the applicant: *Provided*, however, That the following shall constitute proof of financial responsibility:

(A) Proof of five million dollars net worth shall constitute evidence of financial responsibility in lieu of posting the required bond;

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

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

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

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

(b) The surety must be authorized to engage in business within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the
provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form, and shall indemnify the state against any loss arising from the failure of the taxpayer to pay for any cause whatever the motor fuel excise tax levied by this article.

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

(d) Any taxpayer that has furnished a cash bond hereunder shall be relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner a written request to be discharged and the amount of the cash bond refunded: Provided, That the commissioner may retain all or part of the cash bond until such time as the commissioner may perform an audit of the taxpayer's business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any taxpayer seeks discharge as herein provided, it is the duty of
the taxpayer to provide the commissioner with another
cash bond or a continuous surety bond prior to the expira-
tion of the original cash bond. Failure to provide either a
new cash bond or a continuous surety bond shall result in
the commissioner canceling each license and registration
previously issued to the taxpayer.

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

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

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

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

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

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

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

§11-14C-15. Issuance of license.

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

§11-14C-16. Notice of discontinuance, sale or transfer of busi-
ness.
(a) A licensee who discontinues the business for which was issued a license authorized by this article shall notify the commissioner in writing within fifteen days of discontinuance and shall surrender the license to the commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the commissioner.

(b) All taxes for which the licensee is liable under this article but are not yet due are due on the date of the discontinuance. If the licensee has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred is jointly and severally liable for the amount of any tax owed by the licensee to this state on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the licensee.

§11-14C-17. License cancellation.

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

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

(2) Failure, refusal, or neglect of the licensee to file a report or information required by this article;
(3) Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as required by this article;

(4) Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in West Virginia;

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

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

(7) Failure, refusal, or neglect of a licensee to comply with any other provision of this article or any rule promulgated pursuant to this article; or

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

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

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

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

§11-14C-18. Records and lists of license applicants and licensees.
(a) The Commissioner shall maintain a record of:

1. All applicants for a license under this article;
2. All persons to whom a license has been issued under this article; and
3. All persons holding a current license issued under this article, by license category.

(b) The commissioner shall provide a list of licensees to any person who requests a copy. The list shall state the name, business address, and, if available, telephone number of each licensee on the list and may include other 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.

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

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

1. A terminal operator;
2. A supplier;
3. An importer;
4. A blender;
(5) A person incurring liability under section eight of this article for the backup tax on motor fuel;

(6) A permissive supplier;

(7) A motor fuel transporter; and

(8) An exporter.

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

(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, of the motor fuel the tax levied by section five of this article and due on motor fuel removed at a terminal rack: Provided, That at the election of a licensed distributor or licensed importer, the supplier or permissive supplier shall not require the licensed distributor or licensed importer to pay tax levied by section five of this article until two days before the date the supplier or permissive supplier is required to pay the tax to this state: Provided, however, that an election under this subsection is subject to the condition that remittances by the licensed distributor or licensed importer of all tax due to the supplier or permissive supplier shall be paid by electronic funds transfer two days before the date of the remittance by the supplier or permissive supplier to the commissioner. An election under this subsection may be terminated by the supplier or permissive supplier if the licensed distributor or licensed importer does not make timely payments to the supplier or permissive supplier as required by this subsection.

(b) A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the motor fuel. The date by which an exporter shall remit tax is governed by the law of the destination state of the exported motor fuel: Provided, That if the laws of the destination state prohibit the collection of the destination state’s tax, the tax levied by section five of this article shall be collected.
(c) All tax payments received by a supplier or permissive supplier shall be held in trust by the supplier or permissive supplier until the supplier or permissive supplier remits the tax payment to this state or to another state, and the supplier or permissive supplier shall constitute the trustee for the tax payments.

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

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

(a) If the commissioner cancels the license of a distributor or importer, the commissioner shall notify all suppliers and permissive suppliers of the cancellation. If the commissioner issues a license to a distributor or importer whose license was previously canceled, the commissioner shall notify all suppliers and permissive suppliers of the issuance.

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

(c) If the commissioner cancels the license of a supplier or permissive supplier, the commissioner shall notify all licensed distributors, exporters and importers of the cancellation. If the commissioner issues a license to a supplier or permissive supplier whose license was previ-
ously canceled, the commissioner shall notify all licensed distributors, exporters, and importers of the issuance.

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

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

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

The licensed distributor, exporter or importer is not liable for tax due on motor fuel purchased from a previously unlicensed supplier or permissive supplier after the licensee receives notice from the commissioner that the commissioner has issued another license to the supplier or permissive supplier.

