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(Plus all the volunteer  
help we can get)

August 2, 1995

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

AGENCY: State Tax Division

RULE: New Rule, Series 14B, International Fuel Tax Agreement

DATE FILED AS AN EMERGENCY RULE: June 21, 1995

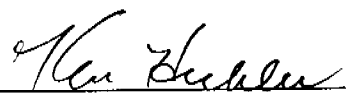
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

AUG 2 3 24 PM 1995

FILED

DECISION NO. 9-95

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
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### EMERGENCY RULE DECISION (ERD 9-95)

AGENCY: State Tax Division  
RULE: New Rule, Series 14B,  
FILED AS AN EMERGENCY RULE: International Fuel Tax Agreement

- par. 1 The State Tax Division (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State June 21, 1995 and with the LRMRC June 21, 1995.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code reads:

*The tax commissioner may adopt rules for the implementation, administration or enforcement of an international fuel tax agreement. These rules shall be promulgated in accordance with the provisions of §29A-3-1 of this code.*

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

See attached circumstances.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . due to both a federal deadline and loss of federal funds if this program is not implemented immediately.

par. 14

This decision shall be cited as Emergency Rule Decision 9-95 or ERD 9-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Division, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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**FILED**

**AUG 2 3 15 PM '95**

**OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE**

STATEMENT OF EMERGENCY FOR

EMERGENCY REGULATIONS 110 C.S.R. SERIES 14B

Section 4005 of the Intermodal Transportation Efficiency Act of 1991, a Federal Enactment, requires establishment of a single state registration system for commercial motor carriers (the International Registration Plan).

Section 4008 of the Intermodal Transportation Efficiency Act of 1991 requires that states adopt the International Fuel Tax Agreement. Failure of a state to conform to the requirements of the Intermodal Transportation Efficiency Act of 1991 would result in abrogation of that state's power to maintain or enforce any commercial motor vehicle registration law, regulation or agreement that limits the operation of any commercial motor vehicle within its borders which is not registered under the laws of the state, if the vehicle is registered under the laws of any other state participating in the international registration plan.

Pursuant to this federal law, the State of West Virginia became a member of the International Fuel Tax Agreement on December 6, 1994.

Article 14B, Chapter 11 of the West Virginia Code was enacted to conform laws of the State of West Virginia relating to the registration of motor carriers and reporting and payment of motor carrier taxes with requirements of the "Intermodal Transportation Efficiency Act of 1991," Public Law 102-240.

Subsections 11-14B-6(a) and (b) of the West Virginia Code read as follows:

**§ 11-14B-6. Effect of international fuel tax agreement.**

(a) The reporting requirements provided in the international fuel tax agreement shall take precedence over the reporting requirements provided in article fourteen-a of this chapter.

(b) Where the international fuel tax agreement and the provisions of article fourteen-a of this chapter and any amendments thereto subsequently made address the same matters, the provisions of the international fuel tax agreement shall take precedence.

Certain provisions of the International Fuel Tax Agreement conflict with the provisions of Article 14A, Chapter 11 of the West Virginia Code, the West Virginia Motor Carrier Road Tax statute. For example, under the International Fuel Tax Agreement, the motor fuel tax decals for motor carriers are issued annually and are effective for the calendar year from January 1 to December 31;

whereas, under the West Virginia Motor Carrier Road Tax statute, decals are issued annually beginning on July 1 of each year.

There are a number of other conflicts of laws between the International Fuel Tax Agreement and Article 14A, Chapter 11 of the West Virginia Code, including a conflict between the basic definition of what types of vehicles constitute "motor carriers" within the meaning of the two provisions.

The provisions of W. Va. Code § 11-14A require that the Motor Carrier Road Tax be administered by the Tax Commissioner. However, the provisions of W. Va. Code § 11-14B require that the administration of the tax be transferred to the Division of Motor Vehicles as of July 1, 1995.

The statute clearly states that the provisions of Article 14B and the International Fuel Tax Agreement will supersede the provisions of Article 14A. However the statutes and the International Fuel Tax Agreement provide no detail or guidance as to the procedures and policies to be adopted to resolve these conflicts and to accomplish these transitions.

