

SECOND ENGROSSMENT

H. B. 2226

(By Mr. Speaker, (Mr. Armstead) and Delegate Miley)

[By Request of the Executive]

[Introduced January 22, 2015; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-43a of said code, all relating to railroads and railways generally; providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel locomotives beginning on January 1, 2017; and expiring, nulling and voiding provisions requiring the Tax Commissioner to pay into the Special Railroad and Intermodal Enhancement Fund any amount from annual collections of the state corporate net income tax for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority, on and after July 1, 2015.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

1 and than §11-24-43a of said code be amended and reenacted, all to read as follows:

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

3 **11-14C-9. Exemptions from tax; claiming refunds of tax.**

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

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

11 (2) Sales of aviation fuel;

12 (3) Sales of dyed special fuel; and

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

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

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

21 (c) *Refundable exemptions from flat rate component of tax.* – A person having a right or
22 claim to any of the following exemptions from the flat rate component of the tax levied by section

1 five of this article shall first pay the tax levied by this article and then apply to the Tax
2 Commissioner for a refund:

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

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

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

10 (4) A county board of education;

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

13 (6) A municipal, county, state or federal civil defense or emergency service program pursuant
14 to a government contract for use in conjunction therewith or to a person who is required to maintain
15 an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling facilities
16 used for these purposes are not capable of fueling motor vehicles and the person in charge of the
17 program has in his or her possession a letter of authority from the Tax Commissioner certifying his
18 or her right to the exemption. In order for this exemption to apply, motor fuel sold under this
19 subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles
20 or equipment owned and operated by the respective government entity or government agency or
21 authority;

22 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently

1 exported from this state to any other state or nation: *Provided*, That the exporter has paid the
2 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the
3 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction
4 not subject to tax in that state or nation. A refund may not be granted on motor fuel which is
5 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

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

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

9 (10) All gallons of fuel used for boilers;

10 (11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial
11 solvent;

12 (12) All gallons of motor fuel used as lubricants, ingredients or components of a
13 manufactured product or compound;

14 (13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

15 (14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

16 (15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use
17 as a motor fuel for internal combustion engines not operated upon highways of this state;

18 (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used
19 to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment
20 uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the
21 person claiming the refund may present to the Tax Commissioner a statement of his or her claim and
22 is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck

1 or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel
2 used in such a truck;

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

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

15 (d) *Refundable exemptions from variable rate component of tax.* – Any of the following
16 persons may claim an exemption from the variable rate component of the tax levied by section five
17 of this article on the purchase and use of motor fuel by first paying the tax levied by this article and
18 then applying to the Tax Commissioner for a refund.

19 (1) The United States or agency thereof: *Provided*, That if the United States government, or
20 agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this
21 article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United
22 States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax

1 imposed by section five of this article on those sales.

2 (2) This state and its institutions;

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

4 (4) A municipal government or agency thereof;

5 (5) A county board of education;

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

8 (7) A municipal, county, state or federal civil defense or emergency service program pursuant
9 to a government contract for use in conjunction therewith, or to a person who is required to maintain
10 an inventory of motor fuel for the purpose of the program: *Provided*, That fueling facilities used for
11 these purposes are not capable of fueling motor vehicles and the person in charge of the program has
12 in his or her possession a letter of authority from the Tax Commissioner certifying his or her right
13 to the exemption;

14 (8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue
15 service that has been certified by the municipality or county where the bona fide volunteer fire
16 department, nonprofit ambulance service or emergency rescue service is located; ~~or~~

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

22 (10) Beginning on January 1, 2017, all gallons of motor fuel sold for use or consumed in

1 railroad diesel locomotives.

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

5 **ARTICLE 24. CORPORATION NET INCOME TAX.**

6 **§11-24-43a. Dedication of tax proceeds to railways.**

7 (a) Beginning January 1, 2008, there is dedicated an annual amount of up to \$4,300,000 from
8 annual collections of the tax imposed by this article for the purpose of construction, reconstruction,
9 maintenance and repair of railways, the construction of railway-related structures and payment of
10 principal and interest on state bonds issued for railway purposes, as approved by the West Virginia
11 Public Port Authority.

12 (b) For purposes of administering the deposits required by this subdivision, after December
13 31, 2007, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter
14 of the year, after deducting the amount of any refunds lawfully paid and any administrative costs
15 authorized by this code, the Tax Commissioner shall pay into the Special Railroad and Intermodal
16 Enhancement Fund provided in section seven-a, article sixteen-b, chapter seventeen of this code an
17 amount equal to at least \$1,075,000. In any quarter where the collections are less than the amount
18 required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where the total
19 amount paid in any year will be less than \$4,300,000, the difference shall be paid from amounts
20 available from collections in succeeding quarters until paid in full. Notwithstanding any provision
21 of this section to the contrary, the total amount to be deposited into the Special Railroad and
22 Intermodal Enhancement Fund for 2013 may not exceed \$2,150,000: Provided, That no deposits

1 shall be made into the Special Railroad and Intermodal Enhancement Fund during the fiscal year
2 2014.

3 (c) Notwithstanding any provision of this section to the contrary, all provisions of this section
4 relating to requiring the deposit of moneys into the Special Railroad and Intermodal Enhancement
5 Fund shall expire and be null and void on and after July 1, 2015.

NOTE: The purpose of this bill is to eliminate dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad Intermodal Enhancement Fund on and after July 1, 2015.

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