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

The return of each supplier and permissive supplier shall list all of the following information and any other information required by the commissioner:

(a) The number of gross gallons of tax-paid motor fuel
received by the supplier or permissive supplier during the
month, sorted by type of motor fuel, seller, point of origin,
destination state, and carrier;

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

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

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

e) The number of gross gallons of motor fuel the supplier
or permissive supplier sold during the month to a govern-
mental entity whose use of motor fuel is exempt from the
tax, sorted by type of motor fuel, carrier, and governmen-
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.

(a) The supplier or permissive supplier may deduct from
the next monthly return those tax payments that were not
remitted for the previous month to the supplier or permis-
sive supplier by any licensed distributor or any licensed
importer who removed motor fuel on which the tax is due
from the supplier's or permissive supplier's terminal. The
licensed supplier or permissive supplier is eligible to take
this deduction if the licensed supplier or permissive
supplier notifies the state within ten business days after a
return is due of any licensed distributor or importer who
did not pay to the supplier or permissive supplier the tax
due by the time the supplier or permissive supplier filed
the monthly return: Provided, That when a licensed
distributor or licensed importer fails to remit the tax to the
licensed supplier or permissive supplier, the licensed
supplier or permissive supplier is not eligible to take the
deduction for any tax payments that accrue after the ten
business day period referenced above for delinquent
distributors or importers. The notice shall be transmitted
to the state in the form required by the commissioner. A
supplier or permissive supplier is not liable for the tax a
licensee owes but fails to pay. If a licensee pays to a
supplier or permissive supplier the tax owed, but the
payment occurs after the supplier or permissive supplier
has deducted the amount of the tax on a return, the
supplier or permissive supplier shall remit the payment to
the commissioner with the next monthly return filed
subsequent to receipt of the tax.

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

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

§11-14C-24. Duties of supplier or permissive supplier as trustee.
(a) All tax payments due to this state that are received by a supplier or permissive supplier shall be held by the supplier or permissive supplier as trustee in trust for this state, and the supplier or permissive supplier has a fiduciary duty to remit to the commissioner the amount of tax received. A supplier or permissive supplier is liable for the taxes paid to it.

(b) A supplier or permissive supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received motor fuel from the supplier or permissive supplier during a reporting period of the number of taxable gallons received. The supplier or permissive supplier shall give this notice after the end of each reporting period and before the licensee is required to remit the amount of tax due on the motor fuel.

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

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

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

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

(b) The number of gross gallons of imported motor fuel acquired from a supplier or permissive supplier who collected the tax due this state on the motor fuel;
(2) The number of gross gallons of imported motor fuel acquired from a person who did not collect the tax due this state on the motor fuel, listed by type of motor fuel, source state, person, and terminal;

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

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

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

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

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

(1) The beginning and ending inventory which pertains
(2) The number of gross gallons of motor fuel received in inventory at the terminal during the month and each position holder for the motor fuel;

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

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

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

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

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

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

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

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

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

(1) The number of invoiced gallons of motor fuel exported during the month;

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

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

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

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

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

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

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

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

§11-14C-31. Claiming refunds.

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

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

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

(1) A petition for refund under section thirty of this
article, other than for evaporation loss, shall be filed with
the commissioner within three years from the end of the
(2) A petition for refund under section thirty of this article for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

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

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

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

§11-14C-32. Payment of refund.

Whenever it appears to the satisfaction of the commissioner that any person is entitled to a refund for taxes paid
pursuant to section five of this article, the commissioner shall forthwith certify the amount of the refund.

PART 6. ENFORCEMENT AND ADMINISTRATION.

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

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

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

(c) To the extent that any provision of this article is in conflict with either article nine or article ten of this 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.

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

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the
following information and any other information required by the commissioner:

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

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

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

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

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

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

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

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

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commis-
sioner and any other authorized individual when trans-
porting the motor fuel described;

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

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

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

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

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

(e) The person to whom motor fuel is delivered by barge,
watercraft, railroad tank car or transport vehicle shall not
accept delivery of the motor fuel if the destination state
shown on the shipping document for the motor fuel is a
state other than West Virginia: Provided, That delivery
may be accepted if the destination state is other than West
Virginia if the document contains a diversion number
authorized by the commissioner. The person to whom the
motor fuel is delivered shall examine the shipping docu-
ment to determine that West Virginia is the destination
state, and shall retain a copy of the shipping document: (1)
At the place of business where the motor fuel was deliv-
ered for ninety days following the date of delivery; and (2)
at the place or another place for at least three years
following the date of delivery. The person who accepts
delivery of motor fuel in violation of this subsection and
any person liable for the tax on the motor fuel pursuant to
section five of this article is jointly and severally liable for
any tax due on the motor fuel.
(f) Any person who transports motor fuel in a barge, watercraft, railroad tank car or transport vehicle without a shipping document or with a false or an incomplete shipping document, or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

