June 30, 1964

Mr. Joe F. Burdett
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Dear Sir:

Enclosed are three copies of Administrative Regulations, Series VIII of Chapter 11-12 for the Gasoline Excise Tax Division of the State Tax Commissioner.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by that Division on June 30, 1964.

Please certify one copy of these regulations and return to that Division.

Very truly yours,

G. Thomas Battle

G. Thomas Battle
State Tax Commissioner

Filed in Office of the Secretary of State
of West Virginia June 30, 1964
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

GASOLINE EXCISE TAX

(Chapter 11, Article 14 of the Code)

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Clifford Lantz
Assistant Tax Commissioner

Charles B. Williams, Director
Gasoline Excise Tax Division

John B. Ruby, Jr.
Assistant Director
Gasoline Excise Tax Division

Filed
June 30, 1964

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-12
Series VIII
1964

TABLE OF CONTENTS

Subject: General Operations of the Gasoline Excise Tax Division

---

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-12
Series VIII
1964

Subject: Gasoline Excise Tax Regulations relating to the West Virginia Gasoline Excise Tax, Chapter 11, Article 14 of the Code of West Virginia, 1931, as amended. These regulations are described as Gasoline Excise Tax Regulations, abbreviated "GET", identified by title; for example, GET §1.06 - Definitions.

Section 1. General

GET §1.01. Scope.--These regulations establish general operating procedures in the office of the Gasoline Excise Tax Division of the State Tax Commissioner.

GET §1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 14, Section 23.

GET §1.03. Effective Date.--These regulations are promulgated on June 30, 1964, and become effective on 60 days thereafter.

GET §1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on ____________________.

GET §1.05. Certification.--These regulations are certified authentic by the State Tax Commissioner, Gasoline Excise Tax Division by certification number VIII.

GET §1.06. Definitions.--(a) "Blending" means the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or capable of use in an internal combustion engine as gasoline and/or as a motor fuel.

(b) "Commissioner or Tax Commissioner" means the state tax commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him.

(c) "Distributor" shall mean and include every person who refines, produces, manufactures, compounds, or blends gasoline in this state for use or for sale to jobbers or consumers, and every person who is now engaged, or who may hereafter engage, in his own name or in the name of his representative or agent in this state, in the selling of gasoline for the purpose of resale or distribution; and persons operating tank wagons into this state from places of business located outside this state and selling gasoline in quantities as desired by purchasers in this state without definite orders having been placed prior to the delivery of the product. Distributor also means a person dispensing fuels for heating purposes that are capable of use in an internal combustion engine as a motor fuel.

(d) "Distribution" means, in addition to its ordinary meaning, any disposition of possession whether by bailment, consignment or other manner or means whereby physical control or possession is relinquished.

(e) "Division" means the Gasoline Excise Tax Division of the Office of the State Tax Commissioner of West Virginia.

(f) "Gallon" means, in addition to its ordinary meaning which is sixty-four ounces of liquid measure, the equivalent in a capacity of measurement of substance in a gaseous state noted below:

33.5 lbs.	=	8 gallons
20 lbs.	=	4 3/4 gallons
43.5 lbs.	=	10 gallons

(g) "Gasoline" shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner's solvent, and any liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine: Provided, however, that the term "gasoline" shall not include diesel fuel, fuel oil or kerosene when used or sold for use as a motor fuel to operate railroad diesel locomotives in this state or when used as a motor fuel to operate watercraft operated upon the navigable streams of this state, nor include any fuel of a type sold exclusively as a motor fuel to operate aircraft.

(h) "Importer" shall mean any person who purchases or obtains gasoline in the amount of twenty-five gallons or more outside this state and uses the same within the state.

(i) "Jobber" means a person whose operation is such that he jobs or peddles products to consumers or persons for resale. Jobbers cannot purchase gasoline, as defined hereinbefore, tax free.

(j) "Motor Vehicle" shall mean automobiles, motor trucks and motorcycles, and shall include all other vehicles, engines or machines which are operated or propelled by combustion of gasoline.

