

S

SB 490
(veto)

FILED

2006 APR -5 P 6:25

CLERK OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

Committee Substitute for
SENATE BILL NO. 490

(By Senator Helmick, et al)

PASSED March 9, 2006

In Effect 90 days from Passage

FILED

2006 APR -5 P 6: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 490

(SENATORS HELMICK, MINEAR, DEMPSEY, BARNES, PLYMALE,
EDGELL, HUNTER AND UNGER, *original sponsors*)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating to motor fuel excise tax; and exempting county aging programs from tax.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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
- 3 in this subsection, are exempt per se from the flat rate of
- 4 the tax levied by section five of this article and the flat
- 5 rate may not be paid at the rack:

6 (1) All motor fuel exported from this state to any other
7 state or nation: *Provided*, That the supplier collects and
8 remits to the destination state or nation the appropriate
9 amount of tax due on the motor fuel transported to that
10 state or nation: *Provided, however*, That this exemption
11 does not apply to any motor fuel which is transported and
12 delivered outside this state in the motor fuel supply tank
13 of a highway vehicle;

14 (2) Sales of aviation fuel;

15 (3) Sales of dyed special fuel; and

16 (4) Sales of propane.

17 (b) *Per se exemptions from variable component of tax.*

18 – Sales of motor fuel to the following are exempt per se
19 from the variable component of the tax levied by section
20 five of this article and the variable component may not be
21 paid at the rack:

22 All motor fuel exported from this state to any other state
23 or nation: *Provided*, That the supplier collects and remits
24 to the destination state or nation the appropriate amount
25 of tax due on the motor fuel transported to that state or
26 nation: *Provided, however*, That this exemption does not
27 apply to any motor fuel which is transported and delivered
28 outside this state in the motor fuel supply tank of a
29 highway vehicle.

30 (c) *Refundable exemptions from flat rate component of*
31 *tax.* – Any person having a right or claim to any of the
32 following exemptions from the flat rate component of the
33 tax levied by section five of this article shall first pay the
34 tax levied by this article and then apply to the Tax Com-
35 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 including a county aging program as defined by the Older
46 Americans Act and designated by the Bureau of Senior
47 Services;

48 (3) Any municipal government or any agency thereof;

49 (4) Any county boards of education;

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

53 (6) Any municipal, county, state or federal civil defense
54 or emergency service program pursuant to a government
55 contract for use in conjunction therewith, or to any person
56 on whom is imposed a requirement to maintain an inven-
57 tory of motor fuel for the purpose of the program: *Pro-*
58 *vided*, That motor fueling facilities used for these purposes
59 are not capable of fueling motor vehicles and the person in
60 charge of the program has in his or her possession a letter
61 of authority from the Tax Commissioner certifying his or
62 her right to the exemption: *Provided, however*, That in
63 order for this exemption to apply, motor fuel sold under
64 this subdivision and subdivisions (1) through (5), inclusive,
65 of this subsection shall be used in vehicles or equipment
66 owned and operated by the respective government entity
67 or government agency or authority;

68 (7) All invoiced gallons of motor fuel purchased by a
69 licensed exporter and subsequently exported from this
70 state to any other state or nation: *Provided*, That the
71 exporter has paid the applicable motor fuel tax to the
72 destination state or nation prior to claiming this refund or
73 the exporter has reported to the destination state or nation
74 that the motor fuel was sold in a transaction not subject to

75 tax in that state or nation: *Provided, however,* That a
76 refund may not be granted on any motor fuel which is
77 transported and delivered outside this state in the motor
78 fuel supply tank of a highway vehicle;

79 (8) All gallons of motor fuel used and consumed in
80 stationary off-highway turbine engines;

81 (9) All gallons of special fuel used for heating any public
82 or private dwelling, building or other premises;

83 (10) All gallons of special fuel used for boilers;

84 (11) All gallons of motor fuel used as a dry cleaning
85 solvent or commercial or industrial solvent;

86 (12) All gallons of motor fuel used as lubricants, ingredi-
87 ents or components of any manufactured product or
88 compound;

89 (13) All gallons of motor fuel sold for use or used as a
90 motor fuel for commercial watercraft;

91 (14) All gallons of special fuel sold for use or consumed
92 in railroad diesel locomotives;

93 (15) All gallons of motor fuel purchased in quantities of
94 twenty-five gallons or more for use as a motor fuel for
95 internal combustion engines not operated upon highways
96 of this state;

97 (16) All gallons of motor fuel purchased in quantities of
98 twenty-five gallons or more and used to power a power
99 take-off unit on a motor vehicle. When a motor vehicle
100 with auxiliary equipment uses motor fuel and there is no
101 auxiliary motor for the equipment or separate tank for a
102 motor, the person claiming the refund may present to the
103 Tax Commissioner a statement of his or her claim and is
104 allowed a refund for motor fuel used in operating a power
105 take-off unit on a cement mixer truck or garbage truck
106 equal to twenty-five percent of the tax levied by this
107 article paid on all motor fuel used in such a truck;

108 (17) Motor fuel used by any person regularly operating
109 any vehicle under a certificate of public convenience and
110 necessity or under a contract carrier permit for transporta-
111 tion of persons when purchased in an amount of twenty-
112 five gallons or more: *Provided*, That the amount refunded
113 is equal to six cents per gallon: *Provided, however*, That
114 the gallons of motor fuel have been consumed in the
115 operation of urban and suburban bus lines and the major-
116 ity of passengers use the bus for traveling a distance not
117 exceeding forty miles, measured one way, on the same day
118 between their places of abode and their places of work,
119 shopping areas or schools; and

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

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

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

143 (2) This state and its institutions;

144 (3) Any county government or unit or agency thereof,
145 including a county aging program as defined by the Older
146 Americans Act and designated by the Bureau of Senior
147 Services;

148 (4) Any municipal government or any agency thereof;

149 (5) Any county boards of education;

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

153 (7) Any municipal, county, state or federal civil defense
154 or emergency service program pursuant to a government
155 contract for use in conjunction therewith, or to any person
156 on whom is imposed a requirement to maintain an inven-
157 tory of motor fuel for the purpose of the program: *Pro-*
158 *vided*, That fueling facilities used for these purposes are
159 not capable of fueling motor vehicles and the person in
160 charge of the program has in his or her possession a letter
161 of authority from the Tax Commissioner certifying his or
162 her right to the exemption;

163 (8) Any bona fide volunteer fire department, nonprofit
164 ambulance service or emergency rescue service that has
165 been certified by the municipality or county wherein the
166 bona fide volunteer fire department, nonprofit ambulance
167 service or emergency rescue service is located; or

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

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

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this the *5th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 3 0 2006

Time 12:13 