

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-14B-12 and 11-10-5

AMENDMENT TO AN EXISTING RULE: YES NO

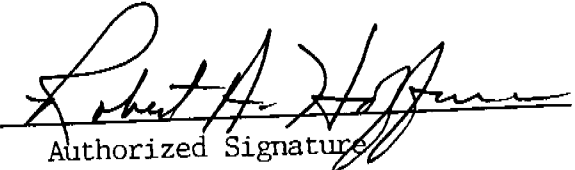
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 14B

TITLE OF RULE BEING PROPOSED: International Fuel Tax Agreement

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

James H. Paige III
State Tax Commissioner



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1995 JUL 28 AM 9:24

GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE JAMES H. PAIGE III
SECRETARY

TAX DIVISION

P. O. Box 2389

Charleston, WV 25328-2389

CONSENT TO FILE RULE

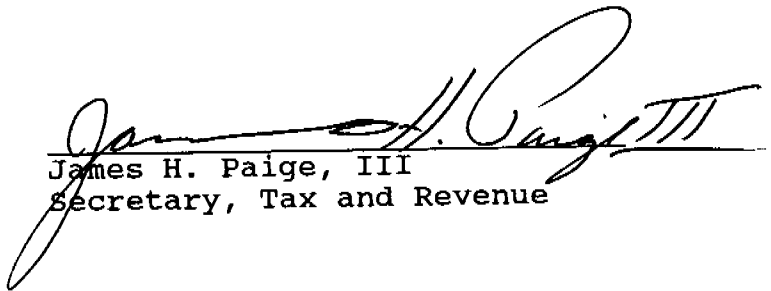
July 25, 1995

To Whom It May Concern:

Title of Rule: International Fuel Tax Agreement
Title Number: 110
Series Number: 14B

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 25th day of July, 1995.


James H. Paige, III
Secretary, Tax and Revenue

SUMMARY OF AGENCY APPROVED RULE

This rule explains and clarifies the administration of the International Fuel Tax Agreement under W. Va. Code § 11-14B-1 et seq.

STATEMENT OF CIRCUMSTANCES

Article 14B, Chapter 11 of the West Virginia Code was enacted to conform West Virginia laws relating to the registration of motor carriers and the reporting and payment of motor carrier taxes with the requirements of the "International Transportation Efficiency Act of 1991," Public Law 102-240. This rule further explains and clarifies the applicable West Virginia Laws.

FISCAL NOTE FOR AGENCY APPROVED RULES

Rule Title: International Fuel Tax Agreement

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division
 Address: W-300
State Capitol
Charleston, WV

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

No fiscal impact is anticipated beyond that envisioned with the enactment of Article 14B, Chapter 11 of the West Virginia Code.

3. Objectives of these rules:

This rule explains and clarifies the administration of the International Fuel Tax Agreement under Article 14B, Chapter 11 of the West Virginia Code.

Rule Title: International Fuel Tax Agreement

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated beyond that anticipated with the enactment of W. Va. Code § 11-14B-1 et seq.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

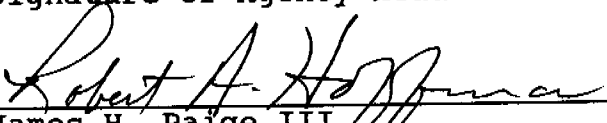
None anticipated beyond that anticipated with the enactment of W. Va. Code § 11-14B-1 et seq.

C. Economic Impact on Citizens/Public at Large.

None anticipated beyond that anticipated with the enactment of W. Va. Code § 11-14B-1 et seq.

Date: July 27, 1995

Signature of Agency Head or Authorized Representative



James H. Paige III
Secretary of Tax and Revenue,
State Tax Commissioner

DATE: July 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: International Fuel Tax Agreement

1. Authorizing statute(s) citation: West Virginia Code §§
11-14B-12 and 11-10-5

2. a. Date filed in State Register with Notice of Comment
Period:

June 21, 1995

b. What other notice, including advertising, did you
give of the comment period?

