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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4567

(By Delegates Craig, Morgan, Leach, Kominar,
Amores, H. White and R. M. Thompson)



Passed March 13, 2004

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 4567

(BY DELEGATES CRAIG, MORGAN, LEACH, KOMINAR,
AMORES, H. WHITE AND R. M. THOMPSON)

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

AN ACT to amend and reenact §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended; and to further amend and reenact §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code, all relating to the motor carrier road tax and international fuel tax agreement; defining certain motor carrier road tax terms; applying motor carrier road tax to household goods carriers and independent contractors; establishing liability for tax between lessors and lessees; restating method of computing tax; revising time for payment of taxes and filing reports; providing penalty for failure to maintain certain records; authorizing tax commissioner to issue assessment for erroneously calculated tax; requiring identification markers and providing for the revocation and removal thereof; prohibiting trip permits for certain motor carriers; providing civil penalty of revocation when taxpayer acts contrary to law; establishing new crimes and providing criminal penalties therefor; providing for administration of certain credits against motor

carrier road tax; eliminating requirement for surety bond conditioned on compliance with law; authorizing disposition of taxes collected under article fourteen-b, chapter eleven of this code; increasing penalty for failure to file return when no tax due; authorizing interest rate on delinquent motor carrier road tax to be one percent per month; establishing effective date of amendments; defining certain international fuel tax agreement terms; establishing identification marker requirements; reserving authority of state to determine applicability of state law; establishing application of article fourteen-a, chapter eleven of this code; specifying those subject to the provisions of article fourteen-a, chapter eleven of this code; authorizing audits by the tax commissioner; and providing that state law controls in the event of inconsistency with the international fuel tax agreement.

Be it enacted by the Legislature of West Virginia:

That §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code be amended and reenacted, all to read as follows:

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Average fuel consumption factor" means the miles
3 driven by the fleet of motor carriers for each gallon of motor
4 fuel consumed in that activity (miles per gallon), and is
5 calculated by dividing the total distance driven in all jurisdic-
6 tions during the reporting period by the total quantity of motor
7 fuel consumed in the operation of the motor carrier in all
8 jurisdictions during the same reporting period.

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

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

15 (4) “Gallon” means two hundred thirty-one cubic inches of
16 liquid measurement, by volume: *Provided*, That the commis-
17 sioner may by rule prescribe other measurement or definition of
18 gallon.

19 (5) “Gasoline” means any product commonly or commer-
20 cially known as gasoline, regardless of classification, suitable
21 for use as fuel in an internal combustion engine, except special
22 fuel as hereinafter defined: *Provided*, That in the event there is
23 a question as to the proper classification of any product,
24 “gasoline” has the same meaning as in article fourteen-c of this
25 chapter.

26 (6) “Highway” means every way or place of whatever
27 nature open to the use of the public as a matter of right for the
28 purpose of vehicular travel, which is maintained by this state or
29 some taxing subdivision or unit thereof or the federal govern-
30 ment or any of its agencies.

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

33 (8) “Identification marker” means the decal issued by the
34 commissioner for display upon a particular motor carrier and
35 authorizing a person to operate or cause to be operated a motor
36 carrier upon any highway of the state: *Provided*, That an
37 identification marker shall include decals issued under the
38 authority of article fourteen-b of this chapter to persons licensed
39 thereunder: *Provided, however*, That said decals shall comply

40 with the international fuel tax agreement requirements refer-
41 enced under the said article fourteen-b.

42 (9) "Independent contractor" means a person that uses its
43 motor carrier or motor carriers in its own or another person's
44 business for the purpose of transporting passengers or the goods
45 of a third party.

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

48 (11) "Motor carrier" means any vehicle used, designed or
49 maintained for the transportation of persons or property and
50 having two axles and a gross vehicle weight exceeding twenty-
51 six thousand pounds or eleven thousand seven hundred ninety-
52 seven kilograms, or having three or more axles regardless of
53 weight, or is used in combination when the weight of the
54 combination exceeds twenty-six thousand pounds or eleven
55 thousand seven hundred ninety-seven kilograms gross vehicle
56 weight or registered gross vehicle weight. The term motor
57 carrier does not include any type of recreational vehicle.

