WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4567
(By Delegates Craig, Morgan, Leach, Kominar, Amores, H. White and R. M. Thompson)

Passed March 13, 2004
In Effect Ninety Days from Passage
AN ACT to amend and reenact §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended; and to further amend and reenact §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code, all relating to the motor carrier road tax and international fuel tax agreement; defining certain motor carrier road tax terms; applying motor carrier road tax to household goods carriers and independent contractors; establishing liability for tax between lessors and lessees; restating method of computing tax; revising time for payment of taxes and filing reports; providing penalty for failure to maintain certain records; authorizing tax commissioner to issue assessment for erroneously calculated tax; requiring identification markers and providing for the revocation and removal thereof; prohibiting trip permits for certain motor carriers; providing civil penalty of revocation when taxpayer acts contrary to law; establishing new crimes and providing criminal penalties therefor; providing for administration of certain credits against motor
carrier road tax; eliminating requirement for surety bond condition on compliance with law; authorizing disposition of taxes collected under article fourteen-b, chapter eleven of this code; increasing penalty for failure to file return when no tax due; authorizing interest rate on delinquent motor carrier road tax to be one percent per month; establishing effective date of amendments; defining certain international fuel tax agreement terms; establishing identification marker requirements; reserving authority of state to determine applicability of state law; establishing application of article fourteen-a, chapter eleven of this code; specifying those subject to the provisions of article fourteen-a, chapter eleven of this code; authorizing audits by the tax commissioner; and providing that state law controls in the event of inconsistency with the international fuel tax agreement.

Be it enacted by the Legislature of West Virginia:


ARTICLE 14A. MOTOR CARRIER ROAD TAX.


1. For purposes of this article:

2. (1) “Average fuel consumption factor” means the miles driven by the fleet of motor carriers for each gallon of motor fuel consumed in that activity (miles per gallon), and is calculated by dividing the total distance driven in all jurisdictions during the reporting period by the total quantity of motor fuel consumed in the operation of the motor carrier in all jurisdictions during the same reporting period.
(2) “Commissioner” or “tax commissioner” means the tax commissioner of the state of West Virginia or his or her duly authorized agent.

(3) “Fleet” means, for purposes of administering the tax imposed by this article, one or more motor carriers operated by the same person.

(4) “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.

(5) “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 in the event there is a question as to the proper classification of any product, “gasoline” has the same meaning as in article fourteen-c of this chapter.

(6) “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.

(7) “Household goods carrier” means a person that uses a motor carrier for the movement of another’s household goods.

(8) “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: Provided, That an identification marker shall include decals issued under the authority of article fourteen-b of this chapter to persons licensed thereunder: Provided, however, That said decals shall comply
with the international fuel tax agreement requirements referenced under the said article fourteen-b.

(9) “Independent contractor” means a person that uses its motor carrier or motor carriers in its own or another person’s business for the purpose of transporting passengers or the goods of a third party.

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

(11) “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 eleven thousand seven hundred ninety-seven kilograms, 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 eleven thousand seven hundred ninety-seven kilograms gross vehicle weight or registered gross vehicle weight. The term motor carrier does not include any type of recreational vehicle.

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

(13) “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.

(14) “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 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.

(15) “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.

(16) “Purchase” means and includes any acquisition of ownership of property or of a security interest for a consideration.

(17) “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.

(18) “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.

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

(20) “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 casing-head 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 practicably suited for use as fuel in an internal combustion engine: Provided, That in the event there
is a question as to the proper classification of any gas or liquid, “special fuel” has the same meaning as in article fourteen-c of this chapter.

(21) “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.

(22) “Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(23) “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.

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

§11-14A-3a. Leased motor carriers, household goods carriers, and independent contractors.

(a) Motor carriers.

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

(A) The lessor has a written lease contract that designates the lessee as the party liable for reporting and paying the tax imposed by this article; and
(B) If the lessee is subject to article fourteen-b of this chapter, the lessor has a copy of the lessee’s license issued thereunder and the license is valid for the term of the lease.

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

(b) Household goods carriers.

(1) Each household goods carrier operating only in West Virginia that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from independent contractors or others under intermittent leases for periods of thirty days or more is liable for the tax imposed by this article: Provided, That the lessor is liable for the tax imposed by this article when the lease periods are for less than thirty days.

(2) Each household goods carrier subject to article fourteen-b of this chapter that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from independent contractors or others under intermittent leases is liable for the tax imposed by this article when the motor carrier is operated under the lessee’s jurisdictional operating authority: Provided, That when the motor carrier is operated under the lessors jurisdictional operating authority, the lessor is liable for the tax imposed by this article.

