

**S E C O N D
E N G R O S S M E N T**

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.]

A BILL to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-43a of said code, all relating to railroads and railways generally; providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel locomotives beginning on

January 1, 2017; and expiring, nulling and voiding provisions requiring the Tax Commissioner to pay into the Special Railroad and Intermodal Enhancement Fund any amount from annual collections of the state corporate net income tax for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority, on and after July 1, 2015.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-43a of said code be amended and reenacted, all 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.* –
- 2 Sales of motor fuel to the following, or as otherwise stated in this
- 3 subsection, are exempt per se from the flat rate of the tax levied
- 4 by section five of this article and the flat rate may not be paid at
- 5 the rack:

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

13 (2) Sales of aviation fuel;

14 (3) Sales of dyed special fuel; and

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

16 (b) *Per se exemptions from variable component of tax.* –

17 Sales of motor fuel to the following are exempt per se from the
18 variable component of the tax levied by section five of this
19 article and the variable component may not be paid at the rack:

20 All motor fuel exported from this state to any other state or
21 nation: *Provided*, That the supplier collects and remits to the
22 destination state or nation the appropriate amount of tax due on
23 the motor fuel transported to that state or nation. This exemption
24 does not apply to motor fuel which is transported and delivered

25 outside this state in the motor fuel supply tank of a highway
26 vehicle.

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

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

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

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

42 (4) A county board of education;

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

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

59 (7) All invoiced gallons of motor fuel purchased by a
60 licensed exporter and subsequently exported from this state to
61 any other state or nation: *Provided*, That the exporter has paid
62 the applicable motor fuel tax to the destination state or nation
63 prior to claiming this refund or the exporter has reported to the
64 destination state or nation that the motor fuel was sold in a
65 transaction not subject to tax in that state or nation. A refund

66 may not be granted on motor fuel which is transported and
67 delivered outside this state in the motor fuel supply tank of a
68 highway vehicle;

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

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

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

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

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

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

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

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

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

95 (17) Motor fuel used by a person regularly operating a
96 vehicle under a certificate of public convenience and necessity
97 or under a contract carrier permit for transportation of persons
98 when purchased in an amount of twenty-five gallons or more:
99 *Provided*, That the amount refunded is equal to \$0.06 per gallon:
100 *Provided, however*, That the gallons of motor fuel have been
101 consumed in the operation of urban and suburban bus lines and
102 the majority of passengers use the bus for traveling a distance
103 not exceeding forty miles, measured one way, on the same day

104 between their places of abode and their places of work, shopping
105 areas or schools; and

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

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

119 (1) The United States or agency thereof: *Provided*, That if
120 the United States government, or agency or instrumentality
121 thereof, does not pay the seller the tax imposed by section five
122 of this article on any purchase of motor fuel, the person selling
123 tax previously paid motor fuel to the United States government,

124 or its agencies or instrumentalities, may claim a refund of the
125 variable rate of tax imposed by section five of this article on
126 those sales.

127 (2) This state and its institutions;

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

129 (4) A municipal government or agency thereof;

130 (5) A county board of education;

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

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

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

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

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

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

ARTICLE 24. CORPORATION NET INCOME TAX.

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

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

8 (b) For purposes of administering the deposits required by
9 this subdivision, after December 31, 2007, from the taxes
10 imposed by this section and paid to the Tax Commissioner in
11 each quarter of the year, after deducting the amount of any
12 refunds lawfully paid and any administrative costs authorized by
13 this code, the Tax Commissioner shall pay into the Special
14 Railroad and Intermodal Enhancement Fund provided in section
15 seven-a, article sixteen-b, chapter seventeen of this code an
16 amount equal to at least \$1,075,000. In any quarter where the
17 collections are less than the amount required to be paid into the
18 Special Railroad and Intermodal Enhancement Fund, or where

19 the total amount paid in any year will be less than \$4,300,000,
20 the difference shall be paid from amounts available from
21 collections in succeeding quarters until paid in full.
22 Notwithstanding any provision of this section to the contrary, the
23 total amount to be deposited into the Special Railroad and
24 Intermodal Enhancement Fund for 2013 may not exceed
25 \$2,150,000: *Provided*, That no deposits shall be made into the
26 Special Railroad and Intermodal Enhancement Fund during the
27 fiscal year 2014.

28 (c) Notwithstanding any provision of this section to the
29 contrary, all provisions of this section relating to requiring the
30 deposit of moneys into the Special Railroad and Intermodal
31 Enhancement Fund shall expire and be null and void on and after
32 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.