N/A

c. Date of public comment period: June 21, 1995 - July
24, 1995

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing: (be
exact)

July 28, 1995

f. Name and phone number(s) of agency person(s) to
contact for additional information:

Mark Morton - 558-8500

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

d. Attach findings and detminations and reasons:

Attached _____

AGENCY APPROVED

RECEIVED

LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE

1995 JUL 28 AM 9:24

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110
SERIES 14B
INTERNATIONAL FUEL TAX AGREEMENT

§ 110-14B-1. General.

1.1 **Scope.** - These legislative regulations set forth and clarify the procedures and requirements which will apply in the State of West Virginia for administration of the International Fuel Tax Agreement pursuant to Article 14B, Chapter 11 of the West Virginia Code, and for administration of the West Virginia Motor Carrier Road Tax set forth in Article 14A, Chapter 11 of the West Virginia Code upon implementation of the provisions of the International Fuel Tax Agreement.

1.1.1 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.

1.1.2 **Controlling effect over Article 14A, Chapter 11 of the West Virginia Code, and regulations issued pursuant thereto.**

These 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)

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- 1.2 Authority. - W. Va. Code §§ 11-10-5 and 11-14B-12.
- 1.3 Filing Date. - June 1, 1995.
- 1.4 Effective Date. - _____.

§ 110-14B-2. Definitions.

As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

2.1 "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this State or any subdivision or unit thereof or the federal government or any agency thereof.

2.2 "Identification marker" means the decal issued under W. Va. Code § 11-14A-7 by the Department of Tax and Revenue or the Division of Motor Vehicles for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the State of West Virginia.

2.3 "Motor carrier":

2.3.1 For taxpayers which operate solely in the State of West Virginia and which have no interstate operations and which are not members of the International Fuel Tax Agreement, the term "motor carrier" means any passenger vehicle which has seats for more than nine (9) passengers in addition to the driver, or any road tractor, or any tractor truck, or any truck having more than two (2) axles which is operated or caused to be operated by any person on any highway in this State;

2.3.1.1 For taxpayers which operate solely in the State of West Virginia and which have no interstate operations and which are not members of the International Fuel Tax Agreement, fifth (5th) wheel trailers when towed by a pick-up truck with the bed of the truck intact are not motor carriers; however, if the bed is removed and a fifth (5th) wheel trailer is attached, the vehicle becomes a tractor truck as defined in this Section 2;

2.3.1.2 For taxpayers which operate solely in the State of West Virginia and which have no interstate operations and which are not members of the International Fuel Tax Agreement, the term "road tractor" means every motor carrier designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn;

2.3.1.3 For taxpayers which operate solely in the State of West Virginia and which have no interstate operations and which are not members of the International Fuel Tax Agreement, the term "tractor truck" means every motor carrier designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn;

2.3.1.4 For taxpayers which operate solely in the State of West Virginia and which have no interstate operations and which are not members of the International Fuel Tax Agreement, the term "truck" means every motor carrier designed, used or maintained primarily for the transportation of property and having more than two (2) axles.

2.3.2 For taxpayers which operate in interstate commerce or which are International Fuel Tax Agreement registrants, the term "Motor Carrier" has the same definition as the definition for that term set forth in the International Fuel Tax Agreement.

2.4 "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated such motor carrier.

2.5 "Person" means and includes any individual, firm partnership, limited partnership, joint adventure, association, company, corporation, organization, syndicate, receiver, trust or nay other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint adventure, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and includes any governmental department, division, agency, office or subdivision thereof, unless the intention to give a more limited meaning is disclosed by the context.

2.6 "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give a more limited meaning is disclosed by the context.

2.7 "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provision of W. Va. Code §11-14A-1 et seq. and this regulation.

§ 110-14B-3. Registration of Motor Carriers.

