

Senate Bill No. 326

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

[Introduced January 10, 2014; referred to the Committee on
Finance.]

10 A BILL to amend and reenact §11-14C-9 of the Code of West Virginia,
11 1931, as amended, relating to fixing a technical error
12 relating to the motor fuel excise tax.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §11-14C-9 of the Code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

16 **ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

17 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

18 (a) *Per se exemptions from flat rate component of tax.* - Sales
19 of motor fuel to the following, or as otherwise stated in this
20 subsection, are exempt per se from the flat rate of the tax levied
21 by section five of this article and the flat rate may not be paid
22 at the rack:

1 (1) All motor fuel exported from this state to any other state
2 or nation: *Provided*, That the supplier collects and remits to the
3 destination state or nation the appropriate amount of tax due on
4 the motor fuel transported to that state or nation. This exemption
5 does not apply to motor fuel which is transported and delivered
6 outside this state in the motor fuel supply tank of a highway
7 vehicle;

8 (2) Sales of aviation fuel;

9 (3) Sales of dyed special fuel; and

10 (4) Sales of propane unless sold for use in a motor vehicle.

11 (b) *Per se exemptions from variable component of tax.* - Sales
12 of motor fuel to the following are exempt per se from the variable
13 component of the tax levied by section five of this article and the
14 variable component may not be paid at the rack:

15 All motor fuel exported from this state to any other state or
16 nation: *Provided*, That the supplier collects and remits to the
17 destination state or nation the appropriate amount of tax due on
18 the motor fuel transported to that state or nation. This exemption
19 does not apply to motor fuel which is transported and delivered
20 outside this state in the motor fuel supply tank of a highway
21 vehicle.

22 (c) *Refundable exemptions from flat rate component of tax.* -

1 A person having a right or claim to any of the following exemptions
2 from the flat rate component of the tax levied by section five of
3 this article shall first pay the tax levied by this article and
4 then apply to the Tax Commissioner for a refund:

5 (1) The United States or agency thereof: *Provided*, That if
6 the United States government, or agency or instrumentality thereof,
7 does not pay the seller the tax imposed by section five of this
8 article on a purchase of motor fuel, the person selling tax
9 previously paid motor fuel to the United States government, or its
10 agencies or instrumentalities, may claim a refund of the flat rate
11 component of tax imposed by section five of this article on those
12 sales;

13 (2) A county government or unit or agency thereof;

14 (3) A municipal government or any agency thereof;

15 (4) A county board of education;

16 (5) An urban mass transportation authority created pursuant to
17 the provisions of article twenty-seven, chapter eight of this code;

18 (6) A municipal, county, state or federal civil defense or
19 emergency service program pursuant to a government contract for use
20 in conjunction therewith or to a person who is required to maintain
21 an inventory of motor fuel for the purpose of the program:
22 *Provided*, That motor fueling facilities used for these purposes are

1 not capable of fueling motor vehicles and the person in charge of
2 the program has in his or her possession a letter of authority from
3 the Tax Commissioner certifying his or her right to the exemption.
4 In order for this exemption to apply, motor fuel sold under this
5 subdivision and subdivisions (1) through (5), inclusive, of this
6 subsection shall be used in vehicles or equipment owned and
7 operated by the respective government entity or government agency
8 or authority;

9 (7) All invoiced gallons of motor fuel purchased by a licensed
10 exporter and subsequently exported from this state to any other
11 state or nation: *Provided*, That the exporter has paid the
12 applicable motor fuel tax to the destination state or nation prior
13 to claiming this refund or the exporter has reported to the
14 destination state or nation that the motor fuel was sold in a
15 transaction not subject to tax in that state or nation. A refund
16 may not be granted on motor fuel which is transported and delivered
17 outside this state in the motor fuel supply tank of a highway
18 vehicle;

19 (8) All gallons of motor fuel used and consumed in stationary
20 off-highway turbine engines;

21 (9) All gallons of fuel used for heating any public or private
22 dwelling, building or other premises;

