

**ENGROSSED**

**H. B. 2226**

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

[By Request of the Executive]

[Introduced January 22, 2015; referred to the  
Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended, relating to dedication of corporation net income tax proceeds to railways; specifying that dedication of corporation net income tax proceeds to railways expires and is null and void on and after July 1, 2015.

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

That §11-24-43a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

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

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

5 (2) Sales of aviation fuel;

6 (3) Sales of dyed special fuel; and

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

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

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

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

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

1 of tax imposed by section five of this article on those sales;

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

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

4 (4) A county board of education;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) This state and its institutions;

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

20 (4) A municipal government or agency thereof;

21 (5) A county board of education;

22 (6) An urban mass transportation authority created pursuant to the provisions of article

1 twenty-seven, chapter eight of this code;

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

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

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

16 (10) Beginning on January 1, 2017, all gallons of motor fuel sold for use or consumed in  
17 railroad diesel locomotives.

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

21 **ARTICLE 24. CORPORATION NET INCOME TAX.**

22 **§11-24-43a. Dedication of tax proceeds to railways.**

1 (a) Beginning January 1, 2008, there is dedicated an annual amount of up to \$4,300,000 from  
2 annual collections of the tax imposed by this article for the purpose of construction, reconstruction,  
3 maintenance and repair of railways, the construction of railway-related structures and payment of  
4 principal and interest on state bonds issued for railway purposes, as approved by the West Virginia  
5 Public Port Authority.

6 (b) For purposes of administering the deposits required by this subdivision, after December  
7 31, 2007, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter  
8 of the year, after deducting the amount of any refunds lawfully paid and any administrative costs  
9 authorized by this code, the Tax Commissioner shall pay into the Special Railroad and Intermodal  
10 Enhancement Fund provided in section seven-a, article sixteen-b, chapter seventeen of this code an  
11 amount equal to at least \$1,075,000. In any quarter where the collections are less than the amount  
12 required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where the total  
13 amount paid in any year will be less than \$4,300,000, the difference shall be paid from amounts  
14 available from collections in succeeding quarters until paid in full. Notwithstanding any provision  
15 of this section to the contrary, the total amount to be deposited into the Special Railroad and  
16 Intermodal Enhancement Fund for 2013 may not exceed \$2,150,000: Provided, That no deposits  
17 shall be made into the Special Railroad and Intermodal Enhancement Fund during the fiscal year  
18 2014.

19 (c) Notwithstanding any provision of this section to the contrary, all provisions of this section  
20 relating to requiring the deposit of moneys into the Special Railroad and Intermodal Enhancement  
21 Fund shall expire and be null and void on and after July 1, 2015.

NOTE: The purpose of this bill is to eliminate dedication of corporation net income tax revenues to and deposits of such revenues into the Special Railroad Intermodal Enhancement Fund on and after July 1, 2015.

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