



# STATE OF WEST VIRGINIA

## Department of Revenue State Tax Department

**Joe Manchin III**  
Governor

**Christopher G. Morris**  
State Tax Commissioner

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### ADMINISTRATIVE NOTICE 2008-24

**SUBJECT: MOTOR FUEL EXCISE TAX -- State Tax Commissioner's Statement Concerning enforcement of the Motor Fuel Excise Tax Act, W. Va. Code § 11-14C-1 et seq., for sales of dyed diesel fuel to midstream refueling companies.**

#### BACKGROUND

Midstream Refueling Companies purchase dyed diesel fuel from suppliers located in West Virginia. The supplier receives the dyed diesel fuel within the bulk transfer/terminal system and then loads the dyed diesel fuel onto midstream refueling company barges. The midstream refueling companies then sell the dyed diesel fuel into vessels operating on navigable waterways within West Virginia borders and within other jurisdictions.

#### DETERMINATION

A midstream refueling company that removes motor fuel from the bulk transfer terminal system or imports dyed diesel fuel into West Virginia is liable for payment of the West Virginia Motor Fuel Excise Tax.

The Ohio River between mile point 40 and mile point 317 is, by law, part of the State of West Virginia.

#### DISCUSSION

The Motor Fuel Excise Tax is imposed under the authority of West Virginia Code § 11-14C-1 et seq. Dyed diesel fuel is subject to the variable rate component of the Motor Fuel Excise Tax under W. Va. Code § 11-14C-5(a), but is exempt from the flat rate component of the Motor Fuel Excise Tax under W. Va. Code § 11-14C-9(a)(3).

West Virginia Motor Fuel Excise Tax is imposed on the following:

**(1)** When motor fuel is removed from a storage tank, barge, holding facility, container or vessel that is not a part of the bulk transfer terminal system, as defined in the statute, the tax is paid by the person removing the fuel.

or

**(2)** When motor fuel is imported into this state, other than by a bulk transfer, the tax is paid by the person importing the motor fuel. W. Va. Code § 11-14C-6(a).

**Fuel purchased or removed from facilities of a supplier outside of the bulk transfer terminal system** -- West Virginia suppliers of motor fuel are required to collect and remit Motor Fuel Excise Tax on the removal of motor fuel from the bulk transfer terminal system. The tax must be collected from the person removing the motor fuel from the facility. W. Va. Code § 11-14C-6(c). If the motor fuel is to be exported to another state or nation, it is not subject to West Virginia's Motor Fuel Excise Tax if the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel that is to be transported to that state or nation. W. Va. Code § 11-14C-9(b).

If the person removing the motor fuel represents at the time of removal that the motor fuel will be exported to another state, the supplier may collect the destination state's motor fuel tax. If a destination state does not impose motor fuel tax on dyed diesel fuel, then the supplier is required to collect the West Virginia Motor Fuel Excise Tax on the removal of dyed diesel fuel.

Then when that person exports the motor fuel outside of West Virginia, the person may file a West Virginia Motor Fuel Exporter Return and seek a refund of the West Virginia tax previously paid on the amount of motor fuel exported to some other state.

**Fuel transported from outside of West Virginia and imported into West Virginia** -- When motor fuel is imported into West Virginia, if the Motor Fuel Excise Tax has not been previously collected by the supplier of the motor fuel, then the importer is directly responsible for filing a West Virginia Motor Fuel Excise Tax Importer Return and for paying the Motor Fuel Excise Tax on the imported motor fuel. This is true whether the fuel is imported into West Virginia on a highway or by railway or on a navigable waterway.

#### APPLICATION OF THIS ADMINISTRATIVE NOTICE

The provisions of this Administrative Notice shall apply to any applicable matter or assessment of tax pending before the Tax Department and governed under West Virginia Code § 11-14C-1 et seq.

If you have any question about this notice, please contact this office.

Issued: October 2, 2008

Christopher G. Morris  
State Tax Commissioner  
West Virginia State Tax Department

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