WEST VIRGINIA LEGISLATURE
Regular Session 2005

ENROLLED

SENATE BILL NO. 67

(By Senators Helmick and Pippin)

PASSED April 8, 2005

In Effect 90 days from Passage
ENROLLED

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
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: \textit{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: \textit{Provided, however}, That this exemption
does not apply to any 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.

(b) \textit{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: \textit{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: \textit{Provided, however}, That this exemption does not
apply to any motor fuel which is transported and delivered
outside this state in the motor fuel supply tank of a
highway vehicle.

(c) \textit{Refundable exemptions from flat rate component of
tax.} – Any 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 Com-
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
that the motor fuel was sold in a transaction not subject to tax in that state or nation: Provided, however, That a refund may not be granted on any 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 special fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of special 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 any 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 special fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five 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 twenty-five 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 or garbage truck
equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by any person regularly operating any 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 twenty-five 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 forty 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 any agency thereof: Provided, That if the United States government, or any 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 then claim a refund of the variable rate of tax imposed by said section on those sales;

(2) This state and its institutions;

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

(4) Any municipal government or any agency thereof;

(5) Any county boards of education;

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

(7) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement 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) 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; or

(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: Provided, however, That a refund may not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.
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.

§11-14C-31. Claiming refunds.

(a) Any person seeking a refund pursuant to subsection (c) or (d), section nine of this article shall present to the Commissioner a petition for refund in the form required by the Commissioner and provide the information required by the Commissioner. The Tax Commissioner may require the petitioner to provide the original or duplicate original sales slips or invoices from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used:

Provided, That sales slips or invoices marked “duplicate” are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of subdivision (15), subsection (c), section nine of this article when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes: And provided further, That a refund claim made under the authority of subdivision (1), subsection (c), section nine of this article and a refund claim made under the authority of subdivision (1), subsection (d) of said section shall be accompanied by such verification as prescribed by the Tax Commissioner: And provided further, That billing statements and electronic invoices are acceptable in lieu of original invoices at the discretion of the Tax Commissioner: And provided further, That the person claiming a refund under subsection (c) or (d) of said section shall retain for at least three years following the postmark date of the application for refund a copy of the invoices, sales
slips and billing statements for which the refund was claimed.

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

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

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

(2) A petition for refund under section thirty of this article for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

(3) A petition for refund under subsection (c) or (d), section nine of this article shall be filed with the Commissioner on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter: Provided, That any application for refund made under authority of subdivision (15), subsection (c) of said section when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be filed within
twelve months from the month of purchase or delivery of
the motor fuel:  *Provided, however,* That all persons
authorized to claim a refundable exemption under the
authority of subdivisions (1) through (6), inclusive, subsec-
tion (c), section nine of this article and subdivisions (1)
through (6), inclusive, subsection (d) of said section shall
do so no later than the thirty-first day of August for the
purchases of motor fuel made during the preceding fiscal
year ending the thirtieth day of June.

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

(e) The Commissioner may make any investigation
considered necessary before refunding to a person the tax
levied by section five of this article. The Commissioner
may also subject to audit the records related to a refund of
the tax levied by section five of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved this the Day of April, 2005.

Governor