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
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 420
(SENIOR 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 is imposed at the time motor fuel is imported into this state, other than by a bulk transfer, is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state and is payable by the person importing the motor fuel unless otherwise specified in this section.

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

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

14 (2) From the bulk transfer/terminal system outside this state for delivery to a location in this state as represented on the shipping papers: Provided, That the supplier imports the motor fuel for the account of the supplier; and
(3) Upon sale or transfer in a terminal or refinery in this state to any person not holding a supplier's license and payable by the person selling or transferring the motor fuel.

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

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

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

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

(1) The removal of motor fuel from the terminal on account of any supplier who is not licensed in this state: Provided, That the terminal operator is relieved of liability if the terminal operator establishes all of the following:
(A) The terminal operator has a valid terminal operator's license issued for the facility from which the motor fuel is withdrawn;

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

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

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

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

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

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

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

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

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

2. Sales of aviation fuel;

3. All sales of dyed special fuel; and

4. Sales of propane.

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

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

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

(1) The United States or any agency thereof;
(2) Any county government or unit or agency thereof;
(3) Any municipal government or any agency thereof;
(4) Any county boards of education;
(5) Any urban mass transportation authority created
pursuant to the provisions of article twenty-seven, chapter
eight of this code;
(6) Any municipal, county, state or federal civil defense
or emergency service program pursuant to a government
contract for use in conjunction therewith, or to any person
on whom is imposed a requirement to maintain an inven-
tory of motor fuel for the purpose of the program: Pro-
vided, That motor fueling facilities used for these purposes
are not capable of fueling motor vehicles and the person in
charge of the program has in his or her possession a letter
of authority from the tax commissioner certifying his or
her right to the exemption: Provided, however, That in
order for this exemption to apply, motor fuel sold under
this subdivision and subdivisions (1) through (5), inclusive,
of this subsection shall be used in vehicles or equipment
owned and operated by the respective government entity
or government agency or authority;
(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation: Provided, however, That a refund shall not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

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

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

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

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

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

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

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

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

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

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

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

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

(1) The United States or any agency thereof;

(2) This state and its institutions;
(3) Any county government or unit or agency thereof;
(4) Any municipal government or any agency thereof;
(5) Any county boards of education;
(6) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;
(7) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption;
(8) Any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or
(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund: Provided, however, That a refund shall not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.
(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor shall not apply to sales of motor fuel under this article.
§11-14C-13. Bond requirements.

(a) There shall be filed with an application for a license required by section eleven of this article either a cash bond or a continuous surety bond in the amount or amounts specified in this section: "Provided, That if a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed: "Provided, however, That if a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter: "Provided further, That if the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, shall be conditioned upon compliance with the requirements of this article, be payable to this state, and be in the form required by the commissioner. The amount of the bond is as follows:

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

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

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

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

(5) For an importer license for a person that imports by
transport vehicle or another means outside the bulk
transfer/terminal system motor fuel removed from a
terminal located in another state in which: (A) The state
from which the motor fuel is imported requires the seller
of the motor fuel to collect a motor fuel excise tax on the
removal either at that state's rate or the rate of the desti-
nation state; or (B) the seller of the motor fuel is a permis-
(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be a minimum of one hundred thousand dollars or an amount equal to three months' tax liability, whichever is greater: Provided, That the amount shall not exceed two million dollars: Provided, however, That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

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

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

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

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

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

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

(A) Proof of five million dollars' net worth shall constitute evidence of financial responsibility in lieu of posting the required bond;
(B) Proof of two million five hundred thousand dollars' net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and