(k) "Person" or the term "company" shall include any individual, firm, copartnership, joint adventure, association, corporation, trust and any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context, and when used in connection with the penalties imposed by these regulations, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint adventure, association, corporation, trust or any other group acting as a unit.

(l) "Retail Dealer" shall mean and include any person not a distributor who sells gasoline from a fixed location (Filling Station) in this state to consumers only.

(m) "Sale" shall include any exchange, gift, or other disposition of the product gasoline, as herein defined.

(n) "Purchase" shall mean and include any acquisition of ownership.

(o) "Special Fuels" means and includes all combustible gases and liquids capable of use in an internal combustion engine, except that it does not include gasoline, as hereinbefore defined. Special Fuels includes diesel fuel, kerosene, heating fuel, etc., when sold for use and/or that are capable of use in an internal combustion engine. Special fuels shall not include fuels used to operate railroad diesel locomotives or watercraft upon the navigable streams of this state. Nor shall it include aircraft fuel.

Section 2. Annual License Tax.--Every person who produces, refines, compounds or sells gasoline shall be required to obtain an annual license as hereinafter provided.

GET §2.01. Distributor's License.--Every distributor shall pay an annual license tax of five dollars for each distributing station or place of business or agency located within or without this state at or from which gasoline or special fuels are sold for resale or distribution or at which gasoline is produced, refined, blended or compounded. Such license tax shall be due and payable on the first day wherein business is transacted and on the first day of January annually, thereafter. A license certificate for any person commencing business on or after July first in any year may be issued for the half year upon payment of half the annual license tax herein required.

GET §2.02. Retail Dealer's License.--Every retail dealer shall pay an annual license tax of one dollar for each station or place of business from which gasoline is sold at retail. Such license tax shall be due and payable on the first day wherein business is transacted and shall be due and payable on the first day of January annually, thereafter.

GET §2.03. License Application.--It shall be the duty of every person intending to deal in gasoline in this state to make application, upon forms provided by the State Tax Commissioner, for a license to do so, to the State Tax Commissioner, which application shall be accompanied by the amount of license tax hereinbefore stated and shall state the nature of business to be transacted and shall designate the intended place of business.

GET §2.04. License Display.--The license certificate shall be posted or displayed and so kept at all times in public view at the place of business for which the same was issued.

GET §2.05. License Not Transferable or Assignable.--License certificates provided for herein shall not be transferable from one person to another nor from one location to another. A change of a person or company name shall require a new license to be issued, and the original license fee shall be charged.

GET §2.06. License Renewal.--The privilege granted through the payment of the annual license tax shall be conditioned upon the licensee complying with the requirements of Chapter 11, Article 14 of the Code of West Virginia and related regulations pertaining to the filing of reports and the payment of the excise tax imposed. Failure to do so may cause a revocation of license or a license may not be issued.

GET §2.07. Revocation of License-Injunction. --The Tax Commissioner may revoke the license of any person (a) who is in default to the state for monies due under Chapter 11, Article 14, Code of West Virginia, or (b) who violates any provision of said Article 14 or any rule or regulation related thereto. The Tax Commissioner upon application to any court of equity, may by injunction, restrain any person who fails or refuses to comply with the provisions of Chapter 11, Article 14 of the Code of West Virginia and/or any related regulations.

Section 3. Amount, Measure and Lien of Tax; Notice of Discontinuance of Business. --There is imposed upon every person who is a distributor, retail dealer or importer an excise tax based on the quantities of all gasoline produced, received, purchased, sold or used in this state, which tax shall be equivalent to seven cents per gallon on all gasoline. The tax shall be paid as hereinafter provided.

GET §3.01. Tax Imposed-Refiners, Producers. --Gallonage shall be included in the measure of tax by refiners and producers when such gallonage has been placed into any tank from which withdrawals are made for sales or transfers to any other person or persons.

GET §3.02. Tax Imposed-Distributor. --A distributor shall use as the measure of the tax the gallonage received, produced, purchased, sold or used in this state, which tax shall be equivalent to seven cents per gallon on all gasoline.

