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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session 2005

ENROLLED

SENATE BILL NO. 667

(By Senators Helmick and Pymale)

PASSED April 8, 2005

In Effect 90 days from Passage

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Senate Bill No. 667

(BY SENATORS HELMICK AND PLYMALE)

[Passed April 8, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, all relating generally to motor fuel excise tax; clarifying exemption for motor fuel sold to United States, its agencies and instrumentalities; providing procedure for sellers of tax-paid fuel to the United States, its agencies and instrumentalities to obtain refund of tax on such fuel; changing time for filing certain claims for refund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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.* –
- 2 Sales of motor fuel to the following, or as otherwise stated

3 in this subsection, are exempt per se from the flat rate of
4 the tax levied by section five of this article and the flat
5 rate may not be paid at the rack:

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

14 (2) Sales of aviation fuel;

15 (3) Sales of dyed special fuel; and

16 (4) Sales of propane.

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

22 All motor fuel exported from this state to any other state
23 or nation: *Provided*, That the supplier collects and remits
24 to the destination state or nation the appropriate amount
25 of tax due on the motor fuel transported to that state or
26 nation: *Provided, however*, That this exemption does not
27 apply to any motor fuel which is transported and delivered
28 outside this state in the motor fuel supply tank of a
29 highway vehicle.

30 (c) *Refundable exemptions from flat rate component of*
31 *tax.* – Any person having a right or claim to any of the
32 following exemptions from the flat rate component of the
33 tax levied by section five of this article shall first pay the
34 tax levied by this article and then apply to the Tax Com-
35 missioner for a refund:

36 (1) The United States or any agency thereof: *Provided*,
37 That if the United States government, or any agency or
38 instrumentality thereof, does not pay the seller the tax
39 imposed by section five of this article on any purchase of
40 motor fuel, the person selling tax previously paid motor
41 fuel to the United States government, or its agencies or
42 instrumentalities, may then claim a refund of the flat rate
43 component of tax imposed by said section on those sales;

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

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

46 (4) Any county boards of education;

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

50 (6) Any municipal, county, state or federal civil defense
51 or emergency service program pursuant to a government
52 contract for use in conjunction therewith, or to any person
53 on whom is imposed a requirement to maintain an inven-
54 tory of motor fuel for the purpose of the program: *Pro-*
55 *vided*, That motor fueling facilities used for these purposes
56 are not capable of fueling motor vehicles and the person in
57 charge of the program has in his or her possession a letter
58 of authority from the Tax Commissioner certifying his or
59 her right to the exemption: *Provided, however*, That in
60 order for this exemption to apply, motor fuel sold under
61 this subdivision and subdivisions (1) through (5), inclusive,
62 of this subsection shall be used in vehicles or equipment
63 owned and operated by the respective government entity
64 or government agency or authority;

65 (7) All invoiced gallons of motor fuel purchased by a
66 licensed exporter and subsequently exported from this
67 state to any other state or nation: *Provided*, That the
68 exporter has paid the applicable motor fuel tax to the
69 destination state or nation prior to claiming this refund or
70 the exporter has reported to the destination state or nation

71 that the motor fuel was sold in a transaction not subject to
72 tax in that state or nation: *Provided, however,* That a
73 refund may not be granted on any motor fuel which is
74 transported and delivered outside this state in the motor
75 fuel supply tank of a highway vehicle;

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

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

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

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

83 (12) All gallons of motor fuel used as lubricants, ingredi-
84 ents or components of any manufactured product or
85 compound;

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

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

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

94 (16) All gallons of motor fuel purchased in quantities of
95 twenty-five gallons or more and used to power a power
96 take-off unit on a motor vehicle. When a motor vehicle
97 with auxiliary equipment uses motor fuel and there is no
98 auxiliary motor for the equipment or separate tank for a
99 motor, the person claiming the refund may present to the
100 Tax Commissioner a statement of his or her claim and is
101 allowed a refund for motor fuel used in operating a power
102 take-off unit on a cement mixer truck or garbage truck

103 equal to twenty-five percent of the tax levied by this
104 article paid on all motor fuel used in such a truck;

105 (17) Motor fuel used by any person regularly operating
106 any vehicle under a certificate of public convenience and
107 necessity or under a contract carrier permit for transporta-
108 tion of persons when purchased in an amount of twenty-
109 five gallons or more: *Provided*, That the amount refunded
110 is equal to six cents per gallon: *Provided, however*, That
111 the gallons of motor fuel have been consumed in the
112 operation of urban and suburban bus lines and the major-
113 ity of passengers use the bus for traveling a distance not
114 exceeding forty miles, measured one way, on the same day
115 between their places of abode and their places of work,
116 shopping areas or schools; and

117 (18) All gallons of motor fuel that are not otherwise
118 exempt under subdivisions (1) through (6), inclusive, of
119 this subsection and that are purchased and used by any
120 bona fide volunteer fire department, nonprofit ambulance
121 service or emergency rescue service that has been certified
122 by the municipality or county wherein the bona fide
123 volunteer fire department, nonprofit ambulance service or
124 emergency rescue service is located.

