ENROLLED

House Bill No. 2882

(By Delegates Kelley, Clements, Walters, Jenkins, Seacrist, Leach and Miller)

Passed March 14, 1998

In Effect July 1, 1998
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2882
(BY DELEGATES KELLEY, CLEMENTS, WALTERS, JENKINS, SEACRIST, LEACH AND MILLER)

[Passed March 14, 1998; in effect July 1, 1998.]

AN ACT to amend and reenact section four, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-b, all relating generally to gasoline and special fuel taxes and exemptions from those taxes; permitting distributors and producers to sell untaxed gasoline and special fuel to certain entities and organizations for their exclusive use; requirements to obtain exemption; privilege to purchase untaxed gasoline and special fuel subject to suspension or revocation by tax commissioner; and penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That section four, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section five-b, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

(a) Measure of tax.

(1) A distributor or producer shall use as the measure of tax all actual metered gallons of gasoline and all actual metered gallons of special fuel withdrawn from storage within this state for use, or for the sale for use, as fuel in an internal combustion engine, or that is sold, transferred or delivered to its company operated retail storage or any other retail station or user wherein the storage is for use or for the sale for use as fuel in an internal combustion engine.

(2) A retail dealer, or importer, or user shall use as the measure of tax all actual metered gallons of gasoline and all actual metered gallons of special fuel, not previously included in the measure of tax, received into such person's storage within this state wherein the storage is for use or for the sale for use as gasoline or special fuel in an internal combustion engine, or is used by him as fuel in an internal combustion engine.

(3) A person who is not a distributor or producer, retail dealer, importer, or user shall use as the measure of tax all actual metered gallons of gasoline or special fuel subject to tax under this article and not previously included in the measure of tax by him or any other person.

(b) Exemptions. — There may be subtracted from the measure of tax determined under subsection (a) of this section, to the extent included in the measure:

(1) The actual metered gallons of gasoline and special fuel that are exempt under section five of this article from the tax imposed by this article, and

(2) The actual metered gallons of gasoline and special fuel sold by a distributor or producer that are exempt under sections five-a and five-b of this article from the tax imposed by this article.

(c) This article shall not be construed to require the inclusion in the measure of tax of any gasoline or special
fuel previously included in the measure of tax upon which the tax has been previously paid.

(d) The tax imposed by this article shall be in addition to all other taxes of whatever character imposed by any other provisions of law.

§11-14-Sb. 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:

(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 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 the first day of July, one thousand nine hundred ninety-eight.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1998.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 21st day of September, 1998.

Governor