

SB 4205

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004



ENROLLED

Committee Substitute for
SENATE BILL NO. 420

(By Senator Bowman,)



PASSED MARCH 13, 2004

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 420

(SENATOR BOWMAN, *original sponsor*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-6, §11-14C-7, §11-14C-9, §11-14C-13, §11-14C-20, §11-14C-22, §11-14C-24, §11-14C-25, §11-14C-26, §11-14C-29, §11-14C-30, §11-14C-31, §11-14C-34, §11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, all relating generally to motor fuels excise tax; requiring tax on unaccounted-for motor fuel losses be calculated using invoiced gallons; changing aircraft fuel to aviation fuel to be consistent with definitions; repealing five hundred gallon-minimum purchase by government entities to qualify for exemption; clarifying bond requirements; specifying election by supplier for motor fuel exported to another state; requiring that all reports and returns, except those filed by terminal operators, specify invoiced gallons; requiring all reports and returns filed by terminal operators specify gross and net gallons; requiring use of machine-generated shipping documents and authorizing commissioner to allow use of

manually prepared shipping documents; requiring use of diversion procedure if destination state changes prior to transport leaving rack; correcting reference to section requiring return information; authorizing refunds for motor fuel used for agricultural purposes and clarifying time for claiming refunds; correcting reference authorizing inspections; and establishing a revolving fund for general administration of taxes.

Be it enacted by the Legislature of West Virginia:

That §11-14C-6, §11-14C-7, §11-14C-9, §11-14C-13, §11-14C-20, §11-14C-22, §11-14C-24, §11-14C-25, §11-14C-26, §11-14C-29, §11-14C-30, §11-14C-31, §11-14C-34, §11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUELS EXCISE TAX.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) There is hereby annually levied a tax at the rate
2 specified by section five of this article on taxable
3 unaccounted-for motor fuel losses at a terminal in this
4 state. "Taxable unaccounted-for motor fuel losses" means
5 the number of gallons of unaccounted-for motor fuel losses
6 that exceed one half of one percent of the number of
7 invoiced gallons removed from the terminal during the
8 year by a bulk transfer or at the terminal rack.
9 "Unaccounted-for motor fuel losses" means the difference
10 between: (1) The amount of motor fuel in inventory at the
11 terminal at the beginning of the year plus the amount of
12 motor fuel received by the terminal during the year; and
13 (2) the amount of motor fuel in inventory at the terminal
14 at the end of the year plus the amount of motor fuel
15 removed from the terminal during the year. Accounted-for
16 motor fuel losses which have been approved by the com-
17 missioner or motor fuel losses constituting part of a
18 transmix shall not constitute unaccounted-for motor fuel
19 losses.

20 (b) The terminal operator whose motor fuel is unac-
21 counted for is liable for the tax levied by this section.

22 Motor fuel received by a terminal operator and not shown
23 on an informational return filed by the terminal operator
24 with the commissioner as having been removed from the
25 terminal is presumed to be unaccounted-for motor fuel
26 losses. A terminal operator may rebut this presumption by
27 establishing that motor fuel received at a terminal, but not
28 shown on an informational return as having been removed
29 from the terminal, was an accounted-for loss or constitutes
30 part of a transmix.

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

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

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

14 (2) Sales of aviation fuel;

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

16 (4) Sales of propane.

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

22 All motor fuel exported from this state to any other state
23 or nation: *Provided*, That the supplier collects and remits
24 to the destination state or nation the appropriate amount

25 of tax due on the motor fuel transported to that state or
26 nation: *Provided, however,* That this exemption shall not
27 apply to any motor fuel which is transported and delivered
28 outside this state in the motor fuel supply tank of a
29 highway vehicle.