GET §3.03. Tax Imposed-Importer. --An importer shall use as the measure of tax the gallonage purchased, received, sold for whatever use. Distributors making shipments of gasoline into West Virginia may, as a matter of convenience to purchasers located in West Virginia, assume and pay the tax imposed when permission so to do is first obtained from the Tax Commissioner.

GET §3.04. Tax Imposed-Retail Dealers. --A retail dealer shall use as a measure of tax any non tax-paid gallonage purchase or obtained by him which gallonage is subject to the tax.

GET §3.05. Certain Exempt Sales or Purchases. --Sales or purchases of special fue ls to retail dealers and/or ser vice stations are exempt from the gasoline excise tax when such sales or purchases are for use or sale to or by consumers for consumption other than in an internal combustion engine provided that fuel in this category is stored separate and apart from facilities wherein fuel is stored for sale to consumers for use in internal combustion engines. Storage facilities for fuel not for use in an internal combustion engine must be labeled

"NOT FOR USE AS A MOTOR FUEL" in plain view of the public to indicate that non taxpaid or non-taxable products are contained therein. All persons storing special fuels for tax-free sales or tax-free use must have storage facilities therefor approved by the Tax Commissioner and identified as hereinafter required prior to receipt of any tax-free special fuels into such storage facilities. Storage or withdrawal facilities of tax-free special fuels which are approved by the Tax Commissioner must be identified by the words "NOT FOR USE AS A MOTOR FUEL". Letters shall be of contrasing color approximately two inches in height and shall be so placed that such words will be visible to persons to whom such tax-free special fuels are being sold or to persons who are making delivery of tax-free special fuels.

Storage facilities to store special fuels which are being used to heat any residence or commercial building that do not contain a pumping device for withdrawals or are so located wherein motor vehicles could not be serviced do not require approval or labeling.

Applications for approval of locations for storage facilities of tax-free special fuel shall be on forms prescribed and obtainable from the State Tax Commissioner's Office.

GET §3.06. Lien of Tax. --The excise tax imposed by Chapter 11, Article 14 of the Code of West Virginia shall accrue from the date of production, purchase, sale or use of the gasoline. The penalties imposed shall accrue from the date they become due and payable. A tax due and un-paid shall be a debt due the State of West Virginia. It shall be a personal obligation of the taxpayer and shall be a lien in favor of the State of West Virginia upon all property, whether real or personal, belonging to such taxpayer. The lien shall arise when a taxpayer fails to file his return and remit the tax.

GET §3.07. Discontinuance of Business-Tax Due.--Whenever a distributor, importer or retail dealer ceases to engage in business within this state, it shall be his duty to notify the Tax Commissioner in writing. Such notice shall give the date of discontinuance, sale or transfer and in the event of the sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof; all taxes accruing, but not yet due and payable, shall become due and payable concurrently with such discontinuance, sale or transfer, and it shall be the duty of such distributor, importer or retail dealer to make a report and pay all such taxes, and to surrender to the Tax Commissioner the license certificate theretofore issued.

GET §3.08. Tax Due-Purchasers Liability.--Unless notice shall have been given to the Tax Commissioner as required in GET §3.07, the purchaser or transferee shall be liable to the State of West Virginia for the amount of all taxes and penalties accrued, but only to the extent of the value of the property and business acquired or purchased.

Section 4. Distributor's Monthly Statement.--Every distributor selling gasoline in this state shall within thirty days after the close of each month, transmit to the Tax Commissioner a statement, verified by oath or affirmation, of all gallons refined, produced, compounded, purchased and received, sold, distributed or used by such distributor during the month to be covered, and if any of the gallonage received by such distributor had not been previously included in the measure of tax, he shall at the same time pay to the Tax Commissioner the amount of tax due.

GET §4.01. Gasoline Delivered to Distributor's Retail Stations.--All gallonage furnished by any distributor to any of its service stations in this state shall be deemed to have been sold and shall be treated and considered, in computing the tax in the same manner as though the same had been sold to retail dealers or to other persons.

