

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2205

BY DELEGATES GEARHEART, COOPER AND AMBLER

[Introduced February 8, 2017; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §11-14C-2 and §11-14C-9 of the Code of West Virginia, 1931, as
 2 amended, all relating to exempting heating oil for residential use from the Motor Fuel
 3 Excise Tax.

Be it enacted by the Legislature of West Virginia:

1 That §11-14C-2 and §11-14C-9 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART I. GENERAL PROVISIONS.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires otherwise, the following terms have
 2 the meaning ascribed herein.

3 (1) "Agricultural purposes" means the activities of:

4 (A) Cultivating the soil, including the planting and harvesting of crops, for the commercial
 5 production of food, fiber and ornamental woodland products;

6 (B) Using land for breeding and management of farm livestock including dairy, apiary,
 7 equine or poultry husbandry; and

8 (C) Using land for the practice of horticulture including the growing of Christmas trees,
 9 orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing
 10 of timber for commercial purposes or other activity that normally would not be included in
 11 subdivision (A), (B) or (C) of this definition.

12 (2) "Aircraft" includes any airplane or helicopter.

13 (3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and
 14 methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or
 15 methanol by volume.

16 (4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as
 17 a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,

18 machine or mechanical contrivance and includes, but is not limited to, products commonly known
19 as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas,
20 natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series
21 fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation
22 fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

23 (5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for
24 alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

25 (6) "Alternative-fuel commercial refueling infrastructure" means property owned by a
26 commercial establishment and used for storing alternative fuels and for dispensing such
27 alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the
28 alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned
29 vehicles or commercial vehicles other than those owned by the same person or entity that owns
30 the alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-
31 fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression
32 equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is
33 delivered: *Provided*, That the property is not located on a private residence or private home.
34 "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure,
35 equipment, apparatus, terminal or connections for servicing, charging or providing electricity to
36 plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling
37 infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as
38 described in this subdivision which is owned by a lessor or landlord and leased to or rented to a
39 lessee or tenant as part of a residence for such lessee or tenant.

40 (7) "Alternative-fuel home refueling infrastructure" means property owned by a private
41 individual for personal use that is located at the individual's private residence or private home and
42 used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor
43 vehicles. This includes, but is not limited to, compression equipment, storage tanks and

44 dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this
45 article, "alternative-fuel home refueling infrastructure" does not include any building,
46 infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing
47 electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling
48 infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by
49 a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for
50 such lessee or tenant.

51 (8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

52 (9) "Assessment" means a written determination by the commissioner of the amount of
53 taxes owed by a taxpayer.

54 (10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

55 (11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft
56 other than jet aircraft and sold or used for that purpose.

57 (12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-
58 prop aircraft and sold or used for that purpose.

59 (13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or
60 in part, from agricultural products or animal fats, or the wastes of such products or fats, and is
61 advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion
62 engine.

63 (14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid
64 including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol,
65 diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as
66 carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

67 (15) "Blender" means a person who produces blended motor fuel outside the bulk
68 transfer/terminal system.

69 (16) "Blending" means the mixing of one or more petroleum products, with or without

70 another product, regardless of the original character of the product blended, if the product
71 obtained by the blending is capable of use in the generation of power for the propulsion of a motor
72 vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the
73 process of refining by the original refiner of crude petroleum or the blending of products known
74 as lubricating oil in the production of lubricating oils and greases.

75 (17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal
76 and from which motor fuel may be removed at a rack.

77 (18) "Bulk transfer" means any transfer of motor fuel from one location to another by
78 pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited
79 to, all of the following:

80 (A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

81 (B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

82 (C) Book transfer of motor fuel within a terminal between licensed suppliers prior to
83 completion of removal across the rack; and

84 (D) Two-party exchange between licensed suppliers or between licensed suppliers and
85 permissive suppliers.

86 (19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses
87 part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

88 (20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting
89 of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a
90 terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk
91 transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a
92 bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or
93 motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not
94 in the bulk transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment
95 suitable for ground transportation is not in the bulk transfer/terminal system.

96 (21) "Carrier" means an operator of a pipeline or marine vessel engaged in the business
97 of transporting motor fuel above the terminal rack.

98 (22) "Code" means the Code of West Virginia, 1931, as amended.

99 (23) "Commercial watercraft" means a watercraft employed in the business of commercial
100 fishing, transporting persons or property for compensation or hire or other trade or business.