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

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

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

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

39 (4) Any county boards of education;

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

43 (6) Any municipal, county, state or federal civil defense
44 or emergency service program pursuant to a government
45 contract for use in conjunction therewith, or to any person
46 on whom is imposed a requirement to maintain an inven-
47 tory of motor fuel for the purpose of the program: *Pro-*
48 *vided,* That motor fueling facilities used for these purposes
49 are not capable of fueling motor vehicles and the person in
50 charge of the program has in his or her possession a letter
51 of authority from the tax commissioner certifying his or
52 her right to the exemption: *Provided, however,* That in
53 order for this exemption to apply, motor fuel sold under
54 this subdivision and subdivisions (1) through (5), inclusive,
55 of this subsection shall be used in vehicles or equipment
56 owned and operated by the respective government entity
57 or government agency or authority;

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

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

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

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

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

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

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

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

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

87 (16) All gallons of motor fuel purchased in quantities of
88 twenty-five gallons or more and used to power a power
89 take-off unit on a motor vehicle. When a motor vehicle
90 with auxiliary equipment uses motor fuel and there is no

91 auxiliary motor for the equipment or separate tank for a
92 motor, the person claiming the refund may present to the
93 tax commissioner a statement of his or her claim and is
94 allowed a refund for motor fuel used in operating a power
95 take-off unit on a cement mixer truck or garbage truck
96 equal to twenty-five percent of the tax levied by this
97 article paid on all motor fuel used in such a truck;

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

110 (18) All gallons of motor fuel that are not otherwise
111 exempt under subdivisions (1) through (6), inclusive, of
112 this subsection and that are purchased and used by any
113 bona fide volunteer fire department, nonprofit ambulance
114 service or emergency rescue service that has been certified
115 by the municipality or county wherein the bona fide
116 volunteer fire department, nonprofit ambulance service or
117 emergency rescue service is located.

118 (d) *Refundable exemptions for variable rate.* – Any of
119 the following persons may claim an exemption to the
120 variable rate of the tax levied by section five of this article
121 on the purchase and use of motor fuel by first paying the
122 tax levied by this article and then applying to the tax
123 commissioner for a refund.

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

125 (2) This state and its institutions;

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

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

128 (5) Any county boards of education;

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

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

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

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

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

§11-14C-13. Bond requirements.

1 (a) There shall be filed with an application for a license
2 required by section eleven of this article either a cash bond
3 or a continuous surety bond in the amount or amounts
4 specified in this section: *Provided*, That if a person has
5 filed applications for licenses for more than one activity,
6 the commissioner may combine the amount of the cash
7 bond or continuous surety bond required for each licensed
8 activity into one amount that shall be no less than the
9 largest amount required for any of those activities for
10 which the license applications are filed: *Provided, how-*
11 *ever*, That if a continuous surety bond is filed, an annual
12 notice of renewal shall be filed thereafter: *Provided*
13 *further*, That if the continuous surety bond includes the
14 requirements that the commissioner is to be notified of
15 cancellation at least sixty days prior to the continuous
16 surety bond being canceled, an annual notice of renewal is
17 not required. The bond, whether a cash bond or a continu-
18 ous surety bond, shall be conditioned upon compliance
19 with the requirements of this article, be payable to this
20 state, and be in the form required by the commissioner.
21 The amount of the bond is as follows:

22 (1) For a supplier license, the amount shall be a mini-
23 mum of one hundred thousand dollars or an amount equal
24 to three months' tax liability, whichever is greater: *Pro-*
25 *vided*, That the amount shall not exceed two million
26 dollars: *Provided, however*, That when required by the
27 commissioner to file a cash bond or a continuous surety
28 bond in an additional amount, the licensee shall comply
29 with the commissioner's notification within thirty days
30 after receiving that notification;

31 (2) For a permissive supplier license, the amount shall be
32 a minimum of one hundred thousand dollars or an amount
33 equal to three months' tax liability, whichever is greater:
34 *Provided*, That the amount shall not exceed two million
35 dollars: *Provided, however*, That when required by the
36 commissioner to file a cash bond or a continuous surety

37 bond in an additional amount, the licensee shall comply
38 with the commissioner's notification within thirty days
39 after receiving that notification;

40 (3) For a terminal operator license, the amount shall be
41 a minimum of one hundred thousand dollars or an amount
42 equal to three months' tax liability, whichever is greater:
43 *Provided*, That the amount shall not exceed two million
44 dollars: *Provided, however*, That when required by the
45 commissioner to file a cash bond or a continuous surety
46 bond in an additional amount, the licensee shall comply
47 with the commissioner's notification within thirty days
48 after receiving that notification;