(c) Independent contractors.

(1) An independent contractor operating only in West Virginia, when leased to a person also operating only in West Virginia, and the lease is for a period of less than thirty days is liable for the tax imposed by this article: Provided, That if the
lease is for a period of thirty days or more, the lessee is
responsible for the tax imposed by this article.

(2) A person subject to article fourteen-b of this chapter that
leases an independent contractor for thirty days or more is
responsible for the tax imposed by this article unless there is a
written contract stating that the lessor is liable for the tax
imposed by this article.

(d) The provision of subsections (a), (b) and (c) of this
section shall govern the primary liability of lessors and licens-
ees or other lessees of motor carriers. If a lessor or licensee or
other lessee primarily liable fails, in whole or in part, to
discharge his or her liability, the failing party and other party to
the transaction, whether denominated as a lessor, licensee or
other lessee, is jointly and severally responsible and liable for
compliance with the provisions of this article and for payment
of any tax or fees due under this article: Provided, That the
aggregate of taxes and fees collected by the commissioner shall
not exceed the total amount or amounts of taxes and fees due
under this article on account of the transactions in question plus
interest, additions to tax, other penalties and costs, if any, that
may be imposed: Provided, however, That no person, other than
the person primarily responsible for the taxes and fees under
this article, may be assessed penalties or additions to tax
resulting from the failure of the party primarily liable for taxes
and fees to pay: Provided further, That once the other party to
the transaction who is not primarily liable for the taxes under
this article but who is made jointly and severally liable under
this subsection for taxes is assessed for those taxes and fees and
fails to discharge the assessment within the time prescribed
therefor, or within thirty days after receiving the assessment if
no time is so prescribed, nothing herein shall prohibit the
commissioner from imposing additions to tax or penalties upon
that person for failing to pay the assessment issued in his or her
name.
sioner of motor vehicles an identification marker for each motor carrier, except as provided in subsection (b) or (c) of this section. A person who operates, or causes to be operated, in this state more than one motor carrier may obtain an identification marker for each motor carrier: Provided, That such person may also obtain an additional number of identification markers equal to twenty-five percent of the total number of motor carriers in the person’s fleet of motor carriers that require identification markers.

(1) Each identification marker for a particular motor carrier shall bear a number. This identification marker shall be displayed on the driver’s side of the motor carrier as required by the commissioner of motor vehicles: Provided, That the identification markers issued under the authority of article fourteen-b of this chapter shall be displayed on the exterior portion of both sides of the motor carrier.

(2) The tax commissioner, after issuance of any identification marker to a motor carrier, shall cause an internal cross-check to be made in his or her office as to any state tax which he or she administers, to aid in determination of any noncompliance in respect to failure to file returns or payment of tax liabilities. If the tax commissioner determines the motor carrier is not in compliance with the requirement to file any tax return or pay any tax liability required by any tax governed by article ten of this chapter, the identification markers issued to that motor carrier by the commissioner of motor vehicles shall be revoked until all the returns are filed and payments made.

(3) The identification markers provided for in this section are valid for a period of one year, ending the thirty-first day of December each year. A fee of five dollars shall be paid to the commissioner of motor vehicles for issuing each identification marker which is reasonably related to the commissioner of motor vehicles’ costs of issuing each identification marker.
(4) All tax or returns due under this article shall be paid or returns filed before the issuance of a new identification marker. If the tax commissioner determines that a person subject to the requirements of this article has failed to file any return or pay the taxes imposed by this article, the commissioner of motor vehicles shall revoke each identification marker previously issued to that person and shall refuse to issue a new identification marker to that person until all returns are filed and all taxes imposed by this article paid.

(5) Each identification marker shall be removed from a motor carrier:

(A) Prior to the motor carrier being sold or traded in for a different motor carrier;

(B) When a motor carrier registered under subsection (a) of this section ceases doing business in this state, or requests cancellation of the account authorized under article fourteen-b of this chapter; or

(C) When the identification marker issued under subsection (a) of this section is revoked.

(6) Each identification marker so removed and any additional identification markers issued under the authority of subsection (a) of this section shall within thirty days of removal be returned to the commissioner of motor vehicles.