3.1 Under the provisions of W. Va. Code § 11-14B-3, the powers, duties and responsibilities of the Tax Commissioner under W. Va. Code § 11-14A-7, relating to the Motor Carrier Road Tax, are transferred to the

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Commissioner of the Division of Motor Vehicles effective with the registration year that begins on July 1, 1995.

3.2 Whereas it is in the public interest that the Motor Carrier Road Tax and other taxes related to the operation of motor carriers in West Virginia and the International Fuel Tax Agreement be administered in an efficient, orderly and cost effective manner, the transfer of duties from the Department of Tax and Revenue to the Division of Motor Vehicles will be implemented in an orderly and systematic way so as to minimize cost and public inconvenience, and allow an orderly transition of administrative duties, powers and responsibilities from one agency to the other.

3.3 The Department of Tax and Revenue will temporarily perform certain processing and administrative functions after July 1, 1995 on behalf of the Department of Motor Vehicles for the Motor Carrier Road Tax imposed by Article 14A, Chapter 11 of the West Virginia Code until an efficient and systematic transfer of all such functions to the Division of Motor Vehicles can be effected. Appropriate interdepartmental reimbursements of costs for the performance of these functions will be made.

§ 110-14B-4. Change of Issuance Dates for Identification Markers (Decals) and Transition Rules for Identification Markers Issued During the Period of July 1, 1994 to December 31, 1995.

4.1 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.

4.1.2 The identification markers issued for periods prior to July 1, 1994 pursuant to the requirements of W. Va. Code § 11-14A-7 and 110 C.S.R. Series 14A, § 7 (1990) were valid under those provisions for a period of one (1) year, ending June thirtieth (30th) of each year.

4.1.3 The International Fuel Tax Agreement requires that identification markers be issued on a calendar year basis. Therefore, it is necessary that the issuance dates for identification markers issued

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by the State of West Virginia pursuant to the requirements of W. Va. Code § 11-14A-7 and 110 C.S.R. Series 14A, § 7 (1990) be changed from a June 30 ending fiscal year to a calendar year.

4.1.4 Identification markers issued under W. Va. Code § 11-14A-7 during the eighteen month period of July 1, 1994 to December 31, 1995 shall be valid for the period ending on December 31, 1995. The effect of this change is to extend the period of effectiveness of identification markers issued on July 1, 1994 from 12 months to 18 months. There shall be no additional charge or fee imposed upon identification marker holders or applicants as a result of the extension. However, the \$5.00 statutory fee imposed by W. Va. Code § 11-14A-7 for each identification marker shall remain in effect for identification markers issued during the 18 month period of July 1, 1994 to December 31, 1995.

4.2 Identification markers issued under W. Va. Code § 11-14A-7 for periods subsequent to December 31, 1995 shall be valid for one (1) year ending on December 31 of each year.

4.3 The change in issuance dates and transition rules set forth in this Section and the subsections thereof shall be applicable to all identification markers issued under W. Va. Code § 11-14A-7, without regard to whether such identification markers are issued to interstate motor carriers or intrastate motor carriers or to motor carriers registered through the International Fuel Tax Agreement or to motor carriers not so registered.

§ 110-14B-5. Exchange of Information.

5.1 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 fuel taxes with requirements of the "Intermodal Surface Transportation Efficiency Act of 1991," Public Law 102-240.

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

5.1.2 Section 4008 of the Intermodal Surface Transportation Efficiency Act of 1991 requires that states adopt the International Fuel Tax Agreement.

5.1.3 Failure of a state to conform to the requirements of the Intermodal Surface Transportation Efficiency Act of 1991 would result in abrogation of that state's power to maintain or enforce any

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commercial motor vehicle registration law, regulation or agreement which 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.

5.2 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 Surface Transportation Efficiency Act of 1991, the International Registration Plan, and the International Fuel Tax Agreement, it is necessary that there be a free exchange of certain information between the Department of Tax and Revenue, the Division of Motor Vehicles and the West Virginia State Police.

5.2.1 Section 11-14B-9 of the West Virginia Code allows the exchange of certain information. That Section reads as follows:

§ 11-14B-9. Exchange of Information.