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

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

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

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

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

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

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

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

(b) A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the motor fuel. The date by which an exporter shall remit tax is governed by the law of the destination state of the exported motor fuel: Provided, That if the laws of the destination state prohibit the collection of the destination state's tax, the supplier may elect to either collect the tax levied by section five of this article or, in lieu thereof, take from the exporter documentation sufficient to establish: (i) That the motor fuel was immediately exported to another state and the name of that state; (ii) that the entire amount of motor fuel exported was reported to the desti-
nation state and the tax imposed on the motor fuel by the
destination state was paid by the exporter; (iii) the name
and address of the person to which the motor fuel was sold
and the quantity of motor fuel sold to that person; and (iv)
that the exporter shall pay the tax levied by section five of
this article if the foregoing documentation is not provided:
Provided, however, That until such time as either the tax
imposed by this state is paid, the tax imposed by the
destination state is paid or the motor fuel is sold in a
transaction not subject to tax in the destination state, both
the supplier and the exporter shall be jointly liable for the
tax levied by section five of this article.

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

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

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

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

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

(b) The number of invoiced gallons of motor fuel re-
moved at a terminal rack during the month from the
account of the supplier, sorted by type of motor fuel,
(c) The number of invoiced gallons of motor fuel removed during the month for export, sorted by type of motor fuel, person receiving the motor fuel, terminal code, destination state and carrier or motor fuel transporter; and

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

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

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

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

(c) A supplier or permissive supplier of motor fuel at a terminal shall notify the commissioner within the time period established by the commissioner of any licensed distributors, licensed exporters or licensed importers who did not pay the tax due when the supplier or permissive supplier filed its return. The notice shall be transmitted to the commissioner in the form required by the commissioner.
(d) A supplier or permissive supplier who receives a payment of tax shall not apply the payment of tax to a debt that the person making the payment owes for motor fuel purchased from the supplier or permissive supplier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When a transaction with a person licensed under this article is required to be reported on a return, the return must state the licensee’s name, address and, if available, license number and telephone number as stated on the lists compiled by the commissioner under section eighteen of this article.
(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously collected from any person.

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

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

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

§11-14C-31. Claiming refunds.

(a) Any person seeking a refund pursuant to subsection (c), section nine of this article shall present to the commissioner a petition accompanied by the original or duplicate original sales slip or invoice from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked "duplicate" are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of subdivision (15), subsection (c), section nine of this article when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes.

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

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

(1) A petition for refund under section thirty of this article, other than for evaporation loss, shall be filed with
the commissioner within three years from the end of the
month in which the tax was erroneously or illegally paid
or the gallons were exported or lost by casualty or in
which a change of rate took effect;

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

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

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

(e) The commissioner may make any investigation
considered necessary before refunding to a person the tax
levied by section five of this article. The commissioner
may also subject to audit the records related to a refund of
the tax levied by section five of this article.
§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.

(a) A person shall not transport in this state any motor fuel by barge, watercraft, railroad tank car or transport vehicle unless the person has a machine-generated shipping document, including applicable multiple copies thereof, for the motor fuel that complies with this section:

Provided, That in the event a terminal operator or operator of a bulk plant does not have installed on the first day of January, two thousand four, an automated machine that will print machine-generated shipping documents, the commissioner may authorize the terminal operator or operator of a bulk plant to issue manually prepared shipping documents: Provided, however, That in the event of an extraordinary unforeseen circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by subsection (b) of this section shall be substituted for the machine-generated shipping document. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, watercraft, railroad tank car or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

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

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

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;
(4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;

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

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

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

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

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

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

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commis-
(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) There is hereby created and established in the state treasury a special revolving fund to be known and designated as the "motor fuel general tax administration fund". The commissioner is authorized to retain one half of one percent of the tax collected pursuant to the provisions of this article: Provided, That in any fiscal year in which the tax collected pursuant to the provisions of this article exceed three hundred million dollars, the commissioner is authorized to retain an additional one percent of the tax in excess of the three hundred million dollars that is collected. The amounts retained by the commissioner under this subsection shall be deposited in the motor fuel general tax administration fund and may be expended for the general administration of taxes imposed by this chapter.

(b) All remaining tax collected under the provisions of this article after deducting the amount of any refunds lawfully paid shall be paid into the state road fund and used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal moneys available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
DATE 3/20/04
TIME 3:20 PM