GET §4.02. Distributor's Detailed Statement Required.--The distributor's statement shall also contain full details as to each sale made, including the gallonage of gasoline shipped from points without West Virginia direct to customers or consignees in West Virginia; the name and address of each purchaser; the date of each shipment or delivery; the point from which shipped or delivered; the quantity of each shipment or sale; the number and initials of the car in which shipped if shipped by rail; the name of the boat or barge if shipped by water; or, if delivered by other means the method of delivery. The statement shall also accurately show the gallonage purchased or received by such distributor during the month; the date each quantity was received; the point from which shipped or delivered; the point at which received; the name and address of the person from whom purchased or obtained; the quantity of each purchase; the number and initials of the car if shipped by rail; the name of the boat or barge if shipped by water; or, if delivered by other means, the method of delivery. The statement shall also contain any additional information the Tax Commissioner may deem necessary for the proper ascertainment and assessment of the tax.

GET §4.03. Statements Required Regardless of Tax Liability. -- The statements required from licensed distributors shall be filed for each month regardless of whether or not the same shows sales or purchases during any month and regardless of whether or not a tax is due.

Section 5. Retail Dealer's Statement. --Every retail dealer shall, within thirty days after the close of each month, transmit to the Tax Commissioner a statement, verified by oath or affirmation, on such forms as the Tax Commissioner shall prescribe, of all gallonage received, purchased or obtained by such retail dealer during the month to be covered, statement shall show the name and address of the person from whom each purchase of gasoline was made; the point from which shipped or delivered; the point at which received; the number and initials of the car if shipped by rail; the name of the boat or barge if shipped by water; or, if delivered by other means, the method of delivery, and the quantity of each purchase.

GET §5.01. Payment of Tax.--If any of the gallonage purchased or obtained by any retail dealer has not been previously included in the measure of tax, such dealer shall, at the time of transmitting the statement required in Section 5, pay to the Tax Commissioner the amount of tax due for such month.

GET §5.02. Invoice to Purchaser; Effect.--A retail dealer when selling gasoline to a purchaser wherein said purchaser or purchasers intend to file for a refund as authorized by Chapter 11, Article 14, Section 20 and 20 A of the Code of West Virginia, shall render to the purchaser an invoice or ticket for each individual purchase. These invoices or tickets shall provide the following information: (a) Date of sale, (b) Purchasers name and address, (c) Sellers (Vendors) name and address, (d) Origin of shipment, also destination, if different, (e) Kind of product sold, (f) Quantity of product sold, in gallons, (g) Extended cost of the product and (h) Proof of payment.

GET §5.03. Inspection-Preservation of Records.--The records of all persons doing business as hereinbefore defined, shall at all reasonable hours be subject to inspection by the Tax Commissioner or his duly authorized agent. Such records shall be preserved and shall not be destroyed until two years after the date the gasoline to which they related was purchased and/or sold.

GET §5.04. Retail Dealer's Statements Filed Monthly Regardless of Tax Liability.--The statements required from retail dealers shall be filed for each month regardless of whether or not the same shows sales or purchases during any month and regardless of whether or not a tax is due.

Section 6. Importer's Monthly Statement.--Every importer shall, within thirty days after the close of each month, transmit to the Tax Commissioner a statement, on such forms as the Tax Commissioner shall prescribe, of all gallonage received by such importer during the month to be covered, which statement shall show the name and address of the person from whom each purchase was made; the point from which shipped or delivered; the point at which received; the date of each shipment or purchase; and the quantity of each shipment or purchase; and he shall at the same time pay to the Tax Commissioner the amount of tax due for such month.

GET §6.01. Importer's Statement Filed Monthly Regardless of Tax Liability.--The statements required from importers shall be filed for each month regardless of whether or not the same shows sales or purchases during any month and regardless of whether or not a tax is due.

Section 7. Record of Gasoline Delivered-Penalties. --Any person transporting gasoline upon the public highways, shall carry either an invoice, sales memorandum, waybill, bill of lading, delivery ticket designating the name of the seller, purchaser or consignee and the point at which the gasoline or special fuels were obtained and the point of destination of the gasoline being transported. Any person violating any of these provisions shall be guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five dollars nor more than one hundred dollars.