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

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

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

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

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

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

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

(b) An importer who does not obtain an import confirmation number when required by this section is subject to the following civil penalty.
13 (1) For the first violation, the amount is five thousand dollars.
14 (2) For each subsequent violation the amount is ten thousand dollars.
15 (c) The civil penalty is payable by the person in whose name the transport vehicle is registered.
16 (d) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the 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 violations is subject to the civil penalty specified in subsection (b) of this section:
2 (1) Sells or stores any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed as such, unless that use is allowed under the authority of 26 U.S.C. §4082;
3 (2) Willfully alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel;
4 (3) Uses dyed diesel fuel in a highway vehicle unless that use is allowed under the authority of 26 U.S.C. §4082;
5 (4) Acquires, sells or stores any motor fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid; or
6 (5) Uses any motor fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid.

19 (b) The amount of the civil penalty for the first two violations of this section in a calendar year, as described
in subsection (a) of this section, is ten dollars per gallon of motor fuel based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or one thousand dollars, whichever is greater:

Provided, That for each subsequent violation in the same calendar year, the penalty is fifteen dollars per gallon based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or two thousand dollars, whichever is greater.

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

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

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

(a) Any person who refuses to allow an inspection authorized by section forty-seven of this article or to allow the taking of a fuel sample authorized by section forty-seven of this article is subject to a civil penalty of five thousand dollars for each refusal. If the refusal is for a sample to be taken from a vehicle, the person operating the vehicle and the owner of the vehicle are jointly and severally liable for payment of the civil penalty. If the refusal is for a sample to be taken from any other storage tank or container, the owner of the storage tank or container and the owner of the motor fuel in the storage tank or container, if different from the owner of the storage tank or container, are jointly and severally liable for payment of the civil penalty.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.
§11-14C-38. Engaging in business without a license; civil penalty.

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

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

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

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

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

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

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

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

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

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

(a) Any person liable for a tax levied under this article who files a false return, report or document under the provisions of this article with the intent to evade the tax
The civil penalty is in addition to the amount of the tax evaded or not collected.  

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

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

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

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

(a) Any person who willfully commits any of the following offenses is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned:  

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

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

(3) Makes a false statement in an application, return, ticket, invoice, statement, or any other document required under this article;
(4) Fails to file no more than thirty days after it is due any return required by this article;

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

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

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

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

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

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

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

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

(13) Interferes with or refuses to permit seizures authorized under section forty-two of this article;

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

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

(16) Allows to be dispensed into the supply tank of a highway vehicle, watercraft or aircraft any motor fuel on which tax levied by section five of this article has not been paid;
(17) Purchases motor fuel from an unlicensed distributor, unlicensed importer or unlicensed supplier; or

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

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

(1) Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to motor fuel pumps to measure the dispensing of motor fuel;

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

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

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

(5) Imports motor fuel into this state in contravention of this article;
(6) Conspires with any other person or persons to engage in an act, plan, or scheme to defraud this state of motor fuels tax proceeds;

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

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

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

(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.

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

(b) If the assessment for the tax is not paid within thirty days, the commissioner is hereby authorized, in addition to the other remedies authorized in this article, to sell the motor fuel and use the proceeds of the sale to satisfy the assessment due, with any funds that exceed the assessment and costs of the sale being returned to the owner of the motor fuel: Provided, That the sale of seized property be
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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
return or to ascertain whether or not the tax levied by this article has been paid.

(b) If a person required to maintain records is open for business during hours which the commissioner may not consider usual business hours, the commissioner may examine the person's books and records during the person's normal business hours, which are those hours when the person is open for business at any of the person's places of business. If the person does not maintain the books and records on the premises, the commissioner may inspect the books and records where they are maintained, irrespective of the working hours at the location, as long as one of the person's places of business maintains hours at the time of day during which the commissioner asserts his or her inspection powers.

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

§11-14C-45. Authority to inspect.

(a) The commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter any place and to conduct inspections in accordance with this section. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be inspected.

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

(c) The commissioner may physically inspect, examine, and otherwise search any tank, reservoir, or other container that can or may be used for the production, storage,
or transportation of motor fuel, motor fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection with, the production, storage, or transportation of motor fuel, motor fuel dyes or markers, including equipment used for the dyeing or marking of motor fuel.

