

H. B. 2396

(By Delegates Howell, Walters, Pasdon, Kump, Ashley,
Campbell, Moore, Barill, Lawrence, P. Smith and Storch)

[Introduced February 13, 2013; referred to the Committee
on Senior Citizen Issues then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-14C-9 of the Code of West Virginia,
1931, as amended, relating to eliminating the motor fuels tax
on heating oil for residential use by eligible seniors.

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
destination state or nation the appropriate amount of tax due on

1 the motor fuel transported to that state or nation: *Provided,*
2 *however,* That this exemption does not apply to any motor fuel which
3 is transported and delivered outside this state in the motor fuel
4 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.

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

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

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

1 of this code:

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

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

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

11 (4) Any county boards of education;

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

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

1 subdivisions (1) through (5), inclusive, of this subsection shall
2 be used in vehicles or equipment owned and operated by the
3 respective government entity or government agency or authority;

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

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

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

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

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

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

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

1 (14) All gallons of special fuel sold for use or consumed in
2 railroad diesel locomotives;

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

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

16 (17) Motor fuel used by any person regularly operating any
17 vehicle under a certificate of public convenience and necessity or
18 under a contract carrier permit for transportation of persons when
19 purchased in an amount of twenty-five gallons or more: *Provided,*
20 That the amount refunded is equal to 6¢ per gallon: *Provided,*
21 *however,* That the gallons of motor fuel have been consumed in the
22 operation of urban and suburban bus lines and the majority of
23 passengers use the bus for traveling a distance not exceeding forty
24 miles, measured one way, on the same day between their places of

1 abode and their places of work, shopping areas or 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 (19) Heating oil used by eligible seniors in their private
10 dwelling. To be eligible, a senior must be sixty-five years of age
11 or older whose federal adjusted gross income is one hundred fifty
12 percent or less of the federal poverty guidelines based upon the
13 number of individuals in the family unit as determined annually by
14 the United States Secretary of Health and Human Services.

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

21 (1) The United States or any agency thereof: *Provided, That*
22 *if the United States government, or any agency or instrumentality*
23 *thereof, does not pay the seller the tax imposed by section five of*
24 *this article on any purchase of motor fuel, the person selling tax*

1 previously paid motor fuel to the United States government, or its
2 agencies or instrumentalities, may then claim a refund of the
3 variable rate of tax imposed by said section on those sales.

4 (2) This state and its institutions;

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

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

7 (5) Any county boards of education;

8 (6) Any urban mass transportation authority created pursuant
9 to the provisions of article twenty-seven, chapter eight of this
10 code;

11 (7) Any municipal, county, state or federal civil defense or
12 emergency service program pursuant to a government contract for use
13 in conjunction therewith, or to any person on whom is imposed a
14 requirement to maintain an inventory of motor fuel for the purpose
15 of the program: *Provided*, That fueling facilities used for these
16 purposes are not capable of fueling motor vehicles and the person
17 in charge of the program has in his or her possession a letter of
18 authority from the Tax Commissioner certifying his or her right to
19 the exemption;

20 (8) Any bona fide volunteer fire department, nonprofit
21 ambulance service or emergency rescue service that has been
22 certified by the municipality or county wherein the bona fide
23 volunteer fire department, nonprofit ambulance service or emergency
24 rescue service is located; ~~or~~

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

9 (10) Eligible seniors, as defined in subdivision (19),
10 subsection (c) of this section, for all invoiced gallons of heating
11 oil for use in their private dwelling.

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

NOTE: The purpose of this bill is to exempt eligible seniors
from payment of tax on heating oil in a private dwelling.

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