

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2304**

BY DELEGATES FAST AND OVERINGTON

[ Introduced February 9, 2017; Referred  
to the Committee on Roads and Transportation then  
Finance.]

1 A BILL amend and reenact §11-14-2 and §11-14-11 of the Code of West Virginia, 1931, as  
 2 amended, all relating to gasoline and fuel excise tax; requiring a refund of gasoline or fuel  
 3 excise tax when fuel is consumed by a commercial vehicle while that vehicle is not  
 4 operated upon the highways of this state.

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

1 That §11-14-2 and §11-14-11 of the Code of West Virginia, 1931, as amended, be  
 2 amended and reenacted, all to read as follows:

**ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.**

**§11-14-2. Definitions.**

1 For purposes of this article:

2 (1) "Actual metered gallons" means, in addition to amounts computed by mechanical  
 3 devices which measure and record directly in digital terms, all amounts computed by other  
 4 methods of computing quantities commonly employed by persons engaged in the sale of  
 5 petroleum products, including, but not limited to, tank or barge strappings and other graduated  
 6 lineal devices.

7 (2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

8 (3) "Commercial vehicle" means any vehicle operated to provide a service or carry goods  
 9 for charge or other consideration, or directly or indirectly in connection with any business, or other  
 10 undertaking intended for profit.

11 ~~(3)~~ (4) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State  
 12 of West Virginia or his or her duly authorized agent.

13 ~~(4)~~ (5) "Distributor" or "producer" means and includes every person:

14 (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in  
 15 this state for use or for sale;

16 (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of  
 17 resale or for distribution; or

18 (c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state  
19 for use or sale by such person.

20 ~~(5)~~ (6) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by  
21 volume: *Provided*, That the commissioner may by rule prescribe other measurement or definition  
22 of gallon.

23 ~~(6)~~ (7) "Gasoline" means any product commonly or commercially known as gasoline,  
24 regardless of classification, suitable for use as fuel in an internal combustion engine, except  
25 special fuel as defined in this section.

26 ~~(7)~~ (8) "Highway" means every way or place of whatever nature open to the use of the  
27 public as a matter of right for the purpose of vehicular travel, which is maintained by this state or  
28 some taxing subdivision or unit of this state or the federal government or any of its agencies.

29 ~~(8)~~ (9) "Importer" means every person, resident or nonresident, other than a distributor,  
30 who receives gasoline or special fuel outside this state for use, sale or consumption within this  
31 state, but shall not include the fuel in the supply tank of a motor vehicle, or a person paying the  
32 motor carrier road tax as provided for in article fourteen-a of this chapter.

33 ~~(9)~~ (10) "Motor carrier" means any passenger vehicle which has seats for more than nine  
34 passengers in addition to the driver, or any road tractor, or any tractor truck or any truck having  
35 more than two axles which is operated or caused to be operated by any person on any highway  
36 in this state.

37 ~~(10)~~ (11) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles  
38 and all other vehicles or equipment, engines or machines which are operated or propelled by  
39 combustion of gasoline or special fuel.

40 ~~(11)~~ (12) "Person" means and includes any individual, firm, partnership, limited  
41 partnership, joint venture, association, company, corporation, organization, syndicate, receiver,  
42 trust or any other group or combination acting as a unit, in the plural as well as the singular  
43 number, and means and includes the officers, directors, trustees or members of any firm,

44 partnership, limited partnership, joint venture, association, company, corporation, organization,  
45 syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well  
46 as the singular number, unless the intention to give a more limited meaning is disclosed by the  
47 context.

48 ~~(12)~~ (13) "Petroleum carrier" means any person who hauls or transports gasoline or  
49 special fuel within this state or on any navigable rivers which are within the jurisdiction of this  
50 state.

51 ~~(13)~~ (14) "Purchase" means and includes any acquisition of ownership of property or of a  
52 security interest for a consideration.

53 ~~(14)~~ (15) "Receive" means any acquisition of ownership or possession of gasoline or  
54 special fuel.

55 ~~(15)~~ (16) "Retail dealer" means any person not a distributor or producer who sells gasoline  
56 or special fuel from a fixed location in this state to users.

57 ~~(16)~~ (17) "Sale" means any transfer, exchange, gift, barter or other disposition of any  
58 property or security interest for a consideration.

59 ~~(17)~~ (18) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for  
60 use as fuel in an internal combustion engine. The term "special fuel" includes products commonly  
61 known as natural or casing head gasoline, but shall not include any petroleum product or chemical  
62 compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly  
63 used nor practicably suited for use as fuel in an internal combustion engine.