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

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

65 (14) "Person" means and includes any individual, firm,
66 partnership, limited partnership, joint venture, association,
67 company, corporation, organization, syndicate, receiver, trust
68 or any other group or combination acting as a unit, in the plural
69 as well as the singular number, and includes the officers,
70 directors, trustees or members of any firm, partnership, limited

71 partnership, joint venture, association, company, corporation,
72 organization, syndicate, receiver, trust or any other group or
73 combination acting as a unit, in the plural as well as the singular
74 number, unless the intention to give a more limited meaning is
75 disclosed by the context.

76 (15) "Pool operation" means any operation whereby two or
77 more taxpayers combine to operate or cause to be operated a
78 motor carrier or motor carriers upon any highway in this state.

79 (16) "Purchase" means and includes any acquisition of
80 ownership of property or of a security interest for a consider-
81 ation.

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

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

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

94 (20) "Special fuel" means any gas or liquid, other than
95 gasoline, used or suitable for use as fuel in an internal combus-
96 tion engine. The term "special fuel" includes products com-
97 monly known as natural or casing-head gasoline but shall not
98 include any petroleum product or chemical compound such as
99 alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not
100 commonly used nor practicably suited for use as fuel in an
101 internal combustion engine: *Provided*, That in the event there

102 is a question as to the proper classification of any gas or liquid,
103 “special fuel” has the same meaning as in article fourteen-c of
104 this chapter.

105 (21) “Tax” includes, within its meaning, interest, additions
106 to tax and penalties, unless the intention to give it a more
107 limited meaning is disclosed by the context.

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

111 (23) “Tractor truck” means every motor carrier designed
112 and used primarily for drawing other vehicles and not con-
113 structed as to carry a load other than a part of the weight of the
114 vehicle and load so drawn.

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

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

1 (a) Motor carriers.

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

8 (A) The lessor has a written lease contract that designates
9 the lessee as the party liable for reporting and paying the tax
10 imposed by this article; and

11 (B) If the lessee is subject to article fourteen-b of this
12 chapter, the lessor has a copy of the lessee's license issued
13 thereunder and the license is valid for the term of the lease.

14 (2) *Motor carriers leased for thirty days or more.* — A
15 licensee or other lessee who leases or rents a motor carrier with
16 or without drivers for a period of thirty days or more is primar-
17 ily liable for payment of the taxes and fees imposed by this
18 article.

19 (b) Household goods carriers.

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

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

37 (c) Independent contractors.

38 (1) An independent contractor operating only in West
39 Virginia, when leased to a person also operating only in West
40 Virginia, and the lease is for a period of less than thirty days is
41 liable for the tax imposed by this article: *Provided*, That if the

42 lease is for a period of thirty days or more, the lessee is
43 responsible for the tax imposed by this article.

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

49 (d) The provision of subsections (a), (b) and (c) of this
50 section shall govern the primary liability of lessors and licens-
51 ees or other lessees of motor carriers. If a lessor or licensee or
52 other lessee primarily liable fails, in whole or in part, to
53 discharge his or her liability, the failing party and other party to
54 the transaction, whether denominated as a lessor, licensee or
55 other lessee, is jointly and severally responsible and liable for
56 compliance with the provisions of this article and for payment
57 of any tax or fees due under this article: *Provided*, That the
58 aggregate of taxes and fees collected by the commissioner shall
59 not exceed the total amount or amounts of taxes and fees due
60 under this article on account of the transactions in question plus
61 interest, additions to tax, other penalties and costs, if any, that
62 may be imposed: *Provided, however*, That no person, other than
63 the person primarily responsible for the taxes and fees under
64 this article, may be assessed penalties or additions to tax
65 resulting from the failure of the party primarily liable for taxes
66 and fees to pay: *Provided further*, That once the other party to
67 the transaction who is not primarily liable for the taxes under
68 this article but who is made jointly and severally liable under
69 this subsection for taxes is assessed for those taxes and fees and
70 fails to discharge the assessment within the time prescribed
71 therefor, or within thirty days after receiving the assessment if
72 no time is so prescribed, nothing herein shall prohibit the
73 commissioner from imposing additions to tax or penalties upon
74 that person for failing to pay the assessment issued in his or her
75 name.

4 sioner of motor vehicles an identification marker for each motor
5 carrier, except as provided in subsection (b) or (c) of this
6 section. A person who operates, or causes to be operated, in this
7 state more than one motor carrier may obtain an identification
8 marker for each motor carrier: *Provided*, That such person may
9 also obtain an additional number of identification markers equal
10 to twenty-five percent of the total number of motor carriers in
11 the person's fleet of motor carriers that require identification
12 markers.