101 (24) "Commissioner" or "Tax Commissioner" means the West Virginia State Tax
102 Commissioner or his or her delegate.

103 (25) "Compressed natural gas" means natural gas that has been compressed and
104 dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for
105 use as or used as an engine motor fuel.

106 (26) "Corporate or partnership officer" means an officer or director of a corporation, partner
107 of a partnership or member of a limited liability company who as an officer, director, partner or
108 member is under a duty to perform on behalf of the corporation, partnership or limited liability
109 company, the tax collection, accounting or remitting obligations.

110 (27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel
111 storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor
112 fuel in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand
113 gallons and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

114 (28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components
115 or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage
116 use but not unsuitable for automotive use.

117 (29) "Designated inspection site" means a state highway inspection station, weigh station,
118 agricultural inspection station, mobile station or other location designated by the commissioner to
119 be used as a motor fuel inspection site.

120 (30) "Destination state" means the state, territory or foreign country to which motor fuel is
121 directed for delivery into a storage facility, a receptacle, a container or a type of transportation

122 equipment for the purpose of resale or use. The term does not include a tribal reservation of a
123 recognized Native American tribe.

124 (31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as,
125 suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The
126 term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline
127 or aviation fuel.

128 (32) "Distributor" means a person who acquires motor fuel from a licensed supplier,
129 permissive supplier or from another licensed distributor for subsequent sale or use.

130 (33) "Diversion" means transporting motor fuel outside a reasonably direct route from the
131 source to the destination state.

132 (34) "Division" or "State Tax Division" means the Tax Division of the West Virginia
133 Department of Revenue.

134 (35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements
135 of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

136 (36) "End seller" means the person who sells motor fuel to the ultimate user of the motor
137 fuel.

138 (37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in
139 another state, territory or foreign country.

140 (38) "Exporter" means a person that exports motor fuel from this state. The seller is the
141 exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter
142 of motor fuel delivered out-of-state by or for the purchaser.

143 (39) "Fuel" means motor fuel.

144 (40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this
145 article as the D-4806 specification for denatured motor fuel grade ethanol for blending with
146 gasoline.

147 (41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is

148 supplied for the propulsion of the motor vehicle.

149 (42) "Gallon" means a unit of liquid measure as customarily used in the United States
150 containing two hundred thirty-one cubic inches by volume and expresses the volume at 60
151 degrees Fahrenheit.

152 (43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

153 (44) "Gasoline" means a product commonly or commercially known as gasoline,
154 regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for
155 use as or used as motor fuel in an internal combustion engine, including gasohol, but does not
156 include special fuel as defined in this section.

157 (45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such
158 as naphtha, reformat, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for
159 use in a motor fuel. The term does not include any substance that will be ultimately used for
160 consumer nonmotor fuel use and is sold or removed in drum quantities of fifty-five gallons or less
161 at the time of the removal or sale.

162 (46) "Gallon equivalent" means the amount of an alternative fuel that is considered to be
163 the equivalent of a gallon of gasoline according to the National Institute of Standards and
164 Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

165 (47) "Gross gallons" means the total measured product, exclusive of any temperature or
166 pressure adjustments, considerations or deductions, in U. S. gallons.

167 (48) "Governmental entity" means this state or a political subdivision thereof or the United
168 States or its commissioners, agencies and instrumentalities.

169 (49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil,
170 #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial
171 processing purposes.

172 (50) "Highway" means every way or place of whatever nature open to the use of the public
173 for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

174 (51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is
175 designed or used for transporting persons or property over the public highway and includes all
176 vehicles subject to registration under article three, chapter seventeen-a of this code.

177 (52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel,
178 pipeline or any other means. Import does not include bringing motor fuel into this state in the
179 motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

180 (53) "Importer" means a person that imports motor fuel into this state. The seller is the
181 importer for motor fuel delivered into this state from outside of this state by or for the seller and
182 the purchaser is the importer for motor fuel delivered into this state from outside of this state by
183 or for the purchaser.

184 (54) "Import verification number" means the number assigned by the commissioner to a
185 single transport vehicle delivery into this state from another state upon request for an assigned
186 number by an importer or the transporter carrying taxable motor fuel into this state for the account
187 of an importer.

188 (55) "In this state" means the area within the borders of West Virginia including all territory
189 within the borders of West Virginia that is owned by the United States of America.

190 (56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

191 (57) "Licensee" means a person licensed by the commissioner pursuant to section ten of
192 this article.

193 (58) "Liquid" means a substance that is liquid above its freezing point.