(b) Trip permit. — A motor carrier that does not have a motor carrier identification marker issued under subsection (a) of this section may obtain a trip permit which authorizes the motor carrier specified therein to be operated in this state without an identification marker for a period of not more than ten consecutive days beginning and ending on the dates specified on the face of the permit: Provided, That if a motor carrier's identification marker, whether issued by this state or
another jurisdiction, has been revoked, the motor carrier may not be issued a trip permit. The fee for this permit is twenty-four dollars.

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

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

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

(c) Transportation permit. — The commissioner of motor vehicles is hereby authorized to grant, in his or her discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of business of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter’s permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter’s permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for a transporter’s permit is fifteen dollars and a transporter’s permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the tax commissioner.
(d) **Civil penalties.** — Upon a finding by the tax commissioner based upon the best evidence available that a taxpayer, whether the owner, licensee or lessee, or the employee, servant or agent thereof, has performed any of the following acts, the commissioner of motor vehicles shall revoke and refuse to renew the taxpayer's identification marker or trip permit until the cause for the revocation is corrected:

1. Maintains inaccurate or incomplete records;
2. Fails to respond to written requests for information;
3. Fails to make records available upon request;
4. Falsified application for identification markers or trip permit;
5. Has a prior revocation of identification markers in another jurisdiction without reinstatement in that jurisdiction;
6. Is delinquent in payment of taxes, but only after the assessment of those taxes is finalized;
7. Transfers or sells an identification marker or trip permit;
8. Receives or purchases from any person not the commissioner of motor vehicles an identification marker or trip permit.

Upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

(e) **Criminal penalties.** —

1. Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this state, a motor carrier in
sioner of motor vehicles an identification marker for each motor
carrier, except as provided in subsection (b) or (c) of this
section. A person who operates, or causes to be operated, in this
state more than one motor carrier may obtain an identification
marker for each motor carrier: Provided, That such person may
also obtain an additional number of identification markers equal
to twenty-five percent of the total number of motor carriers in
the person’s fleet of motor carriers that require identification
markers.

(1) Each identification marker for a particular motor carrier
shall bear a number. This identification marker shall be
displayed on the driver’s side of the motor carrier as required
by the commissioner of motor vehicles: Provided, That the
identification markers issued under the authority of article
fourteen-b of this chapter shall be displayed on the exterior
portion of both sides of the motor carrier.

(2) The tax commissioner, after issuance of any identifica-
tion marker to a motor carrier, shall cause an internal cross-
check to be made in his or her office as to any state tax which
he or she administers, to aid in determination of any noncompli-
ance in respect to failure to file returns or payment of tax
liabilities. If the tax commissioner determines the motor carrier
is not in compliance with the requirement to file any tax return
or pay any tax liability required by any tax governed by article
ten of this chapter, the identification markers issued to that
motor carrier by the commissioner of motor vehicles shall be
revoked until all the returns are filed and payments made.

(3) The identification markers provided for in this section
are valid for a period of one year, ending the thirty-first day of
December each year. A fee of five dollars shall be paid to the
commissioner of motor vehicles for issuing each identification
marker which is reasonably related to the commissioner of
motor vehicles’ costs of issuing each identification marker.
(4) All tax or returns due under this article shall be paid or
returns filed before the issuance of a new identification marker.
If the tax commissioner determines that a person subject to the
requirements of this article has failed to file any return or pay
the taxes imposed by this article, the commissioner of motor
vehicles shall revoke each identification marker previously
issued to that person and shall refuse to issue a new identifica-
tion marker to that person until all returns are filed and all taxes
imposed by this article paid.

(5) Each identification marker shall be removed from a
motor carrier:

(A) Prior to the motor carrier being sold or traded in for a
different motor carrier;

(B) When a motor carrier registered under subsection (a) of
this section ceases doing business in this state, or requests
cancellation of the account authorized under article fourteen-b
of this chapter; or

(C) When the identification marker issued under subsection
(a) of this section is revoked.

(6) Each identification marker so removed and any addi-
tional identification markers issued under the authority of
subsection (a) of this section shall within thirty days of removal
be returned to the commissioner of motor vehicles.

(b) Trip permit. — A motor carrier that does not have a
motor carrier identification marker issued under subsection (a)
of this section may obtain a trip permit which authorizes the
motor carrier specified therein to be operated in this state
without an identification marker for a period of not more than
ten consecutive days beginning and ending on the dates
specified on the face of the permit: Provided, That if a motor
carrier’s identification marker, whether issued by this state or
another jurisdiction, has been revoked, the motor carrier may not be issued a trip permit. The fee for this permit is twenty-four dollars.

