

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2204

FISCAL  
NOTE

2015 Carryover

(BY DELEGATES HOWELL, WALTERS, STORCH, HILL,  
NELSON, KELLY, WAGNER, CANTERBURY, STANSBURY,  
ZATEZALO AND BUTLER)

[Introduced January 13, 2016; referred to the  
Committee on Senior Citizen Issues then Finance.]

1 A BILL to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating  
2 to eliminating the motor fuels tax on heating oil for residential use by eligible seniors.

*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 as provided in section thirty-one, article fourteen-c, chapter eleven  
24 of this code:

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

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

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

32 (4) A county board of education;

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

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

42 in vehicles or equipment owned and operated by the respective government entity or government  
43 agency or authority;

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

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

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

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

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

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

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

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

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

62 (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and  
63 used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary  
64 equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for  
65 a motor, the person claiming the refund may present to the Tax Commissioner a statement of his

66 or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a  
67 cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article  
68 paid on all motor fuel used in such a truck;

69 (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public  
70 convenience and necessity or under a contract carrier permit for transportation of persons when  
71 purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is  
72 equal to \$.06 per gallon: *Provided, however*, That the gallons of motor fuel have been consumed  
73 in the operation of urban and suburban bus lines and the majority of passengers use the bus for  
74 traveling a distance not exceeding forty miles, measured one way, on the same day between their  
75 places of abode and their places of work, shopping areas or schools; ~~and~~

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

81 (19) Heating oil used by eligible seniors in their private dwelling. To be eligible, a senior  
82 must be sixty-five years of age or older whose federal adjusted gross income is one hundred fifty  
83 percent or less of the federal poverty guidelines based upon the number of individuals in the family  
84 unit as determined annually by the United States Secretary of Health and Human Services.

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

89 (1) The United States or agency thereof: *Provided*, That if the United States government,

90 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of  
91 this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the  
92 United States government, or its agencies or instrumentalities, may claim a refund of the variable  
93 rate of tax imposed by section five of this article on those sales.

94 (2) This state and its institutions;

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

96 (4) A municipal government or agency thereof;

97 (5) A county board of education;

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

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

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

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

114           (10) Eligible seniors, as defined in subdivision (19), subsection (c) of this section, for all  
115 invoiced gallons of heating oil for use in their private dwelling.

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

NOTE: The purpose of this bill is to provide an exemption for eligible seniors from payment of tax on heating oil in a private dwelling.

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