194 (59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees
195 centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

196 (60) "Motor carrier" means a vehicle used, designated or maintained for the transportation
197 of persons or property and having two axles and a gross vehicle weight exceeding twenty-six
198 thousand pounds or having three or more axles regardless of weight or used in combination when
199 the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle

200 weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers
201 or freight in or through this state: *Provided*, That the gross vehicle weight rating of the vehicles
202 being towed is in excess of ten thousand pounds. The term "motor carrier" does not include any
203 type of recreational vehicle.

204 (61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and
205 alternative fuel but does not include heating fuel used exclusively for heating a private dwelling.

206 (62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk
207 transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

208 (63) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all
209 other vehicles or equipment, engines or machines which are operated or propelled by combustion
210 of motor fuel.

211 (64) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to
212 a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds
213 pressure per square inch.

214 (65) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of
215 this state but who meets both of the following requirements: (A) Is registered under Section 4101
216 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system;
217 and (B) a position holder in motor fuel only located in another state or a person who receives
218 motor fuel only in another state pursuant to a two-party exchange: *Provided*, That a person is
219 classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a
220 subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or
221 any agent or representative (by whatever name called) operating within this state under the
222 authority of the supplier or its subsidiary.

223 (66) "Person" means an individual, firm, cooperative, association, corporation, limited
224 liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate,
225 partnership, limited partnership, copartnership, organization, limited liability partnership, joint

226 venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group
227 or combination acting as a unit, a public body including, but not limited to, this state and any other
228 state and an agency, commissioner, institution, political subdivision or instrumentality of this state
229 or any other state and, also, an officer, employee or member of any of the foregoing who, as an
230 officer, employee or member, is under a duty to perform or is responsible for the performance of
231 an act prescribed by the provisions of this article.

232 (67) "Position holder" means the person who holds the inventory position in motor fuel in
233 a terminal as reflected on the records of the terminal operator. A person holds the inventory
234 position in motor fuel when that person has a contract with the terminal operator for the use of
235 storage facilities and terminaling services for motor fuel at the terminal. The term includes a
236 terminal operator who owns motor fuel in the terminal.

237 (68) "Principal" means:

238 (A) If a partnership, all its partners;

239 (B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

240 (C) If a limited liability company, all its members; or

241 (D) An individual.

242 (69) "Producer/manufacturer" means a person who produces, refines, blends, distills,
243 manufactures or compounds motor fuel.

244 (70) "Provider of alternative fuel" means a person who does one or more of the following:

245 (A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an
246 alternative-fuel retailer;

247 (B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling
248 infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the
249 person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel
250 retailer to operate a highway vehicle;

251 (C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway

252 vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the
253 vehicle;

254 (D) Imports alternative fuel into this state by a means other than the usual tank or
255 receptacle connected with the engine of a highway vehicle for use by that person to operate a
256 highway vehicle.

257 (71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine
258 vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is
259 outside the bulk transfer/terminal system.

260 (72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on
261 railroad rails and includes a switching engine.

262 (73) "Receive" means acquisition of ownership or possession of motor fuel.

263 (74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

264 (75) "Refinery" means a facility for the manufacture or reprocessing of finished or
265 unfinished petroleum products usable as motor fuel and from which motor fuel may be removed
266 by pipeline or marine vessel or at a rack.

267 (76) "Removal" means a physical transfer other than by evaporation, loss or destruction.
268 A physical transfer to a transport vehicle or other means of conveyance outside the bulk
269 transfer/terminal system is complete upon delivery into the means of conveyance.

270 (77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a
271 retail location.

272 (78) "Retailer of alternative fuel" means a person who maintains storage facilities,
273 including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who
274 sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

275 (79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as
276 motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle,
277 machine, or mechanical contrivance and includes products commonly known as natural or casing-

278 head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol, methanol
279 fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains eighty-
280 five percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel
281 derived from coal through the Fischer-Tropsch process. "Special fuel" does not include
282 alternative fuel or any petroleum product or chemical compound such as alcohol, industrial
283 solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal
284 combustion engine.

285 (80) "State" or "this state" means the State of West Virginia.

286 (81) "Supplier" means a person that is:

287 (A) Subject to the general taxing jurisdiction of this state;

288 (B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor
289 fuel in the bulk transfer/terminal distribution system; and

290 (C) One of the following:

291 (i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently
292 be a position holder in motor fuel in another state; or

293 (ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

294 A terminal operator is not a supplier based solely on the fact that the terminal operator
295 handles motor fuel consigned to it within a terminal.

