

1 **ENROLLED**

2 **H. B. 4154**

3
4 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

5 [By Request of the Executive]

6 [Passed March 5, 2014; in effect from its passage.]
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10 AN ACT to amend and reenact §11-14C-9 of the Code of West Virginia,
11 1931, as amended, relating to clarifying that the refundable
12 amount from the flat rate component of the motor fuel excise
13 tax for certain qualified persons remains six cents per
14 gallon.

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

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

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

19 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

20 (a) *Per se exemptions from flat rate component of tax.* - Sales
21 of motor fuel to the following, or as otherwise stated in this
22 subsection, are exempt per se from the flat rate of the tax levied
23 by section five of this article and the flat rate may not be paid

1 at the rack:

2 (1) All motor fuel exported from this state to any other state
3 or nation: *Provided*, That the supplier collects and remits to the
4 destination state or nation the appropriate amount of tax due on
5 the motor fuel transported to that state or nation. This exemption
6 does not apply to motor fuel which is transported and delivered
7 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
13 of motor fuel to the following are exempt per se from the variable
14 component of the tax levied by section five of this article and the
15 variable component may not be paid at the rack:

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

23 (c) *Refundable exemptions from flat rate component of tax.* -
24 A person having a right or claim to any of the following exemptions

1 from the flat rate component of the tax levied by section five of
2 this article shall first pay the tax levied by this article and
3 then apply to the Tax Commissioner for a refund:

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

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

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

14 (4) A county board of education;

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

17 (6) A municipal, county, state or federal civil defense or
18 emergency service program pursuant to a government contract for use
19 in conjunction therewith or to a person who is required to maintain
20 an inventory of motor fuel for the purpose of the program:
21 *Provided*, That motor fueling facilities used for these purposes are
22 not capable of fueling motor vehicles and the person in charge of
23 the program has in his or her possession a letter of authority from
24 the Tax Commissioner certifying his or her right to the exemption.

1 In order for this exemption to apply, motor fuel sold under this
2 subdivision and subdivisions (1) through (5), inclusive, of this
3 subsection shall be used in vehicles or equipment owned and
4 operated by the respective government entity or government agency
5 or authority;

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

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

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

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

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

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

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

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

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

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

18 (17) Motor fuel used by a person regularly operating a vehicle
19 under a certificate of public convenience and necessity or under a
20 contract carrier permit for transportation of persons when
21 purchased in an amount of twenty-five gallons or more: *Provided,*
22 That the amount refunded is equal to \$0.06 per gallon: *Provided,*
23 *however,* That the gallons of motor fuel have been consumed in the
24 operation of urban and suburban bus lines and the majority of

1 passengers use the bus for traveling a distance not exceeding forty
2 miles, measured one way, on the same day between their places of
3 abode and their places of work, shopping areas or schools; and

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

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

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

24 (2) This state and its institutions;

- 1 (3) A county government or unit or agency thereof;
- 2 (4) A municipal government or agency thereof;
- 3 (5) A county board of education;
- 4 (6) An urban mass transportation authority created pursuant to
5 the provisions of article twenty-seven, chapter eight of this code;
- 6 (7) A municipal, county, state or federal civil defense or
7 emergency service program pursuant to a government contract for use
8 in conjunction therewith, or to a person who is required to
9 maintain an inventory of motor fuel for the purpose of the program:
10 *Provided*, That fueling facilities used for these purposes are not
11 capable of fueling motor vehicles and the person in charge of the
12 program has in his or her possession a letter of authority from the
13 Tax Commissioner certifying his or her right to the exemption;
- 14 (8) A bona fide volunteer fire department, nonprofit ambulance
15 service or emergency rescue service that has been certified by the
16 municipality or county where the bona fide volunteer fire
17 department, nonprofit ambulance service or emergency rescue service
18 is located; or
- 19 (9) All invoiced gallons of motor fuel purchased by a licensed
20 exporter and subsequently exported from this state to any other
21 state or nation: *Provided*, That the exporter has paid the
22 applicable motor fuel tax to the destination state or nation prior
23 to claiming this refund. A refund may not be granted on motor fuel
24 which is transported and delivered outside this state in the motor

1 fuel supply tank of a highway vehicle.

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