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

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

31 (3) The identification markers provided for in this section
32 are valid for a period of one year, ending the thirty-first day of
33 December each year. A fee of five dollars shall be paid to the
34 commissioner of motor vehicles for issuing each identification
35 marker which is reasonably related to the commissioner of
36 motor vehicles' costs of issuing each identification marker.

37 (4) All tax or returns due under this article shall be paid or
38 returns filed before the issuance of a new identification marker.
39 If the tax commissioner determines that a person subject to the
40 requirements of this article has failed to file any return or pay
41 the taxes imposed by this article, the commissioner of motor
42 vehicles shall revoke each identification marker previously
43 issued to that person and shall refuse to issue a new identifica-
44 tion marker to that person until all returns are filed and all taxes
45 imposed by this article paid.

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

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

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

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

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

60 (b) *Trip permit.* — A motor carrier that does not have a
61 motor carrier identification marker issued under subsection (a)
62 of this section may obtain a trip permit which authorizes the
63 motor carrier specified therein to be operated in this state
64 without an identification marker for a period of not more than
65 ten consecutive days beginning and ending on the dates
66 specified on the face of the permit: *Provided*, That if a motor
67 carrier's identification marker, whether issued by this state or

68 another jurisdiction, has been revoked, the motor carrier may
69 not be issued a trip permit. The fee for this permit is twenty-
70 four dollars.

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

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

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

84 (c) *Transportation permit.* — The commissioner of motor
85 vehicles is hereby authorized to grant, in his or her discretion,
86 a special permit to a new motor vehicle dealer for use on new
87 motor vehicles driven under their own power from the factory
88 or distributing place of a manufacturer, or other dealer, to a
89 place of business of the new vehicle dealer, or from the place of
90 business of a new vehicle dealer to a place of business of
91 another dealer, or when delivered from the place of business of
92 the new vehicle dealer to the place of business of a purchaser to
93 whom title passes on delivery. A transporter's permit must be
94 carried in the cab of the motor vehicle being transported. A
95 person to whom a transporter's permit is issued shall file the
96 reports required by section five of this article and pay any tax
97 due. The fee for a transporter's permit is fifteen dollars and a
98 transporter's permit is valid for the fiscal year for which it is
99 issued unless surrendered or revoked by the tax commissioner.

100 (d) *Civil penalties.* — Upon a finding by the tax commis-
101 sioner based upon the best evidence available that a taxpayer,
102 whether the owner, licensee or lessee, or the employee, servant
103 or agent thereof, has performed any of the following acts, the
104 commissioner of motor vehicles shall revoke and refuse to
105 renew the taxpayer's identification marker or trip permit until
106 the cause for the revocation is corrected:

107 (1) Maintains inaccurate or incomplete records;

108 (2) Fails to respond to written requests for information;

109 (3) Fails to make records available upon request;

110 (4) Falsified application for identification markers or trip
111 permit;

112 (5) Has a prior revocation of identification markers in
113 another jurisdiction without reinstatement in that jurisdiction;

114 (6) Is delinquent in payment of taxes, but only after the
115 assessment of those taxes is finalized;

116 (7) Transfers or sells an identification marker or trip permit;
117 or

118 (8) Receives or purchases from any person not the commis-
119 sioner of motor vehicles an identification marker or trip permit.

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

123 (e) *Criminal penalties.* —

124 (1) Any person, whether the person be the owner, licensee
125 or lessee, or the employee, servant or agent thereof, who
126 operates or causes to be operated in this state, a motor carrier in

4 sioner of motor vehicles an identification marker for each motor
5 carrier, except as provided in subsection (b) or (c) of this
6 section. A person who operates, or causes to be operated, in this
7 state more than one motor carrier may obtain an identification
8 marker for each motor carrier: *Provided*, That such person may
9 also obtain an additional number of identification markers equal
10 to twenty-five percent of the total number of motor carriers in
11 the person's fleet of motor carriers that require identification
12 markers.

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

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

31 (3) The identification markers provided for in this section
32 are valid for a period of one year, ending the thirty-first day of
33 December each year. A fee of five dollars shall be paid to the
34 commissioner of motor vehicles for issuing each identification
35 marker which is reasonably related to the commissioner of
36 motor vehicles' costs of issuing each identification marker.

