

H. B. 2695

(By Delegate Fast, Kessinger, Nelson, J., Blair, Hill, Kurcaba, Summers and Howell)
[Introduced February 11, 2015; referred to the
Committee on Roads and Transportation then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-14-2 and §11-14-11 of the Code of West Virginia, 1931, as amended, all relating to gasoline and fuel excise tax; requiring a refund of gasoline or fuel excise tax when fuel is consumed by a commercial vehicle while that vehicle is not operated upon the highways of this state.

Be it enacted by the Legislature of West Virginia:

That §11-14-2 and §11-14-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-2. Definitions.

For purposes of this article:

(1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products,

1 including, but not limited to, tank or barge strappings and other graduated lineal devices.

2 (2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

3 (3) "Commercial vehicle" means any vehicle operated to provide a service or carry goods for
4 charge or other consideration, or directly or indirectly in connection with any business, or other
5 undertaking intended for profit.

6 ~~(3)~~ (4) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State
7 of West Virginia or his or her duly authorized agent.

8 ~~(4)~~ (5) "Distributor" or "producer" means and includes every person:

9 (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this
10 state for use or for sale;

11 (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale
12 or for distribution; or

13 (c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for
14 use or sale by such person.

15 ~~(5)~~ (6) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by
16 volume: *Provided*, That the commissioner may by rule prescribe other measurement or definition
17 of gallon.

18 ~~(6)~~ (7) "Gasoline" means any product commonly or commercially known as gasoline,
19 regardless of classification, suitable for use as fuel in an internal combustion engine, except special
20 fuel as defined in this section.

21 ~~(7)~~ (8) "Highway" means every way or place of whatever nature open to the use of the public
22 as a matter of right for the purpose of vehicular travel, which is maintained by this state or some

1 taxing subdivision or unit of this state or the federal government or any of its agencies.

2 ~~(8)~~ (9) "Importer" means every person, resident or nonresident, other than a distributor, who
3 receives gasoline or special fuel outside this state for use, sale or consumption within this state, but
4 shall not include the fuel in the supply tank of a motor vehicle, or a person paying the motor carrier
5 road tax as provided for in article fourteen-a of this chapter.

6 ~~(9)~~ (10) "Motor carrier" means any passenger vehicle which has seats for more than nine
7 passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having more
8 than two axles which is operated or caused to be operated by any person on any highway in this state.

9 ~~(10)~~ (11) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and
10 all other vehicles or equipment, engines or machines which are operated or propelled by combustion
11 of gasoline or special fuel.

12 ~~(11)~~ (12) "Person" means and includes any individual, firm, partnership, limited partnership,
13 joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other
14 group or combination acting as a unit, in the plural as well as the singular number, and means and
15 includes the officers, directors, trustees or members of any firm, partnership, limited partnership,
16 joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other
17 group or combination acting as a unit, in the plural as well as the singular number, unless the
18 intention to give a more limited meaning is disclosed by the context.

19 ~~(12)~~ (13) "Petroleum carrier" means any person who hauls or transports gasoline or special
20 fuel within this state or on any navigable rivers which are within the jurisdiction of this state.

21 ~~(13)~~ (14) "Purchase" means and includes any acquisition of ownership of property or of a
22 security interest for a consideration.

1 ~~(14)~~ (15) "Receive" means any acquisition of ownership or possession of gasoline or special
2 fuel.

3 ~~(15)~~ (16) "Retail dealer" means any person not a distributor or producer who sells gasoline
4 or special fuel from a fixed location in this state to users.

5 ~~(16)~~ (17) "Sale" means any transfer, exchange, gift, barter or other disposition of any property
6 or security interest for a consideration.

7 ~~(17)~~ (18) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use
8 as fuel in an internal combustion engine. The term "special fuel" includes products commonly
9 known as natural or casing head gasoline, but shall not include any petroleum product or chemical
10 compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used
11 nor practicably suited for use as fuel in an internal combustion engine.