49 (4) For an importer license for a person, other than a
50 supplier, that imports by transport vehicle or another
51 means of transfer outside the bulk transfer/terminal
52 system motor fuel removed from a terminal located in
53 another state in which: (A) The state from which the motor
54 fuel is imported does not require the seller of the motor
55 fuel to collect a motor fuel excise tax on the removal either
56 at that state's rate or the rate of the destination state; and
57 (B) the seller of the motor fuel is not a permissive supplier,
58 the amount shall be a minimum of one hundred thousand
59 dollars or an amount equal to three months' tax liability,
60 whichever is greater: *Provided*, That the amount shall not
61 exceed two million dollars: *Provided, however*, That when
62 required by the commissioner to file a cash bond or a
63 continuous surety bond in an additional amount, the
64 licensee shall comply with the commissioner's notification
65 within thirty days after receiving that notification;

66 (5) For an importer license for a person that imports by
67 transport vehicle or another means outside the bulk
68 transfer/terminal system motor fuel removed from a
69 terminal located in another state in which: (A) The state
70 from which the motor fuel is imported requires the seller
71 of the motor fuel to collect a motor fuel excise tax on the
72 removal either at that state's rate or the rate of the desti-
73 nation state; or (B) the seller of the motor fuel is a permis-

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

83 (6) For a license as both a distributor and an importer as
84 described in subdivision (4) of this subsection, the amount
85 shall be a minimum of one hundred thousand dollars or an
86 amount equal to three months' tax liability, whichever is
87 greater: *Provided*, That the amount shall not exceed two
88 million dollars: *Provided, however*, That when required by
89 the commissioner to file a cash bond or a continuous
90 surety bond in an additional amount, the licensee shall
91 comply with the commissioner's notification within thirty
92 days after receiving that notification;

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

103 (8) For an exporter license, the amount shall be a mini-
104 mum of two thousand dollars or an amount equal to three
105 months' tax liability, whichever is greater: *Provided*, That
106 the amount shall not exceed three hundred thousand
107 dollars: *Provided, however*, That when required by the
108 commissioner to file a cash bond or a continuous surety
109 bond in an additional amount, the licensee shall comply

110 with the commissioner's notification within thirty days
111 after receiving that notification;

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

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

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

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

142 (A) Proof of five million dollars' net worth shall consti-
143 tute evidence of financial responsibility in lieu of posting
144 the required bond;

145 (B) Proof of two million five hundred thousand dollars'
146 net worth constitutes financial responsibility in lieu of
147 posting fifty percent of the required bond; and

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

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

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

171 (b) The surety must be authorized under article nineteen,
172 chapter thirty-three of this code to engage in business of
173 transacting surety insurance within this state. The cash
174 bond and the continuous surety bond are conditioned upon
175 faithful compliance with the provisions of this article,
176 including the filing of the returns and payment of all tax
177 prescribed by this article. The cash bond and the continu-
178 ous surety bond shall be approved by the commissioner as
179 to sufficiency and form and shall indemnify the state
180 against any loss arising from the failure of the taxpayer to

181 pay for any cause whatever the motor fuel excise tax
182 levied by this article.

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

199 (d) Any taxpayer that has furnished a cash bond hereun-
200 der shall be relieved, released and discharged from all
201 liability accruing on the cash bond after the expiration of
202 sixty days from the date the taxpayer shall have lodged, by
203 certified mail, with the commissioner a written request to
204 be discharged and the amount of the cash bond refunded:
205 *Provided*, That the commissioner may retain all or part of
206 the cash bond until such time as the commissioner may
207 perform an audit of the taxpayer's business or three years,
208 whichever first occurs. Discharge from the cash bond
209 shall not relieve, release or discharge the taxpayer from
210 liability already accrued or which shall accrue before the
211 expiration of the sixty-day period. Whenever any tax-
212 payer seeks discharge as herein provided, it is the duty of
213 the taxpayer to provide the commissioner with another
214 cash bond or a continuous surety bond prior to the expira-
215 tion of the original cash bond. Failure to provide either a
216 new cash bond or a continuous surety bond shall result in

217 the commissioner canceling each license and registration
218 previously issued to the taxpayer.

