WEST VIRGINIA CODE: §11-14-5B

§11-14-5b. Exemptions for sales made through special devices.

(a) Where the requirements of this section have been met, gasoline or special fuel sold by a distributor or producer to a customer described in subsection (b) of this section through a special device described in subsection (c) of this section is exempt from the taxes otherwise imposed by this article and article fifteen of this chapter.

(b) For purposes of this section, "customer" means any of the following entities that regularly purchase gasoline or special fuel for nontaxable uses for its exclusive use in vehicles it owns or leases:

(A) The United States government or any agency thereof;

(B) A municipality in this state;

(C) A county commission in this state;

(D) A county board of education in this state; and

(E) An organization in a county in this state that is certified annually by the county commission as a bona fide:

(i) Volunteer fire department;

(ii) Nonprofit ambulance service; or

(iii) Nonprofit emergency rescue service.

(c) For purposes of this section, "special device" means a device, such as a cardlock system, that accurately accounts for sales of gasoline or special fuel for nontaxable uses that is maintained by a distributor or producer at an attended or unattended location in this state.

(d) (1) To qualify for the exemption described in subsection (a) of this section, the distributor or producers must maintain accurate records that establish to the satisfaction of the Tax Commissioner the right to the exemption.

(2) The records must include purchase orders or contracts for the sale or sales of the gasoline or special fuel or, in the absence of such purchase orders or contracts, a certificate, signed by an authorized officer of the customer, that the gasoline or special fuel was purchased for the exclusive use of an entity described in subsection (b) of this section.

(3) The records must also include, for each nontaxable sale:

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(A) The names of the customer and the person to whom the gasoline or special fuel was delivered;

(B) The date of delivery;

(C) The license number of the vehicle fueled;

(D) The type and quantity of gasoline or special fuel delivered; and

(E) Such other information as the Tax Commissioner may require.

(e) (1) A customer's privilege to purchase nontaxable gasoline or special fuel through a special device is subject to suspension or revocation by the Tax Commissioner.

(2) A customer is required to make and retain such records of its purchases of gasoline and special fuel through a special device as may be required by the Tax Commissioner.

(f) When the Tax Commissioner determines, as the result of an audit or investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is reselling the gasoline or special fuel, is using the gasoline or special fuel for purposes other than the customer's exclusive use, or is failing to make and retain sufficient and adequate records showing the quantity of gasoline or special fuel used or consumed for the customer's exclusive use, the Tax Commissioner shall suspend the privilege of the customer to purchase untaxed gasoline or special fuel through any special device for such period as the Tax Commissioner by written order specifies. The order shall be served on the customer in the same manner as a notice of assessment may be served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of the order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.

(g) When the Tax Commissioner determines, as the result of an audit or other investigation, that a customer purchasing gasoline or special fuel that is exempt from tax under subsection (a) of this section is knowingly and intentionally failing to comply with any requirements of this section, the Tax Commissioner shall by written order revoke the customer's privilege to purchase untaxed gasoline or special fuel through any special device. The order of the Tax Commissioner shall be served on the customer in the same manner as a notice of assessment is served under article ten of this chapter. The customer may appeal the order in the same manner and within the same period of time as a notice of assessment may be appealed under article ten of this chapter. A copy of the order and any subsequent change or revision of that order shall also be served on any distributor or producer that maintains a special device through which the customer purchases untaxed gasoline or special fuel.

(h) Notwithstanding the exemption provided under subsection (a) of this section to the

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contrary, a customer is liable for the taxes that would otherwise be imposed by this article and article fifteen of this chapter on the gasoline or special fuel delivered to the customer if the customer sells or uses the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation.

(i) A customer liable for the taxes described in subsection (h) of this section shall, in addition to paying the taxes described in subsection (h) of this section, pay a money penalty equal to twenty-five percent of the taxes plus interest calculated beginning with the day the gasoline or special fuel was received by the customer until the day the taxes, penalty and interest are paid to the Tax Commissioner. For each subsequent sale or use, during a fiscal year, of the gasoline or special fuel in a manner or under circumstances that fails to meet the requirements of this article for the exemption of the gasoline or special fuel from taxation, the purchaser shall pay the taxes and a money penalty equal to fifty percent of the tax plus interest calculated in the same manner. For purposes of this section, gasoline and special fuel is received by the customer when it is put into the supply tank of a vehicle owned or leased by the customer.

(j) A customer liable for the taxes described in subsection (h) of this section is not entitled to a refund or any credit for the taxes paid or required to be paid under subsection (i) of this section.

(k) The exemptions created by this section apply to gasoline or special fuel received by a customer through a special device on or after July 1, 1998.

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