296 (82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes
297 within its meaning interest and additions to tax and penalties unless the context requires a more
298 limited meaning.

299 (83) "Taxpayer" means a person required to file a return for the tax imposed by this article
300 or a person liable for payment of the tax imposed by this article.

301 (84) "Terminal" means a motor fuel storage and distribution facility to which a terminal
302 control number has been assigned by the Internal Revenue Service, to which motor fuel is
303 supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

304 (85) "Terminal operator" means a person who owns, operates or otherwise controls a
305 terminal.

306 (86) "Transmix" means: (A) The buffer or interface between two different products in a
307 pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results
308 in an off-grade mixture.

309 (87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the
310 highway and includes a straight truck, a straight truck/trailer combination and a semitrailer
311 combination rig.

312 (88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and
313 receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

314 (89) "Two-party exchange" means a transaction in which motor fuel is transferred from
315 one licensed supplier or permissive supplier to another licensed supplier or permissive supplier
316 pursuant to an exchange agreement; and

317 (A) Includes a transfer from the person who holds the inventory position in taxable motor
318 fuel in the terminal as reflected on the records of the terminal operator;

319 (B) Is completed prior to removal of the product from the terminal by the receiving
320 exchange partner; and

321 (C) Is recorded on the terminal operator's books and records with the receiving exchange
322 partner as the supplier that removes the motor fuel across the terminal rack for purposes of
323 reporting the transaction to this state.

324 (90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor
325 vehicle, aircraft or watercraft.

326 (91) "Watercraft" means any vehicle used on waterways.

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

1 (a) *Per se exemptions from flat rate component of tax.* — Sales of motor fuel to the
2 following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax

3 levied by section five of this article and the flat rate may not be paid at the rack:

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

9 (2) Sales of aviation fuel;

10 (3) Sales of dyed special fuel; ~~and~~

11 (4) Sales of propane unless sold for use in a motor vehicle; and

12 (5) Sales of heating fuel for use in heating private dwellings.

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

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

21 (2) All heating fuel to be used to heat private dwellings.

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

26 (1) The United States or agency thereof: *Provided*, That if the United States government,
27 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of
28 this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the

29 United States government, or its agencies or instrumentalities, may claim a refund of the flat rate
30 component of tax imposed by section five of this article on those sales;

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

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

33 (4) A county board of education;

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

36 (6) A municipal, county, state or federal civil defense or emergency service program
37 pursuant to a government contract for use in conjunction therewith or to a person who is required
38 to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling
39 facilities used for these purposes are not capable of fueling motor vehicles and the person in
40 charge of the program has in his or her possession a letter of authority from the Tax Commissioner
41 certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold
42 under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used
43 in vehicles or equipment owned and operated by the respective government entity or government
44 agency or authority;

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

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

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

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

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

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

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

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

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

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

70 (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public
71 convenience and necessity or under a contract carrier permit for transportation of persons when
72 purchased in an amount of twenty-five gallons or more: *Provided*, That the amount refunded is
73 equal to 6 cents per gallon: *Provided, however*, That the gallons of motor fuel have been
74 consumed in the operation of urban and suburban bus lines and the majority of passengers use
75 the bus for traveling a distance not exceeding forty miles, measured one way, on the same day
76 between their places of abode and their places of work, shopping areas or schools; and

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

81 service or emergency rescue service is located.

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

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

91 (2) This state and its institutions;

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

93 (4) A municipal government or agency thereof;

94 (5) A county board of education;

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

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

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

106 (9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently

107 exported from this state to any other state or nation: *Provided*, That the exporter has paid the
108 applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund
109 may not be granted on motor fuel which is transported and delivered outside this state in the motor
110 fuel supply tank of a highway vehicle; or

111 (10) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed in
112 railroad diesel locomotives: *Provided*, That the refundable exemption contained in this
113 subdivision may not exceed an aggregate amount of \$4,300,000 in any year to all taxpayers
114 claiming the exemption and that if more than an aggregate amount of \$4,300,000 is appropriately
115 claimed in any year, then the refundable exemption shall be distributed proportionately to the
116 taxpayers so that the total aggregate refund is \$4,300,000 in that year. The Tax Commissioner
117 may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a
118 of this code that the Tax Commissioner considers necessary to administer the exemption
119 contained in this subdivision.

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

NOTE: The purpose of this bill is to exempt heating oil used for residential purposes from the Motor Fuel Excise Tax.

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