

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2745

FISCAL  
NOTE

BY DELEGATES HOUSEHOLDER AND CRISS

[By request of the State Tax Division]

[Introduced January 30, 2019; Referred  
to the Committee on Finance.]

1 A BILL to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to authorizing railroads and commercial watercraft to claim a refundable exemption from  
 3 the variable rate component of the motor fuel excise tax, and to remove the aggregate  
 4 annual exemption limitation imposed on railroads, all beginning July 1, 2019.

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

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

**§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 §11-14C-5 of this code 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.

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

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

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

24 (1) The United States or agency thereof: *Provided*, That if the United States government,  
25 or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of  
26 this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the  
27 United States government, or its agencies or instrumentalities, may claim a refund of the flat rate  
28 component of tax imposed by §11-14C-5 of this code on those sales;

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

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

31 (4) A county board of education;

32 (5) An urban mass transportation authority created pursuant to the provisions of §8-27-1  
33 *et seq.* of this code;

34 (6) A municipal, county, state or federal civil defense or emergency service program  
35 pursuant to a government contract for use in conjunction therewith or to a person who is required  
36 to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling  
37 facilities used for these purposes are not capable of fueling motor vehicles and the person in  
38 charge of the program has in his or her possession a letter of authority from the Tax Commissioner  
39 certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold  
40 under this subdivision and §11-14C-9(c)(1) through (5), inclusive, of this code shall be used in  
41 vehicles or equipment owned and operated by the respective government entity or government  
42 agency or authority;

43 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently  
44 exported from this state to any other state or nation: *Provided*, That the exporter has paid the  
45 applicable motor fuel tax to the destination state or nation prior to claiming this refund or the

46 exporter has reported to the destination state or nation that the motor fuel was sold in a transaction  
47 not subject to tax in that state or nation. A refund may not be granted on motor fuel which is  
48 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

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

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

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

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

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

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

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

59 (15) All gallons of motor fuel purchased in quantities of ~~twenty-five~~ 25 gallons or more for  
60 use as a motor fuel for internal combustion engines not operated upon highways of this state;

61 (16) All gallons of motor fuel purchased in quantities of 25 gallons or more and used to  
62 power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment  
63 uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor,  
64 the person claiming the refund may present to the Tax Commissioner a statement of his or her  
65 claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement  
66 mixer truck or garbage truck equal to 25 percent of the tax levied by this article paid on all motor  
67 fuel used in such a truck;

68 (17) Motor fuel used by a person regularly operating a vehicle under a certificate of public  
69 convenience and necessity or under a contract carrier permit for transportation of persons when  
70 purchased in an amount of 25 gallons or more: *Provided*, That the amount refunded is equal to  
71 6 cents per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in the

72 operation of urban and suburban bus lines and the majority of passengers use the bus for traveling  
 73 a distance not exceeding 40 miles, measured one way, on the same day between their places of  
 74 abode and their places of work, shopping areas or schools; and

75 (18) All gallons of motor fuel that are not otherwise exempt under §11-14C-9(e)(1) through  
 76 (6), inclusive, of this code and that are purchased and used by any bona fide volunteer fire  
 77 department, nonprofit ambulance service or emergency rescue service that has been certified by  
 78 the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance  
 79 service or emergency rescue service is located.

80 (d) *Refundable exemptions from variable rate component of tax.* — ~~Any of the following~~  
 81 ~~persons may claim an exemption~~ A person having a right or claim to any of the following  
 82 exemptions from the variable rate component of the tax levied by ~~section five of this article~~ §11-  
 83 14C-5 of this code may claim such exemption on the purchase and use of motor fuel by first  
 84 paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

85 (1) Motor fuel purchased by:

86 (A) 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 §11-14C-5 of this  
 88 code on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United  
 89 States government, or its agencies or instrumentalities, may claim a refund of the variable rate of  
 90 tax imposed by ~~section five of this article~~ §11-14C-5 of this code on those sales.

91 ~~(2)~~ (B) This state and its institutions;

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

93 ~~(4)~~ (D) A municipal government or agency thereof;

94 ~~(5)~~ (E) A county board of education;

95 ~~(6)~~ (F) An urban mass transportation authority created pursuant to the provisions of §8-  
 96 27-1 et seq. of this code;

97 ~~(7)~~ (G) 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)~~ (H) 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)~~ (2) All invoiced gallons of motor fuel purchased by a licensed exporter and  
107 subsequently exported from this state to any other state or nation: *Provided*, That the exporter  
108 has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund.  
109 A refund may not be granted on motor fuel which is transported and delivered outside this state  
110 in the motor fuel supply tank of a highway vehicle; ~~or~~

111 ~~(10)~~ (3) Beginning on January 1, 2018, all gallons of motor fuel sold for use or consumed  
112 in 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 §29A-3-1 et seq. of this code that  
118 the Tax Commissioner considers necessary to administer the exemption contained in this  
119 subdivision: *Provided, however, That on and after July 1, 2019, all gallons of motor fuel sold for*  
120 *use or consumed in operation of railroad diesel locomotives; or*

121 *(4) On and after July 1, 2019, all gallons of motor fuel sold for use in or consumed as a*  
122 *motor fuel in operation of commercial watercraft.*

123 (e) The provision in ~~of this chapter~~ §11-15-9(a)(9) of this code that exempts as a sale for

- 124 resale those sales of gasoline and special fuel by a distributor or importer to another distributor
- 125 does not apply to sales of motor fuel under this article.

NOTE: The purpose of this bill is to authorize railroad locomotives and commercial watercraft to claim the refundable exemption from the variable rate component of the motor fuel excise tax, and to remove the aggregate annual exemption limitation formerly imposed on railroads on and after July 1, 2019.

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