

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 582**

BY SENATORS PLYMALE AND WOELFEL

[Originating in the Committee on Finance;

reported on February 17, 2016]



1 A BILL to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating  
2 to providing a refundable exemption from the flat rate component of the state motor fuel  
3 excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel  
4 locomotives; setting a cap on the exemption per year; and requiring a proportionate  
5 disbursement if claims exceed the cap.

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

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

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

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

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

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

9 (2) Sales of aviation fuel;

10 (3) Sales of dyed special fuel; and

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

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

15 All motor fuel exported from this state to any other state or nation: *Provided*, That the  
16 supplier collects and remits to the destination state or nation the appropriate amount of tax due

17 on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel  
18 which is transported and delivered outside this state in the motor fuel supply tank of a highway  
19 vehicle.

20 (c) *Refundable exemptions from flat rate component of tax.* — A person having a right or  
21 claim to any of the following exemptions from the flat rate component of the tax levied by section  
22 five of this article shall first pay the tax levied by this article and then apply to the Tax  
23 Commissioner for a refund:

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

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

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

31 (4) A county board of education;

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

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

43 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently  
44 exported from this state to any other state or nation: *Provided*, That the exporter has paid the  
45 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the  
46 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction  
47 not subject to tax in that state or nation. A refund may not be granted on motor fuel which is  
48 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

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

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

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

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

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

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

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

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

61 (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and  
62 used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary  
63 equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for  
64 a motor, the person claiming the refund may present to the Tax Commissioner a statement of his  
65 or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a  
66 cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article  
67 paid on all motor fuel used in such a truck;

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

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

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

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

89 (2) This state and its institutions;

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

91 (4) A municipal government or agency thereof;

92 (5) A county board of education;

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

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

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

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

109 (10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in  
110 railroad diesel locomotives: *Provided*, That the refundable exemption contained in this  
111 subdivision may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers  
112 claiming the exemption and that if more than an aggregate amount of \$4,300,000 is appropriately  
113 claimed in any year, then the refundable exemption shall be distributed proportionately to the  
114 taxpayers so that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner  
115 may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a  
116 of this code that the Tax Commissioner considers necessary to administer the exemption  
117 contained in this subdivision.

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