An emergency exists such as to cause the promulgation of these emergency regulations to be necessary because the change of administration of the West Virginia Motor Carrier Road Tax from the Department of Tax and Revenue to the Division of Motor Vehicles is mandated by statute to occur on July 1, 1995. These regulations are necessary to give notice to taxpayers and to all interested parties of how that transfer is to be accomplished. These regulations are necessary to minimize inconvenience to taxpayers and to allow a cost efficient and orderly transfer of operations from one agency to the other.

These regulations are necessary to inform taxpayers of the methodology that will be adopted to change issuance of motor fuel decals from a fiscal year to a calendar year pursuant to the requirements of the International Fuel Tax Agreement. The necessity of setting and validating transition procedures and promulgating information before the beginning of the next motor fuel decal issuance date (July 1, 1995) constitutes an emergency such as to further justify the promulgation of these regulations.

In order for the State of West Virginia, the Department of Tax and Revenue, the Division of Motor Vehicles and the West Virginia State Police to effectively implement the requirements of the Intermodal Transportation Efficiency Act of 1991, the International Registration Plan, and the International Fuel Tax Agreement, it is necessary that there be an exchange of certain information between the Department of Tax and Revenue, the Division of Motor Vehicles and the West Virginia State Police.

Although W. Va. Code § 11-14B-9 authorizes disclosure of

certain tax information by the Department of Tax and Revenue to other agencies, that statutory provision requires that such disclosure only be made in circumstances where the information is to be used for "tax administration purposes."

It may be necessary for the Department of Tax and Revenue to disclose to the Division of Motor Vehicles or the West Virginia State Police, or both, certain information relating to the registration and ownership of motor vehicles, and the tax reports or tax information filed by or for the owners or operators of motor carriers in order for the Division of Motor Vehicles and the State Police to carry out their duties and responsibilities under the Intermodal Transportation Efficiency Act of 1991, the International Registration Plan, and the International Fuel Tax Agreement. Although such information will be solely and directly used for the administration and enforcement of the Intermodal Transportation Efficiency Act of 1991, the International Registration Plan, or the International Fuel Tax Agreement, such information will not be used directly and solely for tax administration.

Under W. Va. Code § 11-10-5d(f), the Tax Commissioner has the authority to designate, by legislative regulation, certain persons as "persons having a material interest" in certain tax information. Pursuant to that designation, the Tax Commissioner is permitted by the statute, W. Va. Code § 11-10-5d, to disclose confidential tax information to the designated "person having a material interest."

Because the State Police and the Division of Motor Vehicles need certain information set forth in motor fuel tax returns in order to implement the International Fuel Tax Agreement, and particularly the International Registration Plan, these emergency legislative regulations are necessary to allow the Department of Tax and Revenue to disclose the needed tax information to these agencies when such information will not be directly used in "tax administration," but will nevertheless be used for a valid statutory purpose.

These emergency legislative regulations apply to administration of the International Fuel Tax Agreement in the State of West Virginia pursuant to Article 14B, Chapter 11 of the West Virginia Code, and to administration of the West Virginia Motor Carrier Road Tax set forth in Article 14A, Chapter 11 of the West Virginia Code. Where any matter addressed in Article 14A, Chapter 11 of the West Virginia Code or 110 C.S.R. Series 14A (1990) address the same subject matter, and where there is a clear conflict between the provisions of these regulations and any provision of Article 14A, Chapter 11 of the West Virginia Code or 110 C.S.R. Series 14A (1990), these regulations, pursuant to the mandates of W. Va. Code § 11-14B-6, shall take precedence and shall supersede the provisions of Article 14A, Chapter 11 of the West Virginia Code and 110 C.S.R. Series 14A (1990).

Given that the State of West Virginia is a signatory to the International Fuel Tax Agreement and became a member of the International Fuel Tax Agreement on December 6, 1994, and given that the administration of the Motor Carrier Road Tax is required by law to be transferred from the Department of Tax and Revenue to the Division of Motor Vehicles on July 1, 1995, an emergency exists such as to warrant the issuance of emergency legislative regulations addressing the conflicts of law and transitional procedures to be followed in implementing and administering the statutory changes resulting from, and the requirements of, the Intermodal Transportation Efficiency Act of 1991, the International Registration Plan, and the International Fuel Tax Agreement.