

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

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

AMENDMENT TO AN EXISTING RULE: YES NO

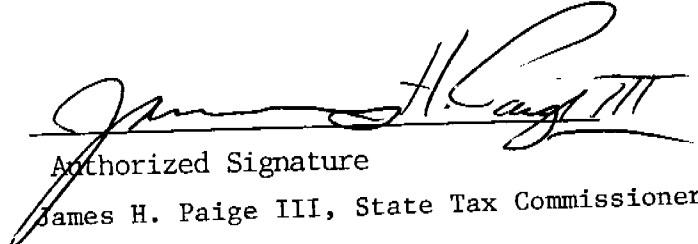
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature
James H. Paige III, State Tax Commissioner

State Tax Division
Title 110
Series 14B

this State or the federal government or any agency of the federal government.

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 **West Virginia intrastate IFTA nonregistrant carriers** - 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:

2.3.1.1 Any passenger vehicle which has seats for more than nine (9) passengers in addition to the driver, or

2.3.1.2 Any road tractor, or

2.3.1.3 Any tractor truck, or

2.3.1.4 Any truck having more than two (2) axles

2.3.1.5 which is operated or caused to be operated by any person on any highway in this State;

2.3.1.6 **Pickup trucks and 5th wheel trailers** - 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 Section 2.3.1.8 of this rule;

2.3.1.7 **Road tractors** - 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; and

2.3.1.8 **Tractor trucks** - 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

State Tax Division
Title 110
Series 14B

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; and

2.3.1.9 **Trucks** - 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; and

2.3.2 **Interstate carriers and IFTA registrants** - 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 the motor carrier to be operated.

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 rule.

§ 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

State Tax Division
Title 110
Series 14B

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

3.2 The Department of Tax and Revenue under an agreement with the Division of Motor Vehicles will temporarily perform certain processing and administrative functions after July 1, 1995 on behalf of the Division of Motor Vehicles for the Motor Carrier Road Tax imposed by West Virginia Code Section 11-14A-1 et. seq. until the Department of Tax and Revenue can effect the transfer of those functions to the Division of Motor Vehicles. The Division of Motor Vehicles will make appropriate interdepartmental reimbursements of costs for the performance of these functions.

§ 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 Identification markers issued under W. Va. Code § 11-14A-7 during the eighteen month period of July 1, 1994 to December 31, 1995 are 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 is 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 remains 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 are 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 are applicable to all identification markers issued under W. Va. Code § 11-14A-7, without regard to whether the 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 registered through that agreement.

§ 110-14B-5. Exchange of Information.

5.1 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

State Tax Division
Title 110
Series 14B

the Department of Tax and Revenue, the Division of Motor Vehicles and the West Virginia State Police.

5.1.1 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 of those motor vehicles in order for the Division of 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.

5.1.2 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).

5.1.3 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:

5.1.3.1 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

5.1.3.2 The motor fuel tax returns of other IFTA member states, which are filed with the State of West Virginia by any person:

5.1.3.2.a Who is registered under the International Fuel Tax Agreement, and

5.1.3.2.b Who files reports with the State of West Virginia pursuant to such registration, and

5.1.3.2.c Who uses the highways of the State of West Virginia; and

5.1.3.3 Motor fuel tax return information of other IFTA member states filed with the State of West Virginia by any person:

5.1.3.3.a Who is registered under the International Fuel Tax Agreement, and

State Tax Division
Title 110
Series 14B

5.1.3.3.b Who files reports with the State of West Virginia pursuant to such registration, and

5.1.3.3.c Who uses the highways of the State of West Virginia.

5.1.4 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 the information is to be directly used for the purpose of tax administration.

5.2 This information disclosure section 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 or from any federal agency or subdivision will be disclosed.

5.3 Disclosure of tax returns or tax information pursuant to this rule is within the sole discretion of the Tax Commissioner, and the Tax Commissioner may refuse disclosure of any return or return information.

5.4 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 West Virginia Code § 11-14B-1 et. seq., 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.



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GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

TAX DIVISION

P. O. Box 2389
Charleston, WV 25328-2389

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

CONSENT TO FILE RULE

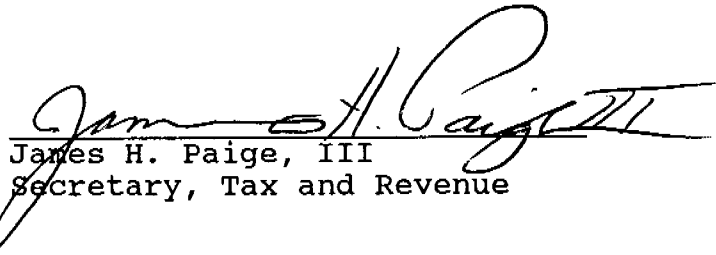
September 20, 1995

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 20th day of September, 1995.


James H. Paige, III
Secretary, Tax and Revenue