GET §7.01. When Delivery of Gasoline is Prohibited-Penalties. --The delivery of gasoline from a tank truck to the tank of a motor vehicle is prohibited, except in cases of emergency. Any person violating this provision shall be fined not more than fifty dollars or confined in jail not more than thirty days, or both, in the discretion of the court.

Section 8. Gasoline Exported or in Interstate Commerce. --Gasoline shipped from another state shall be included in the measure of tax by the person first selling or using the same after the same shall have been divested of its interstate character; Provided, that distributors making shipments of gasoline into West Virginia may, as a matter of convenience to purchasers located in West Virginia, assume and pay the tax imposed, when permission so to do is first obtained from the Tax Commissioner. However, a distributor remitting the tax as a matter of convenience shall be responsible for reporting and paying taxes imposed by Chapter 11, Article 14 of the Code of West Virginia until such time that he notifies the Tax Commissioner in writing of any changes in procedure between the distributor and his customers as it relates to responsibility for the payment of taxes.

Section 9. Transportation Companies to Furnish Statements. --Transportation companies transporting gasoline to points in this state shall furnish a statement, on forms which the Tax Commissioner may prescribe, to be delivered within sixty days after the close of each month showing all quantities of gasoline delivered to points in West Virginia during the month to be covered by the statement; the names and addresses of consignees and consignors; point from which shipped, and point to which delivered; date of shipment and date of delivery; number and initial of the vessel regardless of its character.

Section 10. Nonresident Shipper to Furnish Statements. --Every person domiciled in another state who makes shipments of gasoline consigned to points in West Virginia shall, within thirty days after the close of the month, transmit to the Tax Commissioner, on such forms as the Tax

Commissioner shall prescribe, a statement, verified by oath or affirmation, of all sales or shipments of gasoline made to points in West Virginia during the month to be covered, showing the name and address of each purchaser or consignee; the date of each shipment; the point from which shipped; the point to which shipped; the number and initials of the car if shipped by rail; the name of the boat or barge if shipped by water; and the quantity of each shipment.

Section 11. Statements Filed Monthly Regardless of Tax Liability. -- The statements required by Sections 4, 5, 6, 9 and 10 shall be filed for each month regardless of whether or not the same shows sales or purchases during any month and regardless of whether or not a tax is due.

Section 12. Manner of Payment. --All payments of taxes imposed shall be made by certified check, cashier's check, bank draft or money order, payable to the Tax Commissioner.

Section 13. Failure or Refusal to Make Statement or Pay Tax. --If any distributor, retail dealer, importer or any other person fail, neglect or refuse to make any statement required herein for any month or to pay the excise tax due within the month within the time prescribed which such statement for the payment of such tax there shall automatically accrue a penalty equal to one tenth of one cent per each gallon of gasoline on which the excise tax is due and payable in this period, or on each gallon purchased during that month if any excise tax is due, the amount of which penalty shall in no case be less than five dollars. (Or if any sales or purchases were made, a penalty of five dollars.) Unless it is determined by the Tax Commissioner that such failure to file the return or pay the tax within the time prescribed, was due to circumstances beyond the control of the person.

In the event any distributor, retail dealer, importer or any other person fails or neglects to report or pay the tax on any quantity of gasoline for any month or to pay such tax at the time the return is required to be filed, the Tax Commissioner shall assess and collect the penalty of one tenth of one cent on each gallon of gasoline ommited from the measure of tax.

GET §13.01. Failure to Make Statement or Pay Tax-Additional Penalty. --The Tax Commissioner shall notify any distributor, retail dealer, or importer, that fails, neglects or refuses to make any statement required for any month within the time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten days from the date of such notification, there shall automatically accrue a penalty equal to one cent on each gallon of gasoline on which the excise tax is due and payable in that period or on each gallon purchased during that month if no excise tax is due, the amount of which penalty shall in no case be less than twenty-five dollars (or if no sales or purchases were made, a penalty of twenty-five dollars), such penalty to be paid or collected in the same manner as the tax imposed as hereinbefore stated is required to be paid or collected.