(d) The commissioner may stop, inspect and issue citations to operators of motor vehicles for violations of this article at sites where motor fuel is, or may be, produced, stored, or loaded into or consumed by motor vehicles. The commissioner may enter into agreements with other agencies of this state to provide assistance in stopping and inspecting motor vehicles for violations of this article.

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

(f) The commissioner may, on the premises or at a designated inspection site, take and remove samples of motor fuel in reasonable quantities as necessary to determine the composition of the motor fuel.

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

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

(a) A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that person or another person shall mark each visible storage tank and each dispensing device with the phrase “Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use,” or a
similar phrase that clearly indicates that the diesel fuel is not to be used to operate a highway vehicle.

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

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

(a) The commissioner, for the administration, auditing and enforcement of this article, is authorized to retain and expend one half of one percent of the tax collected pursuant to the provisions of this article: Provided, That in any fiscal year in which the tax collected pursuant to the provisions of this article exceed three hundred million dollars, the commissioner is authorized to retain and expend for the administration, auditing and enforcement of this article an additional one per cent of the tax in excess of the three hundred million dollars that is collected.

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

ARTICLE 15. CONSUMERS SALES TAX.


(a) General. – All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, is subject to the tax imposed by this article, notwith-
standing any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his or her purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. – The measure of tax on sales of gasoline or special fuel by distributors or importers is the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel is imposed on the average wholesale price of gasoline and special fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be considered to be less than ninety-seven cents per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

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

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

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

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

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

(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or
(C) Who receives gasoline or special fuel into the cargo
tank of a tank wagon in this state for use or sale by the
person.

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

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

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

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

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

(9) "Special fuel" means and includes any gas or liquid,
other than gasoline, used or suitable for use as fuel in an
internal combustion engine. The term “special fuel” includes products commonly known as natural or casinghead gasoline and includes gasoline and special fuel for heating any private residential dwelling, building or other premises; but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(10) “Supply tank” means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) “Tank wagon” means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel, or both, for sale or use.

(12) “Taxpayer” means any person liable for the tax imposed by this article.

(13) “User” means any person who purchases gasoline or special fuel for use or consumption.

(d) Tax due. – The tax on sales of gasoline and special fuel shall be paid by each taxpayer on or before the twenty-fifth day of each month, by check, bank draft, certified check or money order, payable to the tax commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary.
(e) Monthly return. – On or before the twenty-fifth day of each month, the taxpayer shall make and file a return for the preceding month showing the information as the tax commissioner requires, notwithstanding any provision of this article to the contrary.

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

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

(h) Construction. – This section is not construed as taxing any sale of gasoline or special fuel which this state
is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(i) Effective date. –

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


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

(b) Measure of tax. – The measure of tax imposed by this article on sales of motor fuel is the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be deter-
mined to be less than ninety-seven cents per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

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

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

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel, and the tax due under article fourteen-c of this chapter, on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter is the last day of each month, notwithstanding any provision in article fourteen-c of this chapter to the contrary.
(f) *Dedication of tax to highways.* – All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the “road fund” in the state treasurer’s office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: *Provided,* That notwithstanding any provision to the contrary, any tax collected on the sale of aviation fuel shall be deposited in the state treasurer’s office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

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

(h) *Effective date.* – The provisions of this section take 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.**

  (a) *Imposition of tax.* –

  (1) *On deliveries in this state.* – Gasoline or special fuel furnished or delivered within this state to consumers or users is subject to tax at the rate imposed by section two of this article: *Provided,* That the amount of tax due under section two shall in no event be less than five percent of the average wholesale price of gasoline and special fuel and with the price to, in no case, be determined to be less than ninety-seven cents per gallon for all gallons of gasoline and special fuel taxable under section two of this article.
(2) On purchases out-of-state. – An excise tax is hereby imposed on the use or consumption in this state of gasoline or special fuel purchased outside this state at the rate of five percent of the average wholesale price of gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: Provided, That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier is not taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the supply tank of a motor carrier.

(b) Definitions. – Terms used in this section have the same meaning as when used in a comparable context in section eighteen, article fifteen of this chapter.

(c) Determination of average wholesale price. –

(1) To simplify determining the average wholesale price of all gasoline and special fuel, the tax commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January, annually, thereafter, determine the average wholesale price of gasoline and special fuel for each annual period, on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of gasoline and special fuel shall be given by the tax commissioner at least thirty days in advance of each first day of January, annual period, by filing notice of the average wholesale price in the state register, and by other means as the tax commissioner considers reasonable: Provided, That notice of the average wholesale price of gasoline and special fuel for the first period shall be timely given if filed in the state register on the effective date of this section.
(2) The "average wholesale price" means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of gasoline or diesel fuel, as determined by the tax commissioner from information furnished by distributors of gasoline or special fuel in this state, or any other information regarding wholesale selling prices as the tax commissioner may gather, or a combination of information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of gasoline or special fuel.