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

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

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

(c) Transportation permit. — The commissioner of motor vehicles is hereby authorized to grant, in his or her discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of business of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter’s permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter’s permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for a transporter’s permit is fifteen dollars and a transporter’s permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the tax commissioner.
Civil penalties. — Upon a finding by the tax commissioner based upon the best evidence available that a taxpayer, whether the owner, licensee or lessee, or the employee, servant or agent thereof, has performed any of the following acts, the commissioner of motor vehicles shall revoke and refuse to renew the taxpayer’s identification marker or trip permit until the cause for the revocation is corrected:

1. Maintains inaccurate or incomplete records;
2. Fails to respond to written requests for information;
3. Fails to make records available upon request;
4. Falsified application for identification markers or trip permit;
5. Has a prior revocation of identification markers in another jurisdiction without reinstatement in that jurisdiction;
6. Is delinquent in payment of taxes, but only after the assessment of those taxes is finalized;
7. Transfers or sells an identification marker or trip permit; or
8. Receives or purchases from any person not the commissioner of motor vehicles an identification marker or trip permit.

Upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

Criminal penalties. —

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

(2) Any person, whether the person be the owner, licensee
or lessee, or the employee, servant or agent thereof, who
transfers or sells an identification marker or trip permit is guilty
of a felony and, upon conviction thereof, shall be fined not less
than five thousand dollars nor more than ten thousand dollars.

(3) Any person, whether the person be the owner, licensee
or lessee, or the employee, servant or agent thereof, who
receives or purchases from any person not the commissioner of
motor vehicles an identification marker or trip permit is guilty
of a felony and, upon conviction thereof, shall be fined not less
than five thousand dollars nor more than ten thousand dollars.

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

§11-14A-9. Credits against tax.
Every taxpayer subject to the road tax imposed in this article 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 said road tax 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, if less than twenty dollars, shall be used as a credit on the tax for which the taxpayer would be otherwise liable for any of the eight succeeding quarters: And provided further, That if the taxpayer has ceased to do business in this state under either this article or article fourteen-b of this chapter, the amount of the credit shall be refunded in accordance with section eleven of this article: And provided further, That if the amount of the credit provided in this section exceeds by twenty dollars or more the amount of
the tax for which the taxpayer is liable in the same quarter, the
entire amount, upon the written request by the taxpayer, shall
be allowed as a credit on the tax for which the taxpayer would
otherwise be liable for any of the succeeding eight quarters:
**And provided further,** That any credit not used within the eight
succeeding quarters after the credit is established shall be
forfeited.

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

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 motor 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 unless the taxpayer has ceased doing business in
this state under either this article or article fourteen-b of this
chapter, any amount less than twenty dollars may not be
refunded but shall be used as a credit in accordance with the
provisions of section nine of this article: **Provided further,** 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 in section nine of this article, was allowed: **And
provided further,** That effective the first day of April, two
thousand four, the commissioner shall not approve a claim for
refund when the claim for refund is filed after eight quarters
from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed:

And provided further, That any refund or credit due a taxpayer subject to article fourteen-b of this chapter shall be withheld if the taxpayer is delinquent on any fuel taxes due any other state:

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.


All tax collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, That the taxes collected under the provisions of this article but for the purposes of article fourteen-b of this chapter shall be disposed of in accordance with the provisions of section eleven, article fourteen-b of this chapter.

Unless necessary for the bond requirements, five fourteenths of the tax collected under the provisions of this article shall be used for feeder and state local service highway purposes.
violation of this section, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than fifty nor more
than five hundred dollars; and each day the violation continues
or reoccurs constitutes a separate offense.

(2) Any person, whether the person be the owner, licensee
or lessee, or the employee, servant or agent thereof, who
transfers or sells an identification marker or trip permit is guilty
of a felony and, upon conviction thereof, shall be fined not less
than five thousand dollars nor more than ten thousand dollars.

(3) Any person, whether the person be the owner, licensee
or lessee, or the employee, servant or agent thereof, who
receives or purchases from any person not the commissioner of
motor vehicles an identification marker or trip permit is guilty
of a felony and, upon conviction thereof, shall be fined not less
than five thousand dollars nor more than ten thousand dollars.

