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H. B. 2204

(By Delegates Howell, Walters, Storch, Hill, Nelson, Kelly,
Wagner, Canterbury, Stansbury, Zatezalo and Butler)

[Introduced January 22, 2015; 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
the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which
is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

- 1 (2) Sales of aviation fuel;
- 2 (3) Sales of dyed special fuel; and
- 3 (4) Sales of propane unless sold for use in a motor vehicle.

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

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

11 (c) *Refundable exemptions from flat rate component of tax.* – A person having a right or
12 claim to any of the following exemptions from the flat rate component of the tax levied by section
13 five of this article shall first pay the tax levied by this article and then apply to the Tax
14 Commissioner for a refund as provided in section thirty-one, article fourteen-c, chapter eleven of
15 this code:

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

- 21 (2) A county government or unit or agency thereof;
- 22 (3) A municipal government or any agency thereof;

- 1 (4) A county board of education;
- 2 (5) An urban mass transportation authority created pursuant to the provisions of article
3 twenty-seven, chapter eight of this code;
- 4 (6) A municipal, county, state or federal civil defense or emergency service program pursuant
5 to a government contract for use in conjunction therewith or to a person who is required to maintain
6 an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling facilities
7 used for these purposes are not capable of fueling motor vehicles and the person in charge of the
8 program has in his or her possession a letter of authority from the Tax Commissioner certifying his
9 or her right to the exemption. In order for this exemption to apply, motor fuel sold under this
10 subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles
11 or equipment owned and operated by the respective government entity or government agency or
12 authority;
- 13 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently
14 exported from this state to any other state or nation: *Provided*, That the exporter has paid the
15 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the
16 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction
17 not subject to tax in that state or nation. A refund may not be granted on motor fuel which is
18 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;
- 19 (8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;
- 20 (9) All gallons of fuel used for heating any public or private dwelling, building or other
21 premises;
- 22 (10) All gallons of fuel used for boilers;

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

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

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

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

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

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

16 (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public
17 convenience and necessity or under a contract carrier permit for transportation of persons when
18 purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is
19 equal to \$.06 per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in
20 the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling
21 a distance not exceeding forty miles, measured one way, on the same day between their places of
22 abode and their places of work, shopping areas or schools; ~~and~~

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

6 (19) Heating oil used by eligible seniors in their private dwelling. To be eligible, a senior
7 must be sixty-five years of age or older whose federal adjusted gross income is one hundred fifty
8 percent or less of the federal poverty guidelines based upon the number of individuals in the family
9 unit as determined annually by the United States Secretary of Health and Human Services.

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

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

19 (2) This state and its institutions;

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

21 (4) A municipal government or agency thereof;

22 (5) A county board of education;

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

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

9 (8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue
10 service that has been certified by the municipality or county where the bona fide volunteer fire
11 department, nonprofit ambulance service or emergency rescue service is located; ~~or~~

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

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

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

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NOTE: The purpose of this bill is to provide an exemption for 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.