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

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

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

(1) The total amount of gasoline or special fuel used in the operation of the motor carrier within this state is that proportion of the total amount of gasoline and special fuel used in any motor carrier's operations within and without
this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

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

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

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

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

(f) Compliance. – To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require motor carriers liable for the taxes imposed by this
article on the use of gasoline or special fuel in the opera-
tion of motor carriers within this state, and the tax
imposed by article fourteen-a of this chapter on gallons of
fuel, to file a combined return and make a combined
payment of the tax due under this article and article
fourteen-a of this chapter on the fuel. In order to encour-
age use of a combined return and the making of a single
payment each quarter for both taxes, the due date of the
return and tax due under article fourteen-a of this chapter
is hereby changed from the last day of January, April, July
and October of each calendar year, to the twenty-fifth day
of each of those months, notwithstanding any provisions
in article fourteen-a of this chapter to the contrary.

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

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

(i) **Effective date.** —

This section shall have no force or effect after the thirty-
first day of December, two thousand three: **Provided,** That
tax liabilities arising for periods ending before the first
day of January, two thousand four, shall be determined,
paid, administered, assessed and collected as if this section
had not been repealed, and the rights and duties of the
taxpayer and the state of West Virginia are fully and
completely preserved.
\(\text{(j) Validation.} \) — Inasmuch as there is currently litigation challenging the lawfulness of this section in the situation where a motor carrier purchases gasoline or special fuel in another state paying to that other state a sales tax thereon and then consumes that gasoline or special fuel in its operation of a motor carrier in this state, without being statutorily allowed a credit for the sales tax against the tax imposed by this article with respect to the gallonage of tax paid fuel consumed in this state; and inasmuch as section ten-a of this article reestablishes the allowance of a credit and makes the allowance effectively retroactive and applicable to gasoline and special fuel consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, the purported constitutional infirmity is cured. To avoid any question about whether this section was in effect subsequent to the thirtieth day of June, one thousand nine hundred eighty-five, this section is reenacted and expressly made retroactive to the first day of July, one thousand nine hundred eighty-five, and the tax commissioner shall not refund or credit any tax previously paid under this section due to a claim that the tax was not lawfully imposed subsequent to the thirtieth day of June, one thousand nine hundred eighty-five.


\(1 \) (a) \textbf{Imposition of tax.} —

\(2 \) (1) \textit{On deliveries in this state.} — Effective the first day of January, two thousand four, all motor fuel furnished or delivered within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by the said section five, article fourteen-c, and shall be collected and remitted at the time the tax imposed by the said section five, article fourteen-c is remitted: \textit{Provided,} That the amount of tax due under this article shall in no event be less than five percent of the average wholesale
price of motor fuel as determined in accordance with said section five, article fourteen-c.

(2) *On purchases out-of-state subject to motor fuel tax.*

- Effective the first day of January, two thousand four, an excise tax is hereby imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter: *Provided,*

  That the rate of the tax due under this article shall in no event be less than five percent of the average wholesale price of the motor fuel, as determined in accordance with said section five, article fourteen-c: *Provided, however,*

  That the motor fuel subject to the tax imposed by this article shall comprise the variable component of the tax imposed by the said section five, article fourteen-c, and shall be collected and remitted by the seller at the time the seller remits the tax imposed by the said section five, article fourteen-c.

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

(b) *Definitions.* – For purposes of this article, the terms “gasoline” and “special fuel” are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in article fourteen-c of this chapter.
(c) Computation of tax due from motor carriers. — Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons of motor fuel used in the operation of any motor carrier within this state, under the following rules:

1. The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

2. A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter, of all motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

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

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

(d) Return and payment of tax. — Tax due under this article on the uses or consumption in this state of motor fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of
each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the tax commissioner, for the amount of tax due for the preceding quarter: Provided, That the tax due under this article that comprises the variable component of the tax due under article fourteen-c of this chapter is due on the last day of the month. Every taxpayer shall make and file with his or her remittance, a return showing the information the tax commissioner requires.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner shall require motor carriers liable for the taxes imposed by this article on the use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year.

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

(g) Construction. — The tax imposed by this article on the use of motor fuel in this state is not construed as taxing any motor fuel which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.
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120 (h) Effective date. – The provisions of this section take
121 effect the first day of January, two thousand four.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

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

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date 3/27/03
Time 10:10 AM