Section 14. Failure or Refusal to Make Statement-Power of Commissioner. -- If any distributor, retail dealer or importer fail, or refuse to make and file any statement at the time prescribed, or make, willfully or otherwise, an erroneous, false or fraudulent statement, the tax commissioner, or his duly appointed agent, shall make the statement from his own knowledge and from such information as he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes.

GET §14.01. Examine Books, Records, Papers and Witnesses. -- As a further means of making the statement the Tax Commissioner or his duly appointed agent, shall have power to examine the books, records and papers of such distributor, retail dealer or importer, to ascertain the amount of tax due and to that end, shall have power to examine witnesses under oath; and if any witness shall fail or refuse to appear at the request of the Tax Commissioner or his duly appointed agent, or refuse access to the books, records or papers, the Tax Commissioner or such agent shall certify the facts and names of the witnesses failing or refusing to appear, or refusing access to books or papers, to the circuit court of the county having jurisdiction of the party, and such court shall thereupon issue summons to such part to appear before the Tax Commissioner, or his agent, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as occasion may require, and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of tax, if any, due. From the statement so made the Tax Commissioner shall determine the amount of tax due.

GET §14.02. Additional Means of Checking Records.--In order that the Tax Commissioner may have additional means of checking the accuracy of the reports made, and determining the amount of tax due from any person, the books, records and other documents of common carriers, relative to the transportation of gasoline, are hereby declared accessible to the Tax Commissioner, or his duly appointed agent.

Section 15. Failure or Refusal to Pay Tax or Penalty-Procedure for Collection.--If any distributor, retail dealer or importer, liable for the payment of any excise tax or penalty, fail, neglect or refuse to pay such excise tax or penalty on demand from the Tax Commissioner and for ten days thereafter, it shall be lawful, for the Tax Commissioner, or his duly appointed agent, to collect such tax and penalty by distraint and sale of the good, chattels or effect, including stocks, securities and evidences of debt of the person liable for the payment of such tax and penalty.

If a person's failure or refusal to pay the tax is willful, such person may be subjected to liability for double the amount of tax and penalty found to be due.

Section 16. Invoice to Purchasers-Effect. --A distributor, selling gasoline or special fuels to another distributor or to a retail dealer and any person whether a distributor or a retail dealer selling gasoline or special fuels to others who intend to file for refund as authorized by Section 20 and 20 A of Article 14, Chapter 11 of the Code of West Virginia, shall render to the purchasers an invoice or ticket dated the day of shipment or delivery of the gasoline and upon such invoice or ticket the person so selling shall plainly state whether or not the tax has been paid on the gallonage of gasoline indicated thereon. In addition to this the invoice shall disclose the following information: (a) Purchasers name and address, (b) Sellers (Vendors) name and address, (c) Origin of shipment, also destination if different, (d) Kind of product sold, (e) Quantity of product sold, in gallons (f) The extended cost of the product and (g) Proof of payment.

Section 17. Status of Tax Accrued and Unpaid. --T he excise tax imposed by Chapter 11, Article 14 of the Code of West Virginia, when accrued and while in the hands of the distributor, retail dealer and importer, shall be the property of the State of West Virginia held in trust.

GET §17.01. Embezzlement of Tax Accrued and Unpaid. --If any person shall willfully fail to pay the tax to the Tax Commissioner as hereinbefore provided, he shall be guilty of embezzlement of funds, the property of the State of West Virginia, and upon conviction, he shall be confined in the penitentiary not less than one nor more than five years.

GET §17.02. Surety Bond. --In any case where it shall be deemed necessary by the Tax Commissioner, the Tax Commissioner is authorized to require any distributor, retail dealer or importer to deposit with the Tax Commissioner a surety bond, to be approved by the Tax Commissioner as to the sufficiency and by the attorney general as to form, indemnifying the State against any loss arising from the failure of the distributor, retail dealer or importer to pay the excise tax for any cause whatsoever.

Section 18. Failure to Pay the Tax. --If any person refuses or fails to pay the excise tax or the penalty, or any part thereof, due for any month upon demand from the Tax Commissioner and for ten days thereafter, the Tax Commissioner is empowered to cancel the license or licenses issued to such person.

