

WEST VIRGINIA CODE: §11-14C-9

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

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

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.

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

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

- (4) A county board of education;
- (5) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;
- (6) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: *Provided*, That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;
- (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: *Provided*, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;
- (8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;
- (9) All gallons of fuel used for heating any public or private dwelling, building or other premises;
- (10) All gallons of fuel used for boilers;
- (11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;
- (12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;
- (13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;
- (14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;
- (15) All gallons of motor fuel purchased in quantities of 25 gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;
- (16) All gallons of motor fuel purchased in quantities of 25 gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate

tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck, garbage truck, or fuel delivery truck equal to 25 percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of 25 gallons or more: *Provided*, That the amount refunded is equal to six cents per gallon: *Provided, however*, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding 40 miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

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

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

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

(2) This state and its institutions;

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

(4) A municipal government or agency thereof;

(5) A county board of education;

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

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

the Tax Commissioner certifying his or her right to the exemption;

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

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

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

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