(a) The tax commissioner may, as required by the terms of any agreement executed under section four of this article, forward to the proper officers of any party to such agreement any information in the tax commissioner's possession relative to the manufacture, receipt, sale, use, transportation or shipment of motor fuels by any person.

(b) The tax commissioner may disclose to the proper officers of any party to an agreement executed under section four of this article the location of offices, motor vehicles and other real and personal property of users of motor fuels.

(c) Information which the tax commissioner is authorized to disclose under this article, which is confidential information under article ten et seq of this chapter when in the possession of the tax commissioner, shall be treated as confidential information by the recipient thereof and that information may be used only for tax administration purposes.

(d) In the event of any inconsistency between the disclosure of information rules specified in this article and the confidentiality rules provided in article ten of this chapter, the language of this article shall control.

5.2.2 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 filed by or for the owners or operators thereof in order for the Division of

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Motor Vehicles and the State Police to carry out their duties and responsibilities under the Intermodal Surface Transportation Efficiency Act of 1991, the International Registration Plan, and the International Fuel Tax Agreement.

5.2.3 Use of such information for the administration and enforcement of the Intermodal Surface Transportation Efficiency Act of 1991, the International Registration Plan, or the International Fuel Tax Agreement, for registration and enforcement purposes constitutes use thereof directly and solely related to tax administration, as required by W. Va. Code § 11-14B-9(c).

5.2.4 Therefore, pursuant to the requirements of W. Va. Code § 11-14B-9(c), the Department of Tax and Revenue and Tax Commissioner will, within the Tax Commissioner's discretion, disclose to the Division of Motor Vehicles of the West Virginia Department of Transportation or the West Virginia State Police or both, as appropriate:

5.2.4.1 Motor Carrier Road Tax returns and Motor Carrier Road Tax return information of any person filing a West Virginia Motor Carrier Road Tax return or paying the West Virginia Motor Carrier Road Tax, and

5.2.4.1 The motor fuel tax returns of other states which are members of the International Fuel Tax Agreement and motor fuel tax information of other states which are members of the International Fuel Tax Agreement, which returns are filed with the State of West Virginia by any person registered under the International Fuel Tax Agreement that files reports with the State of West Virginia pursuant to such registration and uses the highways of the State of West Virginia.

5.2.5 The Tax Commissioner may disclose to the Division of Motor Vehicles and the State Police only Motor Carrier Road Tax returns and Motor Carrier Road Tax return information, and motor fuel tax returns and return information, as aforesaid, for implementation, administration or enforcement of the Intermodal Surface Transportation Efficiency Act of 1991, the International Registration Plan, or the International Fuel Tax Agreement, only if such information is to be directly used for the purpose of tax administration.

5.3 This information disclosure provision applies only to information filed directly by or for the taxpayer, filer or registrant with the Tax Commissioner. No information derived from the Internal Revenue Service, from the federal government.

5.4 Disclosure of tax returns or tax information pursuant to this regulation shall be within the sole discretion of the Tax Commissioner, and the Tax Commissioner may refuse disclosure of any return or return

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information.

5.5 The Tax Commissioner may disclose tax returns and tax information to states which are not members of the International Fuel Tax Agreement or to any department, division, agency, office or other subdivision thereof only in accordance with the requirements of W. Va. Code §§ 11-10-5d and 11-14B-9 and other applicable provisions of West Virginia law.

§ 110-14B-6. All Interstate Motor Carriers Doing Business In West Virginia Required to Join the International Fuel Tax Agreement

6.1 Pursuant to the requirements of Article 14B, Chapter 11 of the West Virginia Code, and pursuant to the participation of the State of West Virginia in the International Fuel Tax Agreement, all West Virginia domestic Motor Carriers which are registered with the West Virginia Division of Motor Vehicles as commercial motor carriers and which operate in interstate commerce in any other state which is a member of the International Fuel Tax Agreement are hereby required to join the International Fuel Tax Agreement.