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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 2882

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



Passed March 14, 1998

In Effect July 1, 1998

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STATE OF WEST VIRGINIA

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 2882

(BY DELEGATES KELLEY, CLEMENTS, WALTERS, JENKINS,  
SEACRIST, LEACH AND MILLER)

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

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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.**

**§11-14-4. Computation of tax.**

1 (a) Measure of tax.

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4 metered gallons of special fuel withdrawn from storage  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

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

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

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

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

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

35 (c) This article shall not be construed to require the  
36 inclusion in the measure of tax of any gasoline or special

37 fuel previously included in the measure of tax upon which  
38 the tax has been previously paid.

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

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

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

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

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

13 (B) A municipality in this state;

14 (C) A county commission in this state;

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

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

19 (i) Volunteer fire department;

20 (ii) Nonprofit ambulance service; or

21 (iii) Nonprofit emergency rescue service.

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

28 (d)(1) To qualify for the exemption described in  
29 subsection (a) of this section, the distributor or producers  
30 must maintain accurate records that establish to the  
31 satisfaction of the tax commissioner the right to the  
32 exemption.

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

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

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

44 (B) The date of delivery;

45 (C) The license number of the vehicle fueled;

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

48 (E) Such other information as the tax commissioner  
49 may require.

50 (e)(1) A customer's privilege to purchase nontaxable  
51 gasoline or special fuel through a special device is subject  
52 to suspension or revocation by the tax commissioner.

53 (2) A customer is required to make and retain such  
54 records of its purchases of gasoline and special fuel  
55 through a special device as may be required by the tax  
56 commissioner.

57 (f) When the tax commissioner determines, as the  
58 result of an audit or investigation, that a customer  
59 purchasing gasoline or special fuel that is exempt from tax  
60 under subsection (a) of this section is reselling the  
61 gasoline or special fuel, is using the gasoline or special  
62 fuel for purposes other than the customer's exclusive use,  
63 or is failing to make and retain sufficient and adequate

64 records showing the quantity of gasoline or special fuel  
65 used or consumed for the customer's exclusive use, the  
66 tax commissioner shall suspend the privilege of the  
67 customer to purchase untaxed gasoline or special fuel  
68 through any special device for such period as the tax  
69 commissioner by written order specifies. The order shall  
70 be served on the customer in the same manner as a notice  
71 of assessment may be served under article ten of this  
72 chapter. The customer may appeal the order in the same  
73 manner and within the same period of time as a notice of  
74 assessment may be appealed under article ten of this  
75 chapter. A copy of the order and any subsequent change  
76 or revision of the order shall also be served on any  
77 distributor or producer that maintains a special device  
78 through which the customer purchases untaxed gasoline  
79 or special fuel.

80 (g) When the tax commissioner determines, as the  
81 result of an audit or other investigation, that a customer  
82 purchasing gasoline or special fuel that is exempt from tax  
83 under subsection (a) of this section is knowingly and  
84 intentionally failing to comply with any requirements of  
85 this section, the tax commissioner shall by written order  
86 revoke the customer's privilege to purchase untaxed  
87 gasoline or special fuel through any special device. The  
88 order of the tax commissioner shall be served on the  
89 customer in the same manner as a notice of assessment is  
90 served under article ten of this chapter. The customer  
91 may appeal the order in the same manner and within the  
92 same period of time as a notice of assessment may be  
93 appealed under article ten of this chapter. A copy of the  
94 order and any subsequent change or revision of that order  
95 shall also be served on any distributor or producer that  
96 maintains a special device through which the customer  
97 purchases untaxed gasoline or special fuel.

98 (h) Notwithstanding the exemption provided under  
99 subsection (a) of this section to the contrary, a customer is  
100 liable for the taxes that would otherwise be imposed by  
101 this article and article fifteen of this chapter on the  
102 gasoline or special fuel delivered to the customer if the  
103 customer sells or uses the gasoline or special fuel in a  
104 manner or under circumstances that fails to meet the

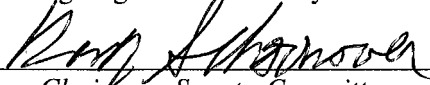
105 requirements of this article for the exemption of the  
106 gasoline or special fuel from taxation.

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

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

128 (k) The exemptions created by this section apply to  
129 gasoline or special fuel received by a customer through a  
130 special device on or after the first day of July, one  
131 thousand nine hundred ninety-eight.

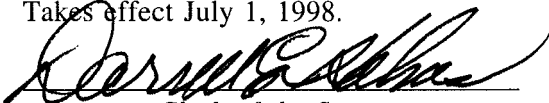
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

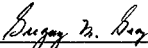
  
Chairman Senate Committee

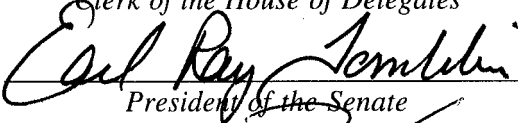
  
Chairman House Committee


Originating in the House.

Takes effect July 1, 1998.

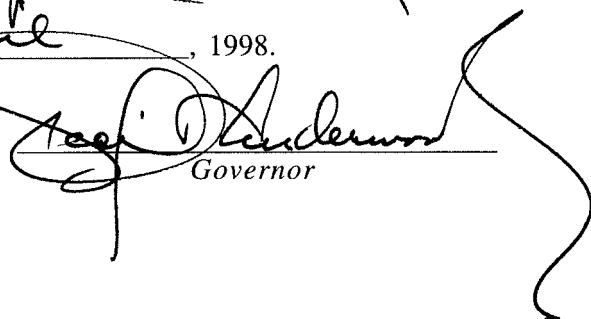
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 6th  
day of April, 1998.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 10:15 am