

H. B. 2772

(By Delegates Cowles, Stowers, Rodighiero,  
J. Miller, C. Miller, Michael and Hall)  
[Introduced January 24, 2011; referred to the  
Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-14C-9 of the Code of West Virginia,  
1931, as amended, relating to exempting special fuel and  
propane used for home heating purposes from the motor fuel  
excise tax.

*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 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) All motor fuel exported from this state to any other state  
or nation: *Provided*, That the supplier collects and remits to the

1 destination state or nation the appropriate amount of tax due on  
2 the motor fuel transported to that state or nation: *Provided,*  
3 *however,* That this exemption does not apply to any motor fuel which  
4 is transported and delivered outside this state in the motor fuel  
5 supply tank of a highway vehicle;

6 (2) Sales of aviation fuel;

7 (3) Sales of dyed special fuel; and

8 (4) Sales of propane.

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

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

20 (c) *Refundable exemptions from flat rate component of tax.* --  
21 Any person having a right or claim to any of the following  
22 exemptions from the flat rate component of the tax levied by  
23 section five of this article shall first pay the tax levied by this  
24 article and then apply to the Tax Commissioner for a refund:

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

8           (2) Any county government or unit or agency thereof;

9           (3) Any municipal government or any agency thereof;

10          (4) Any county boards of education;

11          (5) Any urban mass transportation authority created pursuant  
12 to the provisions of article twenty-seven, chapter eight of this  
13 code;

14          (6) Any municipal, county, state or federal civil defense or  
15 emergency service program pursuant to a government contract for use  
16 in conjunction therewith, or to any person on whom is imposed a  
17 requirement to maintain an inventory of motor fuel for the purpose  
18 of the program: *Provided, That* motor fueling facilities used for  
19 these purposes are not capable of fueling motor vehicles and the  
20 person in charge of the program has in his or her possession a  
21 letter of authority from the Tax Commissioner certifying his or her  
22 right to the exemption: *Provided, however, That* in order for this  
23 exemption to apply, motor fuel sold under this subdivision and  
24 subdivisions (1) through (5), inclusive, of this subsection shall

1 be used in vehicles or equipment owned and operated by the  
2 respective government entity or government agency or authority;

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

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

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

17       (10) All gallons of special fuel used for boilers;

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

20       (12) All gallons of motor fuel used as lubricants, ingredients  
21 or components of any manufactured product or compound;

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

24       (14) All gallons of special fuel sold for use or consumed in

1 railroad diesel locomotives;

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

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

15       (17) Motor fuel used by any person regularly operating any  
16 vehicle under a certificate of public convenience and necessity or  
17 under a contract carrier permit for transportation of persons when  
18 purchased in an amount of twenty-five gallons or more: *Provided,*  
19 That the amount refunded is equal to six cents per gallon:  
20 *Provided, however,* That the gallons of motor fuel have been  
21 consumed in the operation of urban and suburban bus lines and the  
22 majority of passengers use the bus for traveling a distance not  
23 exceeding forty miles, measured one way, on the same day between  
24 their places of abode and their places of work, shopping areas or

1 schools; and

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

9       (d) *Refundable exemptions from variable rate component of tax.*

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

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

22       (2) This state and its institutions;

23       (3) Any county government or unit or agency thereof;

24       (4) Any municipal government or any agency thereof;

- 1           (5) Any county boards of education;
- 2           (6) Any urban mass transportation authority created pursuant  
3 to the provisions of article twenty-seven, chapter eight of this  
4 code;
- 5           (7) Any municipal, county, state or federal civil defense or  
6 emergency service program pursuant to a government contract for use  
7 in conjunction therewith, or to any person on whom is imposed a  
8 requirement to maintain an inventory of motor fuel for the purpose  
9 of the program: *Provided*, That fueling facilities used for these  
10 purposes are not capable of fueling motor vehicles and the person  
11 in charge of the program has in his or her possession a letter of  
12 authority from the Tax Commissioner certifying his or her right to  
13 the exemption;
- 14           (8) Any bona fide volunteer fire department, nonprofit  
15 ambulance service or emergency rescue service that has been  
16 certified by the municipality or county wherein the bona fide  
17 volunteer fire department, nonprofit ambulance service or emergency  
18 rescue service 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: *Provided, however*, That a refund may not  
24 be granted on any motor fuel which is transported and delivered

1 outside this state in the motor fuel supply tank of a highway  
2 vehicle; or

3 (10) All gallons of special fuel and propane used for the  
4 heating private dwellings.

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

NOTE: The purpose of this bill is to exempt special fuels and propane gas that are used for home heating purposes from the motor fuel excise tax.

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