37 (4) All tax or returns due under this article shall be paid or
38 returns filed before the issuance of a new identification marker.
39 If the tax commissioner determines that a person subject to the
40 requirements of this article has failed to file any return or pay
41 the taxes imposed by this article, the commissioner of motor
42 vehicles shall revoke each identification marker previously
43 issued to that person and shall refuse to issue a new identifica-
44 tion marker to that person until all returns are filed and all taxes
45 imposed by this article paid.

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

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

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

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

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

60 (b) *Trip permit.* — A motor carrier that does not have a
61 motor carrier identification marker issued under subsection (a)
62 of this section may obtain a trip permit which authorizes the
63 motor carrier specified therein to be operated in this state
64 without an identification marker for a period of not more than
65 ten consecutive days beginning and ending on the dates
66 specified on the face of the permit: *Provided*, That if a motor
67 carrier's identification marker, whether issued by this state or

68 another jurisdiction, has been revoked, the motor carrier may
69 not be issued a trip permit. The fee for this permit is twenty-
70 four dollars.

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

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

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

84 (c) *Transportation permit.* — The commissioner of motor
85 vehicles is hereby authorized to grant, in his or her discretion,
86 a special permit to a new motor vehicle dealer for use on new
87 motor vehicles driven under their own power from the factory
88 or distributing place of a manufacturer, or other dealer, to a
89 place of business of the new vehicle dealer, or from the place of
90 business of a new vehicle dealer to a place of business of
91 another dealer, or when delivered from the place of business of
92 the new vehicle dealer to the place of business of a purchaser to
93 whom title passes on delivery. A transporter's permit must be
94 carried in the cab of the motor vehicle being transported. A
95 person to whom a transporter's permit is issued shall file the
96 reports required by section five of this article and pay any tax
97 due. The fee for a transporter's permit is fifteen dollars and a
98 transporter's permit is valid for the fiscal year for which it is
99 issued unless surrendered or revoked by the tax commissioner.

100 (d) *Civil penalties.* — Upon a finding by the tax commis-
101 sioner based upon the best evidence available that a taxpayer,
102 whether the owner, licensee or lessee, or the employee, servant
103 or agent thereof, has performed any of the following acts, the
104 commissioner of motor vehicles shall revoke and refuse to
105 renew the taxpayer's identification marker or trip permit until
106 the cause for the revocation is corrected:

107 (1) Maintains inaccurate or incomplete records;

108 (2) Fails to respond to written requests for information;

109 (3) Fails to make records available upon request;

110 (4) Falsified application for identification markers or trip
111 permit;

112 (5) Has a prior revocation of identification markers in
113 another jurisdiction without reinstatement in that jurisdiction;

114 (6) Is delinquent in payment of taxes, but only after the
115 assessment of those taxes is finalized;

116 (7) Transfers or sells an identification marker or trip permit;
117 or

118 (8) Receives or purchases from any person not the commis-
119 sioner of motor vehicles an identification marker or trip permit.

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

123 (e) *Criminal penalties.* —

124 (1) Any person, whether the person be the owner, licensee
125 or lessee, or the employee, servant or agent thereof, who
126 operates or causes to be operated in this state, a motor carrier in

127 violation of this section, is guilty of a misdemeanor and, upon
128 conviction thereof, shall be fined not less than fifty nor more
129 than five hundred dollars; and each day the violation continues
130 or reoccurs constitutes a separate offense.

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

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

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

§11-14A-9. Credits against tax.

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

36 the tax for which the taxpayer is liable in the same quarter, the
37 entire amount, upon the written request by the taxpayer, shall
38 be allowed as a credit on the tax for which the taxpayer would
39 otherwise be liable for any of the succeeding eight quarters:
40 *And provided further*, That any credit not used within the eight
41 succeeding quarters after the credit is established shall be
42 forfeited.