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

§11-14A-9. Credits against tax.
Every taxpayer subject to the road tax imposed in this article 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 said road tax 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, if less than twenty dollars, shall be used as a credit on the tax for which the taxpayer would be otherwise liable for any of the eight succeeding quarters: And provided further, That if the taxpayer has ceased to do business in this state under either this article or article fourteen-b of this chapter, the amount of the credit shall be refunded in accordance with section eleven of this article: And provided further, That if the amount of the credit provided in this section exceeds by twenty dollars or more the amount of
Every taxpayer subject to the road tax imposed in this article 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 said road tax 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, if less than twenty dollars, shall be used as a credit on the tax for which the taxpayer would be otherwise liable for any of the eight succeeding quarters: And provided further, That if the taxpayer has ceased to do business in this state under either this article or article fourteen-b of this chapter, the amount of the credit shall be refunded in accordance with section eleven of this article: And provided further, That if the amount of the credit provided in this section exceeds by twenty dollars or more the amount of
the tax for which the taxpayer is liable in the same quarter, the entire amount, upon the written request by the taxpayer, shall be allowed as a credit on the tax for which the taxpayer would otherwise be liable for any of the succeeding eight quarters:  

And provided further, That any credit not used within the eight succeeding quarters after the credit is established shall be forfeited.

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

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 motor 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 unless the taxpayer has ceased doing business in this state under either this article or article fourteen-b of this chapter, any amount less than twenty dollars may not be refunded but shall be used as a credit in accordance with the provisions of section nine of this article: Provided further, 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 in section nine of this article, was allowed: And provided further, That effective the first day of April, two thousand four, the commissioner shall not approve a claim for refund when the claim for refund is filed after eight quarters
from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed: 

*And provided further,* That any refund or credit due a taxpayer subject to article fourteen-b of this chapter shall be withheld if the taxpayer is delinquent on any fuel taxes due any other state:

*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.


All tax collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of the interest and sinking fund obligations on state bonds issued for highway purposes: *Provided,* That the taxes collected under the provisions of this article but for the purposes of article fourteen-b of this chapter shall be disposed of in accordance with the provisions of section eleven, article fourteen-b of this chapter.

Unless necessary for the bond requirements, five fourteenths of the tax collected under the provisions of this article shall be used for feeder and state local service highway purposes.
(b) Beginning with the registration year specified in subsection (a) of this section, the commissioner of motor vehicles shall furnish the tax commissioner with motor carrier registration information and information pertaining to the trip permit registration program for use by the tax commissioner in collecting motor fuel taxes.

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

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

§11-14B-5. Scope of agreement.

An international fuel tax agreement may provide for:

(a) Determining the base jurisdiction of motor carriers;

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

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

(d) Exchanging information for purposes of motor fuel use tax administration and collection;
§11-14B-6. Effect of international fuel tax agreement on the
administration or application of motor fuel use
taxes imposed by this state.

(a) Even though the state of West Virginia is a member of
the international fuel tax agreement, the state of West Virginia
retains substantive authority to determine when the motor fuel
use taxes imposed by this state apply, the applicable rate of tax,
the applicable interest rate, and any other substantive tax issues
related to the administration or application of those taxes.

(b) The provisions of article fourteen-a of this chapter shall
apply to every licensee that is subject to the provisions of this
article: Provided, That, The amount of international fuel tax
agreement taxes reported as due and owing by a motor carrier
based in this state shall for purposes of articles nine and ten of
this chapter be treated as taxes due and owing to the state of
West Virginia: and,
(c) Every motor carrier that is not a licensee, every motor carrier based in another state which is not a member of the international fuel tax agreement and every West Virginia intrastate motor carrier shall continue to be subject to the provisions of article fourteen-a of this chapter, and any subsequent amendments thereto.

§11-14B-10. Audits.

(a) The international fuel tax agreement provides that each base jurisdiction audit the records of motor carriers based in that jurisdiction to determine if the motor fuel taxes due all other base jurisdictions are properly reported and paid. When a base jurisdiction performs a motor fuel use tax audit on an interstate motor carrier based in that jurisdiction, it shall forward the findings of the audit to each base jurisdiction in which the interstate motor carrier has taxable use of motor fuels.

(b) The tax commissioner is authorized to participate in auditing motor carriers in other base jurisdictions to determine if the motor fuel taxes due this state are properly reported and paid: Provided, That any other base jurisdiction may participate with the tax commissioner in auditing motor carriers based in this state to determine if motor fuel taxes due that base jurisdiction are properly reported and paid.

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


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

(b) In the event of any inconsistency between the provisions of article ten of this chapter and the terms of the international fuel tax agreement, the terms of said article ten control.
That Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of April, 2004.

Governor
PRESENTED TO THE GOVERNOR

DATE 2/1/64

TIME 4:35 PM