12 ~~(18)~~ (19) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under United
13 States Environmental Protection Agency rules for high sulphur diesel fuel or is dyed under internal
14 revenue service rules for low sulphur fuel or pursuant to any other requirements subsequently set by
15 the United States Environmental Protection Agency or Internal Revenue Service including any
16 invisible marker requirements that is sold for the exclusive use or consumption in off-highway
17 equipment and is exempt from excise taxation under federal law.

18 ~~(19)~~ (20) "Supply tank" means any receptacle on a motor vehicle from which gasoline or
19 special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of
20 a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank,
21 and any auxiliary tank or receptacle of any kind from which gasoline or special fuel is supplied for
22 the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel

1 supply line of the vehicle.

2 ~~(20)~~ (21) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank
3 or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

4 ~~(21)~~ (22) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless
5 the intention to give it a more limited meaning is disclosed by the context.

6 ~~(22)~~ (23) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty
7 under the provisions of this article.

8 ~~(23)~~ (24) "User" means any person who purchases gasoline or special fuel for use as fuel and
9 uses the fuel in an internal combustion engine owned or operated by that person.

10 **§11-14-11. Refund of tax because of certain commercial nonhighway uses; statute of**
11 **limitations and effective date.**

12 (a) The tax imposed by this article shall be refunded to any person who shall buy in quantities
13 of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed
14 ~~for the following purposes~~ by a commercial vehicle while that vehicle is not operated upon the
15 highways of this state. This refund applies, but is not limited, to gasoline or fuel used for the
16 following purposes:

17 (1) As a special fuel for internal combustion engines not operated upon highways of this
18 state; or

19 (2) Gasoline consumed to operate tractors and gas engines or threshing machines for
20 agricultural purposes, when such operation is not, in whole or in part, upon the highways of this
21 state; or

22 (3) Gasoline used by any railway company, subject to regulation by the Public Service

1 Commission of West Virginia, for any purpose other than upon the highways of this state; or

2 (4) Gasoline consumed in the business of manufacturing or producing natural resources or
3 in mining or drilling therefor, or in the transportation of natural resources solely by means of
4 unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor
5 fuel or for any other purpose and which gasoline is not in any part used upon the highways of this
6 state; or

7 (5) Gasoline consumed in motorboats or other watercraft operated upon the navigable waters
8 of this state; or

9 (6) Gasoline or special fuel used to power a power take-off unit on a motor vehicle. When
10 a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such
11 equipment or separate tank for such a motor, the person claiming the refund may present to the Tax
12 Commissioner a statement of his or her claim and shall be allowed a refund for fuel used in operating
13 a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the
14 tax imposed by this article paid on all fuel used in such a truck.

15 (b) Such tax shall be refunded upon presentation to the commissioner of an affidavit
16 accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the
17 distributor or producer or retail dealer, showing such purchases, together with evidence of payment
18 thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and
19 consumed by such user, other than upon any highways of this state, and how used; and the Tax
20 Commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to
21 be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

22 (c) The right to receive any refund under the provisions of this section shall not be assignable

1 and any assignment thereof shall be void and of no effect, nor shall any payment be made to any
2 person other than the original person entitled thereto using gasoline or special fuel as hereinbefore
3 in this section set forth. The Tax Commissioner shall cause a refund to be made under the authority
4 of this section only when the claim for such refund is filed with the Tax Commissioner, upon forms
5 prescribed by the Tax Commissioner, within six months from the month of purchase or delivery of
6 the gasoline or special fuel, except that any application for refund made under authority of
7 subdivision (2) above shall be filed within twelve months from the month of purchase or delivery
8 of such gasoline or special fuel. Any claim for a refund not timely filed shall not be construed to be
9 or constitute a moral obligation of the State of West Virginia for payment. Such claim for refund
10 shall also be subject to the provisions of section fourteen, article ten of this chapter.

11 (d) *Effective date.* -- The provisions of this section as hereby amended shall apply to all
12 gasoline and special fuels purchased or delivered on or after July 1, 1986, and the provisions of this
13 section in effect prior to July 1, shall apply to gasoline and special fuels purchased or delivered prior
14 to July 1, 1986.

NOTE: The purpose of this bill is to require a refund of gasoline or fuel excise tax when fuel is consumed by a commercial vehicle while that vehicle is not operated upon the highways of this state.

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