

WEST VIRGINIA STATE TAX DEPARTMENT

Administrative Notice 2005-02

SUBJECT: MOTOR FUEL EXCISE TAX -- Shipping Documents Required for the Transportation of Liquefied Petroleum Gas and/or Propane by Transport Truck to Residential Customers. W. VA. Code § 11-14C-34.

This Administrative Notice advises the public of the policy the Tax Department will follow relative to the requirement of certain shipping documents for the transportation of liquefied petroleum gas and/or propane gas to residential customers.

FACTS

In order to deliver liquefied petroleum gas and propane (herein, both are referred to as "LPG and/or propane") to customers, the LPG and/or propane that is stored at a bulk plant is loaded onto a transport vehicle with a pressurized tank designed for the transportation of LPG and/or propane (herein "transport vehicle"). The use of a transport vehicle with a pressurized tank for the delivery of LPG and/or propane is required by the Federal Motor Carrier Safety Administration. The transport vehicle makes multiple deliveries from each tank load to home heating customers and/or end users. The bulk plant may be located in either West Virginia or one of the surrounding States. When making deliveries, the transport vehicle may leave and re-enter the State several times, depending on the road system in use for the route being taken. Upon delivery, the customer is given an invoice containing the customer's address and the quantity delivered.

West Virginia Code § 11-14C-34 requires certain information to be stated on the shipping document. Each time a transport vehicle leaves and re-enters West Virginia, an action that may occur several times when delivering the LPG and/or propane contained in one tank full, the diversion procedure in Section 11-14C-34(d) is required to be used. Section 11-14C-34 states the following.

§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport; civil penalty.

(a) A person shall not transport in this state any motor fuel by barge, watercraft, railroad tank car or transport vehicle unless the person has a machine-generated shipping document, including multiple copies thereof, for the motor fuel that complies with this section. *Provided*, that in the event a terminal operator or operator of a bulk plant does not have installed on the first day of January, two thousand four, an automated machine that will print machine-generated shipping documents, the commissioner may authorize the terminal operator or operator of a bulk plant to issue manually prepared shipping documents: *Provided, however*, That in the event of an extraordinary unforeseen circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by subsection (b) of this section shall be substituted for the machine-generated shipping document. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, watercraft, railroad tank car or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the commissioner:

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received;
- (2) Date the motor fuel was loaded;
- (3) Invoiced gallons loaded;
- (4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;
- (5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase;
- (6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable Use Only Penalty for Taxable Use" or a similar phrase; and
- (7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. In the event that either the terminal operator, bulk plant operator, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal or bulk plant that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

- (1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;
- (2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel described;
- (3) Deliver motor fuel to the destination state printed on the shipping document unless the person:
 - (A) Notifies the commissioner before transporting the motor fuel into a state other than the printed destination state that the person has received instructions after

the shipping document was issued to deliver the motor fuel to a different destination state;

(B) Receives from the commissioner a confirmation number authorizing the diversion; and

(C) Writes on the shipping document the change in destination state and the confirmation number for the diversion; and

(4) Gives a copy of the shipping document to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by barge, watercraft, railroad tank car or transport vehicle shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia: *Provided*, That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the commissioner. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel in a barge, watercraft, railroad tank car or transport vehicle without a shipping document or with a false or an incomplete shipping document, or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is five thousand dollars.

(4) The amount of the civil penalty for each subsequent violation is ten thousand dollars.

(5) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the motor fuel excise tax imposed by this article.

ISSUE

Whether a transport truck required for the delivery of LPG and/or propane that makes deliveries both in West Virginia and in surrounding States and that in so doing exits and re-enters this State is required to obtain a diversion number every time the transport vehicle re-enters the State.

DISCUSSION

The Motor Fuel Excise Tax is imposed under the authority of West Virginia Code § 11-14C-1 et seq. on motor fuel that is imported into West Virginia. West Virginia Code § 11-14C-2 defines "motor fuel" as gasoline, blended fuel, aviation fuel and any special fuel. "Special Fuel" is defined to include LPG and propane. Therefore, the Motor Fuel Excise Tax is imposed on LPG and propane imported into this State.

As demonstrated above, motor fuel is not to be transported in this state unless the person doing the transporting has a machine-generated shipping document. The purpose behind the shipping document requirements in West Virginia Code § 11-14C-34 is to assure that all motor fuel entering West Virginia has been accounted for and subjected to the appropriate taxes. As a result, when the transport truck is loaded from a bulk plant in West Virginia, appropriate taxes have been paid prior to loading the LPG and/or propane on the transport truck.

However, if LPG and/or propane is being transported from a bulk plant in a surrounding State into West Virginia for residential heating use or for the end user, the tax may not have been paid. However, because of the route taken by this transport vehicle, it too may exit and re-enter West Virginia numerous times while making deliveries to customers.

The diversion procedure was established to assure the motor fuel being transported was actually being transported to the destination state named on the shipping document. The procedure authorizes designating a different destination state with records of the diversion being retained through provision of a confirmation number that is provided to the driver. It is common practice within the industry for shipments to be directed to a different state named at some point subsequent to completion of the shipping documents.

We are asked to determine whether the diversion procedure is to be utilized when LPG and/or propane is being delivered to residences and other end users when the transport vehicle is moving across the State's boundaries in the manner described above. To require use of the procedure is to impose a rather cumbersome process on the transport truck driver as that person makes many deliveries from the same tank load, all while entering and leaving the State numerous times. This is a considerably different situation from that involved with a large tanker truck delivering 5,000 gallons of gasoline to a retail gas station.

When delivering LPG and/or propane, customers are provided an invoice stating the amount delivered, day and location. Retention by the vendor of a copy for record keeping purposes will provide the necessary audit trail when determining whether the appropriate taxes have been paid.

CONCLUSION

We conclude that when delivering LPG and/or propane in a transport vehicle with a pressurized tank from a bulk plant to end users and/or home heating customers, that customer invoices (or a customer list) that states the address of the customers, and the dates and quantities of LPG and/or propane delivered may be used by the transporter in lieu of the requirement that a destination state be shown on the shipping documents issued by the operator of a bulk plant, thereby requiring use of the diversion procedure.

DETERMINATION

A vendor of LPG and/or propane that delivers both within and outside of West Virginia to residential customers and other end users, crossing the State's boundaries with other States when making those deliveries may use either the diversion procedure provided in West Virginia Code § 11-14C-34 or retain appropriate records demonstrating each customer's name, address, date and quantity of LPG and/or propane delivered.

The conclusions reached in this Administrative Notice are based upon the facts and representations submitted, and upon application of current law. In the event there is a material change in the facts, or if it is determined that material facts were omitted or are materially different from those furnished to us for purposes of this ruling, or if there is a material change in the applicable law, the conclusions reached in this Administrative Notice may no longer apply.

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-34.

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

Issued: March 7, 2005

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