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

1 The commissioner is hereby authorized to refund from the
2 funds collected under the provisions of this article and article
3 fourteen of this chapter, the amount of the credit accrued for
4 gallons of motor fuel purchased in this state but consumed
5 outside of this state, if the taxpayer by duly filed claim requests
6 the commissioner to issue a refund and if the commissioner is
7 satisfied that the taxpayer is entitled to the refund and that the
8 taxpayer has not applied for a refund of the tax imposed by
9 article fourteen of this chapter: *Provided*, That effective the first
10 day of January, two thousand four, the refunds authorized in
11 this section shall be made from the funds collected under the
12 provisions of this article and from the flat rate of tax imposed
13 under section five, article fourteen-c of this chapter: *Provided*,
14 *however*, That unless the taxpayer has ceased doing business in
15 this state under either this article or article fourteen-b of this
16 chapter, any amount less than twenty dollars may not be
17 refunded but shall be used as a credit in accordance with the
18 provisions of section nine of this article: *Provided further*, That
19 the commissioner shall not approve a claim for refund when the
20 claim for a refund is filed after thirteen months from the close
21 of the quarter in which the tax was paid or the credit, as
22 provided in section nine of this article, was allowed: *And*
23 *provided further*, That effective the first day of April, two
24 thousand four, the commissioner shall not approve a claim for
25 refund when the claim for refund is filed after eight quarters

26 from the close of the quarter in which the tax was paid or the
27 credit, as provided in section nine of this article, was allowed:
28 *And provided further*, That any refund or credit due a taxpayer
29 subject to article fourteen-b of this chapter shall be withheld if
30 the taxpayer is delinquent on any fuel taxes due any other state:
31 *And provided further*, That the credit or refund shall in no case
32 be allowed to reduce the amount of tax to be paid by a taxpayer
33 below the amount due as tax on gasoline or special fuel used as
34 fuel in this state as provided by article fourteen of this chapter:
35 *And provided further*, That effective the first day of January,
36 two thousand four, the credit or refund shall in no case be
37 allowed to reduce the amount of tax to be paid by a taxpayer
38 below the amount due as tax on motor fuel used in this state as
39 provided by article fourteen-c of this chapter. The right to
40 receive any refund under the provisions of this article is not
41 assignable and any attempt at assignment thereof is void and of
42 no effect. The claim for refund or credit shall also be subject to
43 the provisions of section fourteen, article ten of this chapter.

§11-14A-13. Disposition of tax collected.

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

10 Unless necessary for the bond requirements, five four-
11 tenths of the tax collected under the provisions of this article
12 shall be used for feeder and state local service highway pur-
13 poses.

127 violation of this section, is guilty of a misdemeanor and, upon
128 conviction thereof, shall be fined not less than fifty nor more
129 than five hundred dollars; and each day the violation continues
130 or reoccurs constitutes a separate offense.

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

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

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

§11-14A-9. Credits against tax.

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

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

36 the tax for which the taxpayer is liable in the same quarter, the
37 entire amount, upon the written request by the taxpayer, shall
38 be allowed as a credit on the tax for which the taxpayer would
39 otherwise be liable for any of the succeeding eight quarters:
40 *And provided further*, That any credit not used within the eight
41 succeeding quarters after the credit is established shall be
42 forfeited.

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

1 The commissioner is hereby authorized to refund from the
2 funds collected under the provisions of this article and article
3 fourteen of this chapter, the amount of the credit accrued for
4 gallons of motor fuel purchased in this state but consumed
5 outside of this state, if the taxpayer by duly filed claim requests
6 the commissioner to issue a refund and if the commissioner is
7 satisfied that the taxpayer is entitled to the refund and that the
8 taxpayer has not applied for a refund of the tax imposed by
9 article fourteen of this chapter: *Provided*, That effective the first
10 day of January, two thousand four, the refunds authorized in
11 this section shall be made from the funds collected under the
12 provisions of this article and from the flat rate of tax imposed
13 under section five, article fourteen-c of this chapter: *Provided*,
14 *however*, That unless the taxpayer has ceased doing business in
15 this state under either this article or article fourteen-b of this
16 chapter, any amount less than twenty dollars may not be
17 refunded but shall be used as a credit in accordance with the
18 provisions of section nine of this article: *Provided further*, That
19 the commissioner shall not approve a claim for refund when the
20 claim for a refund is filed after thirteen months from the close
21 of the quarter in which the tax was paid or the credit, as
22 provided in section nine of this article, was allowed: *And*
23 *provided further*, That effective the first day of April, two
24 thousand four, the commissioner shall not approve a claim for
25 refund when the claim for refund is filed after eight quarters