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

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

21 (b) A licensed exporter shall remit tax due on motor fuel
22 removed at a terminal rack to the supplier of the motor
23 fuel. The date by which an exporter shall remit tax is
24 governed by the law of the destination state of the ex-
25 ported motor fuel: *Provided*, That if the laws of the
26 destination state prohibit the collection of the destination
27 state's tax, the supplier may elect to either collect the tax
28 levied by section five of this article or, in lieu thereof, take
29 from the exporter documentation sufficient to establish: (i)
30 That the motor fuel was immediately exported to
31 another state and the name of that state; (ii) that the entire
32 amount of motor fuel exported was reported to the desti-

33 nation state and the tax imposed on the motor fuel by the
34 destination state was paid by the exporter; (iii) the name
35 and address of the person to which the motor fuel was sold
36 and the quantity of motor fuel sold to that person; and (iv)
37 that the exporter shall pay the tax levied by section five of
38 this article if the foregoing documentation is not provided:
39 *Provided, however,* That until such time as either the tax
40 imposed by this state is paid, the tax imposed by the
41 destination state is paid or the motor fuel is sold in a
42 transaction not subject to tax in the destination state, both
43 the supplier and the exporter shall be jointly liable for the
44 tax levied by section five of this article.

45 (c) All tax payments received by a supplier or permissive
46 supplier shall be held in trust by the supplier or permissive
47 supplier until the supplier or permissive supplier remits
48 the tax payment to this state or to another state and the
49 supplier or permissive supplier shall constitute the trustee
50 for the tax payments.

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

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

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

4 (a) The number of invoiced gallons of tax-paid motor
5 fuel received by the supplier or permissive supplier during
6 the month, sorted by type of motor fuel, seller, point of
7 origin, destination state and carrier or motor fuel trans-
8 porter;

9 (b) The number of invoiced gallons of motor fuel re-
10 moved at a terminal rack during the month from the
11 account of the supplier, sorted by type of motor fuel,

12 person receiving the motor fuel, terminal code and carrier
13 or motor fuel transporter;

14 (c) The number of invoiced gallons of motor fuel re-
15 moved during the month for export, sorted by type of
16 motor fuel, person receiving the motor fuel, terminal code,
17 destination state and carrier or motor fuel transporter; and

18 (d) The number of invoiced gallons of motor fuel re-
19 moved during the month from a terminal located in
20 another state for conveyance to West Virginia, as indicated
21 on the shipping document for the motor fuel, sorted by
22 type of motor fuel, person receiving the motor fuel,
23 terminal code and carrier or motor fuel transporter.

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

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

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

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

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

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

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

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

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

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

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

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

30 one percent of the amount of tax payable by the importer
31 to this state not to exceed five thousand dollars per month.

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

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

8 (1) The beginning and ending inventory which pertains
9 to the applicable reporting month;

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

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

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

19 (b) The tax commissioner may accept the federal
20 ExSTARS terminal operator report provided to the
21 internal revenue service in lieu of the required state
22 terminal operator report.

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

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

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

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

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

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

28 (d) Every supplier, distributor or producer, retail dealer,
29 exporter or importer is entitled to a refund of the flat rate
30 of the tax levied by section five of this article from this
31 state of the amount resulting from a change of rate
32 decreasing the tax under the provisions of this article on

33 motor fuel on hand and in inventory on the effective date
34 of the rate change, which motor fuel has been included in
35 any previous computation by which the tax levied by this
36 article has been paid.

§11-14C-31. Claiming refunds.

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

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

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

30 (1) A petition for refund under section thirty of this
31 article, other than for evaporation loss, shall be filed with

32 the commissioner within three years from the end of the
33 month in which the tax was erroneously or illegally paid
34 or the gallons were exported or lost by casualty or in
35 which a change of rate took effect;

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

40 (3) A petition for refund under subsection (c), section
41 nine of this article shall be filed with the commissioner
42 within six months from the month of purchase or delivery
43 of the motor fuel: *Provided*, That any application for
44 refund made under authority of subdivision(15) of said
45 subsection when the motor fuel is used to operate tractors
46 and gas engines or threshing machines for agricultural
47 purposes shall be filed within twelve months from the
48 month of purchase or delivery of the motor fuel: *Provided*,
49 *however*, That all persons authorized to claim a refundable
50 exemption under the authority of subdivisions (1) through
51 (6), inclusive, subsection (c), section nine of this article and
52 subdivisions (1) through (6), inclusive, subsection (d) of
53 said section shall do so no later than the thirty-first day of
54 August for the purchases of motor fuel made during the
55 preceding fiscal year ending the thirtieth day of June.

