

1 **H. B. 4154**

2  
3 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 14, 2014; referred to the  
6 Committee on Finance.]

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10 A Bill to amend and reenact §11-14C-9 of the Code of West Virginia,  
11 1931, as amended, relating to clarifying that the refundable  
12 amount from the flat rate component of the motor fuel excise  
13 tax for certain qualified persons remains six cents per  
14 gallon.

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

16 That §11-14C-9 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

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

19 **§11-14C-9. Exemptions from tax; claiming refunds of tax.**

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

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

8           (2) Sales of aviation fuel;

9           (3) Sales of dyed special fuel; and

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

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

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

22          (c) *Refundable exemptions from flat rate component of tax.* -  
23 A person having a right or claim to any of the following exemptions  
24 from the flat rate component of the tax levied by section five of

1 this article shall first pay the tax levied by this article and  
2 then apply to the Tax Commissioner for a refund:

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

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

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

13       (4) A county board of education;

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

16       (6) A municipal, county, state or federal civil defense or  
17 emergency service program pursuant to a government contract for use  
18 in conjunction therewith or to a person who is required to maintain  
19 an inventory of motor fuel for the purpose of the program:

20 *Provided*, That motor fueling facilities used for these purposes are  
21 not capable of fueling motor vehicles and the person in charge of  
22 the program has in his or her possession a letter of authority from  
23 the Tax Commissioner certifying his or her right to the exemption.

24 In order for this exemption to apply, motor fuel sold under this

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

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

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

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

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

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

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

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

1 fuel for commercial watercraft;

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

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

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

17       (17) Motor fuel used by a person regularly operating a vehicle  
18 under a certificate of public convenience and necessity or under a  
19 contract carrier permit for transportation of persons when  
20 purchased in an amount of twenty-five gallons or more: *Provided,*  
21 That the amount refunded is equal to ~~\$0.6~~ \$0.06 per gallon:  
22 *Provided, however,* That the gallons of motor fuel have been  
23 consumed in the operation of urban and suburban bus lines and the  
24 majority of passengers use the bus for traveling a distance not

1 exceeding forty miles, measured one way, on the same day between  
2 their places of abode and their places of work, shopping areas or  
3 schools; and

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

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

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

24 (2) This state and its institutions;

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

1 fuel supply tank of a highway vehicle.

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

NOTE: The purpose of this bill is to fix a technical error relating to 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.