

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 461

BY SENATORS FERNS AND CLINE

[Originating in the Committee on Finance; reported on

February 12, 2018]

1 A BILL to amend and reenact §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as
2 amended, all relating to petitions for tax refunds; and extending the time period to file a
3 petition for motor fuel excise tax refunds.

Be it enacted by the Legislature of West Virginia:

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 §11-14C-5 of this code 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 §11-14C-5 of this code
14 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 §11-
22 14C-5 of this code 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 §11-14C-5 of this
26 code on a purchase of motor fuel, the person selling tax previously paid motor fuel to the United
27 States government, or its agencies or instrumentalities, may claim a refund of the flat rate
28 component of tax imposed by §11-14C-5 of this code 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 §8-27-1
33 *et seq.* 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 §11-14C-9(c)(1) through §11-14C-9(c)(5) of this code shall be used in
41 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 25 gallons or more for use as a
60 motor fuel for internal combustion engines not operated upon highways of this state;

61 (16) All gallons of motor fuel purchased in quantities of 25 gallons or more and used to
62 power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment
63 uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor,
64 the person claiming the refund may present to the Tax Commissioner a statement of his or her
65 claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement
66 mixer truck or garbage truck equal to 25 percent of the tax levied by this article paid on all motor
67 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 25 gallons or more: *Provided*, That the amount refunded is equal to
71 six cents per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in

72 the operation of urban and suburban bus lines and the majority of passengers use the bus for
73 traveling a distance not exceeding 40 miles, measured one way, on the same day between their
74 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 §11-14C-9(c)(1) through
76 §11-14C-9(c)(6) of this code 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 §11-14C-
82 5 of this code 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 §11-14C-5 of this
86 code on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United
87 States government, or its agencies or instrumentalities, may claim a refund of the variable rate of
88 tax imposed by §11-14C-5 of this code 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 §8-27-1
94 *et seq.* 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;

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 subdivision
111 may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers claiming the
112 exemption and that if more than an aggregate amount of \$4,300,000 is appropriately claimed in
113 any year, then the refundable exemption shall be distributed proportionately to the taxpayers so
114 that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner shall allocate
115 the aggregate amount of the \$4,300,000 refundable exemption according to the order in which
116 the refund claim forms are received. The Tax Commissioner may propose rules for legislative
117 approval in accordance with §29A-3-1 *et seq.* of this code that the Tax Commissioner considers
118 necessary to administer the exemption contained in this subdivision.

119 (e) The provision in §11-15-9(a)(9) of this code that exempts as a sale for resale those
120 sales of gasoline and special fuel by a distributor or importer to another distributor does not apply
121 to sales of motor fuel under this article.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to §11-14C-9(c) or §11-14C-9(d) of this code
2 shall present to the commissioner a petition for refund in the form required by the commissioner

3 and provide the information required by the commissioner. The Tax Commissioner may require
4 the petitioner to provide the original or duplicate original sales slips or invoices from the distributor
5 or producer or retail dealer, as the case may be, showing the amount of the purchases, together
6 with evidence of payment thereof, and a statement stating how the motor fuel was used: *Provided,*
7 That sales slips or invoices marked “duplicate” are not acceptable: *Provided, however,* That
8 certified copies of sales slips or invoices are acceptable: *Provided further,* That copies of sales
9 slips and invoices may be used with any application for refund made under authority of §11-14C-
10 9(c) of this code when the motor fuel is used to operate tractors and gas engines or threshing
11 machines for agricultural purposes: *And provided further,* That a refund claim made under the
12 authority of §11-14C-9(c)(1) of this code and a refund claim made under the authority of §11-14C-
13 9(d)(1) of this code shall be accompanied by such verification as prescribed by the Tax
14 Commissioner: *And provided further,* That billing statements and electronic invoices are
15 acceptable in lieu of original invoices at the discretion of the Tax Commissioner: *And provided*
16 *further,* That the person claiming a refund under §11-14C-9(c) or §11-14C-9(d) of this code shall
17 retain for at least three years following the postmark date of the application for refund a copy of
18 the invoices, sales slips, and billing statements for which the refund was claimed.

19 (b) Any person claiming a refund pursuant to §11-14C-30 of this code shall file a petition
20 in writing with the commissioner. The petition shall be in the form and with supporting records as
21 required by the commissioner and made under the penalty of perjury.

22 (c) The right to receive any refund under the provisions of this section is not assignable
23 and any assignment thereof is void and of no effect. No payment of any refund may be made to
24 any person other than the original person entitled to claim the refund except as otherwise
25 expressly provided in this article. The commissioner shall cause a refund to be made under the
26 authority of this section only when the claim for refund is filed with the commissioner within the
27 following time periods:

28 (1) A petition for refund under §11-14C-30 of this code, other than for evaporation loss,
29 shall be filed with the commissioner within three years from the end of the month in which: (A)

30 The tax was erroneously or illegally paid; (B) the gallons were exported or lost by casualty; or (C)
31 a change of rate took effect;

32 (2) A petition for refund under §11-14C-30 of this code for evaporation loss shall be filed
33 within three years from the end of the year in which the evaporation occurred;

34 (3) A petition for refund under §11-14C-9(c) or §11-14C-9(d) of this code shall be filed with
35 the commissioner ~~on or before the last day of January, April, July and October~~ within one year
36 from the end of the calendar year for purchases of motor fuel during the ~~immediately preceding~~
37 ~~calendar quarter~~ calendar year: *Provided*, That any application for refund made under authority
38 of §11-14C-9(c) or §11-14C-9(d) of this code when the motor fuel is used to operate tractors and
39 gas engines or threshing machines for agricultural purposes shall be filed within 12 months from
40 the month of purchase or delivery of the motor fuel: *Provided, however*, That all persons
41 authorized to claim a refundable exemption under the authority of §11-14C-9(c)(1) through §11-
42 14C-9(c)(6) of this code, §11-14C-9(d)(1) through §11-14C-9(d)(6) of this code shall do so no
43 later than ~~August~~ December 31 for the purchases of motor fuel made during the preceding fiscal
44 year ending June 30.

45 (d) Any petition for a refund not timely filed is not construed to be or constitute a moral
46 obligation of the State of West Virginia for payment. Every petition for refund is subject to the
47 provisions of §33-10-14 of this code.

48 (e) The commissioner may make any investigation considered necessary before refunding
49 to a person the tax levied by §11-14C-5 of this code. The commissioner may also subject to audit
50 the records related to a refund of the tax levied by §11-14C-5 of this code.

NOTE: The purpose of this bill is to extend the time period to file a petition for motor fuel excise tax refunds.

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