- 1 (10) All gallons of fuel used for boilers;
- 2 (11) All gallons of motor fuel used as a dry cleaning solvent
3 or commercial or industrial solvent;
- 4 (12) All gallons of motor fuel used as lubricants, ingredients
5 or components of a manufactured product or compound;
- 6 (13) All gallons of motor fuel sold for use or used as a motor
7 fuel for commercial watercraft;
- 8 (14) All gallons of motor fuel sold for use or consumed in
9 railroad diesel locomotives;
- 10 (15) All gallons of motor fuel purchased in quantities of
11 twenty-five gallons or more for use as a motor fuel for internal
12 combustion engines not operated upon highways of this state;
- 13 (16) All gallons of motor fuel purchased in quantities of
14 twenty-five gallons or more and used to power a power take-off unit
15 on a motor vehicle. When a motor vehicle with auxiliary equipment
16 uses motor fuel and there is no auxiliary motor for the equipment
17 or separate tank for a motor, the person claiming the refund may
18 present to the Tax Commissioner a statement of his or her claim and
19 is allowed a refund for motor fuel used in operating a power
20 take-off unit on a cement mixer truck or garbage truck equal to
21 twenty-five percent of the tax levied by this article paid on all
22 motor fuel used in such a truck;

1 (17) Motor fuel used by a person regularly operating a vehicle
2 under a certificate of public convenience and necessity or under a
3 contract carrier permit for transportation of persons when
4 purchased in an amount of twenty-five gallons or more: *Provided,*
5 That the amount refunded is equal to ~~\$0.6~~ \$0.06 per gallon:
6 *Provided, however,* That the gallons of motor fuel have been
7 consumed in the operation of urban and suburban bus lines and the
8 majority of passengers use the bus for traveling a distance not
9 exceeding forty miles, measured one way, on the same day between
10 their places of abode and their places of work, shopping areas or
11 schools; and

12 (18) All gallons of motor fuel that are not otherwise exempt
13 under subdivisions (1) through (6), inclusive, of this subsection
14 and that are purchased and used by any bona fide volunteer fire
15 department, nonprofit ambulance service or emergency rescue service
16 that has been certified by the municipality or county wherein the
17 bona fide volunteer fire department, nonprofit ambulance service or
18 emergency rescue service is located.

19 (d) *Refundable exemptions from variable rate component of tax.*
20 - Any of the following persons may claim an exemption from the
21 variable rate component of the tax levied by section five of this
22 article on the purchase and use of motor fuel by first paying the

1 tax levied by this article and then applying to the Tax
2 Commissioner for a refund.

3 (1) The United States or agency thereof: *Provided*, That if
4 the United States government, or agency or instrumentality thereof,
5 does not pay the seller the tax imposed by section five of this
6 article on any purchase of motor fuel, the person selling tax
7 previously paid motor fuel to the United States government, or its
8 agencies or instrumentalities, may claim a refund of the variable
9 rate of tax imposed by section five of this article on those sales.

10 (2) This state and its institutions;

11 (3) A county government or unit or agency thereof;

12 (4) A municipal government or agency thereof;

13 (5) A county board of education;

14 (6) An urban mass transportation authority created pursuant to
15 the provisions of article twenty-seven, chapter eight of this code;

16 (7) A municipal, county, state or federal civil defense or
17 emergency service program pursuant to a government contract for use
18 in conjunction therewith, or to a person who is required to
19 maintain an inventory of motor fuel for the purpose of the program:
20 *Provided*, That fueling facilities used for these purposes are not
21 capable of fueling motor vehicles and the person in charge of the
22 program has in his or her possession a letter of authority from the

1 Tax Commissioner certifying his or her right to the exemption;

2 (8) A bona fide volunteer fire department, nonprofit ambulance
3 service or emergency rescue service that has been certified by the
4 municipality or county where the bona fide volunteer fire
5 department, nonprofit ambulance service or emergency rescue service
6 is located; or

7 (9) All invoiced gallons of motor fuel purchased by a licensed
8 exporter and subsequently exported from this state to any other
9 state or nation: *Provided*, That the exporter has paid the
10 applicable motor fuel tax to the destination state or nation prior
11 to claiming this refund. A refund may not be granted on motor fuel
12 which is transported and delivered outside this state in the motor
13 fuel supply tank of a highway vehicle.

14 (e) The provision in subdivision (9), subsection (a), section
15 nine, article fifteen of this chapter that exempts as a sale for
16 resale those sales of gasoline and special fuel by a distributor or
17 importer to another distributor does not apply to sales of motor
18 fuel under this article.

NOTE: The purpose of this bill is to fix a technical error relating to the motor fuel excise tax.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.