GET §18.01. Enjoining Operation of Business. --In the case of any person continuing in any activity after the license issued therefor has been cancelled, or in the case of any person engaging in any activity without the payment of the license tax required therefor, the Tax Commissioner is directed to bring action in the circuit court of the county having jurisdiction of the party with a view to enjoining such person from engaging or continuing in such activity.

GET §18.02. Failure to Pay Tax-Violations;Penalties. -- If any distributor, retail dealer, importer, or other person making deliveries of gasoline in West Virginia, or any person required to file statements under Section 10 of these regulations, or the officers, directors, trustees or members of any firm, copartnership, joint adventure, association, corporation, trust or any other group acting as a unit fail, refuse, or neglect to make the statements required within the time and in the manner prescribed, or refuse examination of books and papers pertaining to gasoline sales or receipts, or who makes an incomplete statement and who fails or refuses to render invoices or tickets as hereinbefore required or who does, or attempts to do, anything whatsoever to avoid full disclosure of the amount of business done, or to avoid the payment of the whole or any part of tax due, he shall be guilty of a misdemeanor, and upon conviction thereof, fined not exceeding one thousand dollars, or imprisoned not exceeding six months, or both.

If any distributor, retail dealer, importer or any officer, director, trustee or member of any firm, copartnership, joint adventure, association or corporation, or any member of a group acting as a unit, makes a false or fraudulent statement hereunder, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one or more than five years.

Section 19. Refund of Gasoline Exported.--Any distributor who shall export gasoline from West Virginia to any other state or nation, may be refunded a sum equal to the amount of such excise tax paid on such gallonage upon application made on proper forms to the Tax Commissioner within thirty days after the close of the month in which such gasoline was exported.

GET §19.01. Loss by Reason of Shrinkage or Evaporation.--Any distributor who shall in the conduct of his wholesale gasoline business, sustain losses of gasoline by reason of shrinkage or evaporation, which gasoline shall have been included in the measure by which the excise tax imposed is determined, shall be refunded a sum equal to the amount of such excise tax on the gallonage lost, not to exceed one and one half of one per cent of the gallonage handled during that month which has been previously included in the measure by which the excise tax imposed is determined. Provided, however, that the tax commissioner shall cause refund to be made under authority of the section when application of refund is filed with the Tax Commissioner within thirty days following the close of the month during which the loss took place.

GET §19.02. Casualty Loss.--A distributor shall be entitled to a refund of the amount of gasoline tax paid by him, on any gasoline lost or destroyed, while he shall be the owner thereof, through fire, lightning, breakage, or flood: Provide, however, that such distributor shall notify the tax commissioner in writing of such loss or destruction, and the quantity of gasoline lost or destroyed, within ten days after the date of discovery of such loss or destruction: Provided further, that within thirty days after the discovery of such loss or destruction, such distributor shall file with the Tax Commissioner an affidavit sworn to by him, setting forth in full the circumstances and quantity of the loss or destruction, and such other information with respect thereto tas the Tax Commissioner may require.

Section 20. Refund of Tax on Gasoline Used for Certain Purposes.--
The statute provides for a refund of the excise tax on gasoline used for certain purposes off the highway. The person claiming the refund must buy in quantities of twenty-five gallons or more at one time, gasoline as defined by Chapter 11, Article 14 and the gasoline tax imposed by this article must have been previously paid to the State of West Virginia.

GET §2.01. Refund Categories.--Gasoline and/or special fuels actually used in any of the following categories may qualify for a gasoline excise tax refund.

(a) As a motor fuel for diesel engines not operated upon the public streets of this state;

(b) As a motor fuel to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the public highways or streets of this state;

(c) By any railway company subject to regulation by the public service commission of West Virginia, for any purpose other than upon the public highways or streets of this state;

(d) In the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the public highways and streets of this state;

(e) As a motor fuel in motor boats or other watercraft operated upon the navigable streams of this state.