64 ~~(18)~~ (19) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under  
65 United States Environmental Protection Agency rules for high sulphur diesel fuel or is dyed under  
66 Internal Revenue Service rules for low sulphur fuel or pursuant to any other requirements  
67 subsequently set by the United States Environmental Protection Agency or Internal Revenue  
68 Service including any invisible marker requirements that is sold for the exclusive use or  
69 consumption in off-highway equipment and is exempt from excise taxation under federal law.

70           ~~(19)~~ (20) "Supply tank" means any receptacle on a motor vehicle from which gasoline or  
71 special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive  
72 of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply  
73 tank, and any auxiliary tank or receptacle of any kind from which gasoline or special fuel is  
74 supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly  
75 connected to the fuel supply line of the vehicle.

76           ~~(20)~~ (21) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank  
77 or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or  
78 use.

79           ~~(21)~~ (22) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless  
80 the intention to give it a more limited meaning is disclosed by the context.

81           ~~(22)~~ (23) "Taxpayer" means any person liable for any tax, interest, additions to tax or  
82 penalty under the provisions of this article.

83           ~~(23)~~ (24) "User" means any person who purchases gasoline or special fuel for use as fuel  
84 and uses the fuel in an internal combustion engine owned or operated by that person.

**§11-14-11. Refund of tax because of certain commercial nonhighway uses; statute of limitations and effective date.**

1           (a) The tax imposed by this article shall be refunded to any person who shall buy in  
2 quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when  
3 consumed ~~for the following purposes~~ by a commercial vehicle while that vehicle is not operated  
4 upon the highways of this state, including, but not limited to, gasoline or fuel used for the following  
5 purposes:

6           (1) As a special fuel for internal combustion engines not operated upon highways of this  
7 state; or

8           (2) Gasoline consumed to operate tractors and gas engines or threshing machines for  
9 agricultural purposes, when such operation is not, in whole or in part, upon the highways of this  
10 state; or

11           (3) Gasoline used by any railway company, subject to regulation by the Public Service  
12 Commission of West Virginia, for any purpose other than upon the highways of this state; or

13           (4) Gasoline consumed in the business of manufacturing or producing natural resources  
14 or in mining or drilling therefor, or in the transportation of natural resources solely by means of  
15 unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a  
16 motor fuel or for any other purpose and which gasoline is not in any part used upon the highways  
17 of this state; or

18           (5) Gasoline consumed in motorboats or other watercraft operated upon the navigable  
19 waters of this state; or

20           (6) Gasoline or special fuel used to power a power take-off unit on a motor vehicle, when  
21 a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such  
22 equipment or separate tank for such a motor ~~the person claiming the refund may present to the~~  
23 ~~Tax Commissioner a statement of his or her claim and shall be allowed a refund for fuel used in~~  
24 ~~operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five~~  
25 ~~percent of the tax imposed by this article paid on all fuel used in such a truck~~ and which gasoline  
26 is not in any part used by the vehicle upon the highways of this state.

27           (b) Such tax shall be refunded upon presentation to the commissioner of an affidavit  
28 accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from  
29 the distributor or producer or retail dealer, showing such purchases, together with evidence of  
30 payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel  
31 purchased and consumed by such user, other than upon any highways of this state, and how  
32 used; and the Tax Commissioner upon the receipt of such affidavit and such paid sales slips or

33 invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and  
34 consumed as aforesaid.

35 (c) The right to receive any refund under the provisions of this section shall not be  
36 assignable and any assignment thereof shall be void and of no effect, nor shall any payment be  
37 made to any person other than the original person entitled thereto using gasoline or special fuel  
38 as hereinbefore in this section set forth. The Tax Commissioner shall cause a refund to be made  
39 under the authority of this section only when the claim for such refund is filed with the Tax  
40 Commissioner, upon forms prescribed by the Tax Commissioner, within six months from the  
41 month of purchase or delivery of the gasoline or special fuel, except that any application for refund  
42 made under authority of subdivision (2) above shall be filed within twelve months from the month  
43 of purchase or delivery of such gasoline or special fuel. Any claim for a refund not timely filed  
44 shall not be construed to be or constitute a moral obligation of the State of West Virginia for  
45 payment. Such claim for refund shall also be subject to the provisions of section fourteen, article  
46 ten of this chapter.

47 (d) Effective date. -- The provisions of this section as hereby amended shall apply to all  
48 gasoline and special fuels purchased or delivered on or after July 1, 1986, and the provisions of  
49 this section in effect prior to July 1, shall apply to gasoline and special fuels purchased or delivered  
50 prior to July 1, 1986.

NOTE: The purpose of this bill is to require a refund of gasoline or fuel excise tax when fuel is consumed by a commercial vehicle while that vehicle is not operated upon the highways of this state.

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