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

132 (1) The United States or any agency thereof: *Provided*,
133 That if the United States government, or any agency or
134 instrumentality thereof, does not pay the seller the tax
135 imposed by section five of this article on any purchase of
136 motor fuel, the person selling tax previously paid motor
137 fuel to the United States government, or its agencies or

138 instrumentalities, may then claim a refund of the variable
139 rate of tax imposed by said section on those sales;

140 (2) This state and its institutions;

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

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

143 (5) Any county boards of education;

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

147 (7) Any municipal, county, state or federal civil defense
148 or emergency service program pursuant to a government
149 contract for use in conjunction therewith, or to any person
150 on whom is imposed a requirement to maintain an inven-
151 tory of motor fuel for the purpose of the program: *Pro-*
152 *vided*, That fueling facilities used for these purposes are
153 not capable of fueling motor vehicles and the person in
154 charge of the program has in his or her possession a letter
155 of authority from the Tax Commissioner certifying his or
156 her right to the exemption;

157 (8) Any bona fide volunteer fire department, nonprofit
158 ambulance service or emergency rescue service that has
159 been certified by the municipality or county wherein the
160 bona fide volunteer fire department, nonprofit ambulance
161 service or emergency rescue service is located; or

162 (9) All invoiced gallons of motor fuel purchased by a
163 licensed exporter and subsequently exported from this
164 state to any other state or nation: *Provided*, That the
165 exporter has paid the applicable motor fuel tax to the
166 destination state or nation prior to claiming this refund:
167 *Provided, however*, That a refund may not be granted on
168 any motor fuel which is transported and delivered outside
169 this state in the motor fuel supply tank of a highway
170 vehicle.

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

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to subsection
2 (c) or (d), section nine of this article shall present to the
3 Commissioner a petition for refund in the form required by
4 the Commissioner and provide the information required by
5 the Commissioner. The Tax Commissioner may require the
6 petitioner to provide the original or duplicate original
7 sales slips or invoices from the distributor or producer or
8 retail dealer, as the case may be, showing the amount of
9 the purchases, together with evidence of payment thereof,
10 and a statement stating how the motor fuel was used:
11 *Provided*, That sales slips or invoices marked “duplicate”
12 are not acceptable: *Provided, however*, That certified
13 copies of sales slips or invoices are acceptable: *Provided*
14 *further*, That copies of sales slips and invoices may be used
15 with any application for refund made under authority of
16 subdivision (15), subsection (c), section nine of this article
17 when the motor fuel is used to operate tractors and gas
18 engines or threshing machines for agricultural purposes:
19 *And provided further*, That a refund claim made under the
20 authority of subdivision (1), subsection (c), section nine of
21 this article and a refund claim made under the authority
22 of subdivision (1), subsection (d) of said section shall be
23 accompanied by such verification as prescribed by the Tax
24 Commissioner: *And provided further*, That billing state-
25 ments and electronic invoices are acceptable in lieu of
26 original invoices at the discretion of the Tax Commis-
27 sioner: *And provided further*, That the person claiming a
28 refund under subsection (c) or (d) of said section shall
29 retain for at least three years following the postmark date
30 of the application for refund a copy of the invoices, sales

31 slips and billing statements for which the refund was
32 claimed.

33 (b) Any person claiming a refund pursuant to section
34 thirty of this article shall file a petition in writing with the
35 Commissioner. The petition shall be in the form and with
36 supporting records as required by the Commissioner and
37 made under the penalty of perjury.

38 (c) The right to receive any refund under the provisions
39 of this section is not assignable and any assignment
40 thereof is void and of no effect. No payment of any refund
41 may be made to any person other than the original person
42 entitled to claim the refund except as otherwise expressly
43 provided in this article. The Commissioner shall cause a
44 refund to be made under the authority of this section only
45 when the claim for refund is filed with the Commissioner
46 within the following time periods:

47 (1) A petition for refund under section thirty of this
48 article, other than for evaporation loss, shall be filed with
49 the Commissioner within three years from the end of the
50 month in which: (A) The tax was erroneously or illegally
51 paid; (B) the gallons were exported or lost by casualty; or
52 (C) a change of rate took effect;

53 (2) A petition for refund under section thirty of this
54 article for evaporation loss shall be filed within three years
55 from the end of the year in which the evaporation oc-
56 curred;

57 (3) A petition for refund under subsection (c) or (d),
58 section nine of this article shall be filed with the Commis-
59 sioner on or before the last day of January, April, July and
60 October for purchases of motor fuel during the immedi-
61 ately preceding calendar quarter: *Provided*, That any
62 application for refund made under authority of subdivi-
63 sion (15), subsection (c) of said section when the motor fuel
64 is used to operate tractors and gas engines or threshing
65 machines for agricultural purposes shall be filed within

66 twelve months from the month of purchase or delivery of
67 the motor fuel: *Provided, however,* That all persons
68 authorized to claim a refundable exemption under the
69 authority of subdivisions (1) through (6), inclusive, subsec-
70 tion (c), section nine of this article and subdivisions (1)
71 through (6), inclusive, subsection (d) of said section shall
72 do so no later than the thirty-first day of August for the
73 purchases of motor fuel made during the preceding fiscal
74 year ending the thirtieth day of June.

75 (d) Any petition for a refund not timely filed is not
76 construed to be or constitute a moral obligation of the
77 state of West Virginia for payment. Every petition for
78 refund is subject to the provisions of section fourteen,
79 article ten of this chapter.

80 (e) The Commissioner may make any investigation
81 considered necessary before refunding to a person the tax
82 levied by section five of this article. The Commissioner
83 may also subject to audit the records related to a refund of
84 the tax levied by section five of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mandy L. White
.....
Chairman Senate Committee

H. Luke Burr
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell E. Eble
.....
Clerk of the Senate

Bryce M. Burd
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert S. P. [Signature]
.....
Speaker House of Delegates

The within *is approved* this the *28th*
Day of *April* 2005.
[Signature]
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:15pm