GET §20.02. Requirements for Filing Refund Claims.--Persons intending to file for a refund of the Gasoline Excise Tax must submit a refund application providing the following information:

(a) Persons intending to file for refund of the gasoline excise tax must submit to the Tax Commissioner an affidavit accompanied by the original or top copy sales slips or invoices or certified copies thereof from the distributor or retail dealer showing such purchases:

(b) The invoice must bear evidence of payment thereof;

(c) The affidavit for refund shall set forth the total amount of such gasoline purchased and used by such consumer;

(d) The affidavit shall also set forth how this gasoline was used.

GET §20.03. Rights of Refund Not Assignable.--The right to receive any refund under the provisions of this article shall not be assignable. Any assignment thereof shall be void and of no effect.

GET §20.04. Persons Entitled to Claim Refund.--Only those persons purchasing and using gasoline and/or special fuels in accordance with this section shall be eligible to file an application for gasoline tax refund.

GET §20.05. Limitation on Filing Application.--The Tax Commissioner shall cause a refund to be made under the authority of this section only when application for refund is filed with the Tax Commissioner upon forms prepared and furnished by the Tax Commissioner within ninety (90) days from the date of purchase or delivery of the gasoline. An application for refund shall be considered as having been timely filed if the postmark date thereon is within the ninety (90) day period. If the ninetieth day falls on Sunday, the ninety day period shall be extended one day.

GET §20.06. Refunds Disallowed-Reasons.--Here, in general, but not limited to, are some of the reasons deemed sufficient to disallow or reject applications for refund:

(a) If one or more invoices attached to the current refund application has been previously submitted on a prior application it may be considered sufficient reason to disallow or reject applications for refund.

(b) Attaching a statement and/or invoice covering more than one purchase, regardless of quantity of each purchase, except where the statement or invoice is provided as proof of payment pertaining to the individual invoices attached to the refund application may be considered sufficient reason to disallow or reject the application for refund.

(c) Any erasure, change of date or other alteration of an invoice or invoices attached to a refund application shall be considered sufficient reason to disallow or reject an application for refund.

(d) If a person attaches an invoice(s) or ticket(s) in support of a refund application and said invoice(s) or ticket(s) were obtained from a person not licensed as required by Article 14 this may be considered sufficient reason to disallow or reject an application for refund.

(e) Where a purchaser acquires gallonage and then resells said gallonage and attaches his purchase invoice(s) to an application for refund on the gallonage resold to another person or persons and this gallonage was used by other persons, this may be considered sufficient reason to disallow or reject an application for refund.

(f) Failure of the refund claimant to answer requests for additional information after a second request has been made may be considered as sufficient reason to disallow or reject an application for refund.

(g) Applications having invoices attached must provide the following information: Name and address of vendor; date of purchase; name and address of purchaser; product purchased; number of gallons purchased; price of product. Failure to attach invoices to refund application that provide this information may be considered sufficient reason to disallow or reject an application for refund.

Section 20a. Partial Refund of Tax on Gasoline Used by Buses. -- Any person who shall buy in quantities of twenty-five gallons or more, at any one time, gasoline as defined by this article, for use in any vehicle or vehicles regularly operated by such person on urban or suburban bus lines in this state under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, may, if the gasoline tax imposed by this article shall have previously been paid upon such gasoline, be refunded an amount equal to three cents per gallon for each gallon of gasoline upon which tax has been paid.

GET §20a.01. Definition. -- Urban or suburban bus lines shall mean bus lines the majority of whose passengers use the buses for traveling a distance of not exceeding fort y miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools.

Section 21. False or Fraudulent Claim for Refund; Penalty. -- If any person shall make a false or fraudulent claim for refund he shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

Section 22. Taxes to be Used for Road Purposes. --All taxes collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of the construction, reconstruction, maintenance and repair of roads and highways, payment of the interest and sinking fund on state bonds issued for road purposes and the cost of administration.

Section 23. Forms and Regulations for Enforcement. --The Tax Commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe forms for returns and assessments and to make, issue and put in force all necessary and needful rules and regulations for ascertaining, assessing and collecting the taxes imposed by this article and the enforcement of the provisions thereof.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-12
Series VIII
1964

GENERAL INDEX