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

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

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

1 (a) A person shall not transport in this state any motor
2 fuel by barge, watercraft, railroad tank car or transport
3 vehicle unless the person has a machine-generated ship-
4 ping document, including applicable multiple copies
5 thereof, for the motor fuel that complies with this section:
6 *Provided*, That in the event a terminal operator or opera-
7 tor of a bulk plant does not have installed on the first day
8 of January, two thousand four, an automated machine that
9 will print machine-generated shipping documents, the
10 commissioner may authorize the terminal operator or
11 operator of a bulk plant to issue manually prepared
12 shipping documents: *Provided, however*, That in the event
13 of an extraordinary unforeseen circumstance, including an
14 act of God, that temporarily interferes with the ability to
15 issue an automated machine-generated shipping docu-
16 ment, a manually prepared shipping document that
17 contains all of the information required by subsection (b)
18 of this section shall be substituted for the machine-gener-
19 ated shipping document. A terminal operator or operator
20 of a bulk plant shall give a shipping document to the
21 person who operates the barge, watercraft, railroad tank
22 car or transport vehicle into which motor fuel is loaded at
23 the terminal rack or bulk plant rack.

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

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

30 (2) Date the motor fuel was loaded;

31 (3) Invoiced gallons loaded;

32 (4) Destination state of the motor fuel as represented by
33 the purchaser of the motor fuel or the purchaser's agent;

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

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

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

45 (c) A terminal operator or bulk plant operator may rely
46 on the representation made by the purchaser of motor fuel
47 or the purchaser's agent concerning the destination state
48 of the motor fuel. In the event that either the terminal
49 operator, bulk plant operator, purchaser or transporter
50 determines prior to the shipment of motor fuel leaving the
51 terminal or bulk plant that the destination state indicated
52 on the shipping document is incorrect, the diversion
53 procedure provided in subdivision (3), subsection (d) of
54 this section shall be used to obtain authorization to deliver
55 the motor fuel to a different state. A purchaser is liable
56 for any tax due as a result of the purchaser's diversion of
57 motor fuel from the represented destination state.

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

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

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

65 sioner and any other authorized individual when trans-
66 porting the motor fuel described;

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

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

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

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

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

81 (e) The person to whom motor fuel is delivered by barge,
82 watercraft, railroad tank car or transport vehicle shall not
83 accept delivery of the motor fuel if the destination state
84 shown on the shipping document for the motor fuel is a
85 state other than West Virginia: *Provided*, That delivery
86 may be accepted if the destination state is other than West
87 Virginia if the document contains a diversion number
88 authorized by the commissioner. The person to whom the
89 motor fuel is delivered shall examine the shipping docu-
90 ment to determine that West Virginia is the destination
91 state and shall retain a copy of the shipping document: (1)
92 At the place of business where the motor fuel was deliv-
93 ered for ninety days following the date of delivery; and (2)
94 at the place or another place for at least three years
95 following the date of delivery. The person who accepts
96 delivery of motor fuel in violation of this subsection and
97 any person liable for the tax on the motor fuel pursuant to
98 section five of this article is jointly and severally liable for
99 any tax due on the motor fuel.

100 (f) Any person who transports motor fuel in a barge,
101 watercraft, railroad tank car or transport vehicle without
102 a shipping document or with a false or an incomplete
103 shipping document, or delivers motor fuel to a destination
104 state other than the destination state shown on the ship-
105 ping document, is subject to the following civil penalty.

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

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

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

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

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

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

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

12 owner of the storage tank or container, are jointly and
13 severally liable for payment of the civil penalty.

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

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

1 (a) There is hereby created and established in the state
2 treasury a special revolving fund to be known and desig-
3 nated as the "motor fuel general tax administration fund".
4 The commissioner is authorized to retain one half of one
5 percent of the tax collected pursuant to the provisions of
6 this article: *Provided*, That in any fiscal year in which the
7 tax collected pursuant to the provisions of this article
8 exceed three hundred million dollars, the commissioner is
9 authorized to retain an additional one percent of the tax in
10 excess of the three hundred million dollars that is col-
11 lected. The amounts retained by the commissioner under
12 this subsection shall be deposited in the motor fuel general
13 tax administration fund and may be expended for the
14 general administration of taxes imposed by this chapter.

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

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

Carly Murr
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrel Hobbs
.....
Clerk of the Senate

Gregory W. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

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

The within *is approved* this the *2nd*
Day of *April*, 2004.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/26/04
TIME 3:20pm