26 from the close of the quarter in which the tax was paid or the
27 credit, as provided in section nine of this article, was allowed:
28 *And provided further*, That any refund or credit due a taxpayer
29 subject to article fourteen-b of this chapter shall be withheld if
30 the taxpayer is delinquent on any fuel taxes due any other state:
31 *And provided further*, That the credit or refund shall in no case
32 be allowed to reduce the amount of tax to be paid by a taxpayer
33 below the amount due as tax on gasoline or special fuel used as
34 fuel in this state as provided by article fourteen of this chapter:
35 *And provided further*, That effective the first day of January,
36 two thousand four, the credit or refund shall in no case be
37 allowed to reduce the amount of tax to be paid by a taxpayer
38 below the amount due as tax on motor fuel used in this state as
39 provided by article fourteen-c of this chapter. The right to
40 receive any refund under the provisions of this article is not
41 assignable and any attempt at assignment thereof is void and of
42 no effect. The claim for refund or credit shall also be subject to
43 the provisions of section fourteen, article ten of this chapter.

§11-14A-13. Disposition of tax collected.

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

10 Unless necessary for the bond requirements, five four-
11 tenths of the tax collected under the provisions of this article
12 shall be used for feeder and state local service highway pur-
13 poses.

11 (b) Beginning with the registration year specified in
12 subsection (a) of this section, the commissioner of motor
13 vehicles shall furnish the tax commissioner with motor carrier
14 registration information and information pertaining to the trip
15 permit registration program for use by the tax commissioner in
16 collecting motor fuel taxes.

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

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

§11-14B-5. Scope of agreement.

1 An international fuel tax agreement may provide for:

2 (a) Determining the base jurisdiction of motor carriers;

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

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

6 (d) Exchanging information for purposes of motor fuel use
7 tax administration and collection;

- 8 (e) Determining persons eligible for a motor carrier tax
9 license or registration;
- 10 (f) Defining qualified motor carriers;
- 11 (g) Determining if or when bonding is required;
- 12 (h) Specify reporting requirements and periods;
- 13 (i) Specifying uniform penalty and interest rates for late
14 reporting and payment of motor fuel use taxes;
- 15 (j) Determining methods for collecting and forwarding of
16 motor fuel use taxes and penalties to another jurisdiction; and
- 17 (k) Any other provision which the parties to the agreement
18 believe will facilitate administration of the agreement and
19 collection of motor fuel use taxes from interstate motor carriers.

**§11-14B-6. Effect of international fuel tax agreement on the
administration or application of motor fuel use
taxes imposed by this state.**

- 1 (a) Even though the state of West Virginia is a member of
2 the international fuel tax agreement, the state of West Virginia
3 retains substantive authority to determine when the motor fuel
4 use taxes imposed by this state apply, the applicable rate of tax,
5 the applicable interest rate, and any other substantive tax issues
6 related to the administration or application of those taxes.
- 7 (b) The provisions of article fourteen-a of this chapter shall
8 apply to every licensee that is subject to the provisions of this
9 article: *Provided*, That, The amount of international fuel tax
10 agreement taxes reported as due and owing by a motor carrier
11 based in this state shall for purposes of articles nine and ten of
12 this chapter be treated as taxes due and owing to the state of
13 West Virginia: and,

14 (c) Every motor carrier that is not a licensee, every motor
15 carrier based in another state which is not a member of the
16 international fuel tax agreement and every West Virginia
17 intrastate motor carrier shall continue to be subject to the
18 provisions of article fourteen-a of this chapter, and any subse-
19 quent amendments thereto.

§11-14B-10. Audits.

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

10 (b) The tax commissioner is authorized to participate in
11 auditing motor carriers in other base jurisdictions to determine
12 if the motor fuel taxes due this state are properly reported and
13 paid: *Provided*, That any other base jurisdiction may participate
14 with the tax commissioner in auditing motor carriers based in
15 this state to determine if motor fuel taxes due that base jurisdic-
16 tion are properly reported and paid.

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

§11-14B-14. General procedure and administration.

1 (a) All of the provisions of the “West Virginia Tax Proce-
2 dure and Administration Act” set forth in article ten of this

3 chapter, including amendments thereto, apply to motor fuel
4 taxes collected under an international fuel tax agreement.

5 (b) In the event of any inconsistency between the provisions
6 of article ten of this chapter and the terms of the international
7 fuel tax agreement, the terms of said article ten control.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 10th
day of April, 2004.

Governor

PRESENTED TO THE

GOVERNOR

DATE

4-1-04

TIME

4:35 PM