



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Tax TITLE-SERIES: 110-41

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: RAILROAD DIESEL LOCOMOTIVE
REFUNDABLE EXEMPTION FROM THE
VARIABLE RATE COMPONENT OF THE MOTOR
FUEL EXCISE TAX

CITE STATUTORY AUTHORITY: W. Va. Code §11-10-5

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

December 31, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file
legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

**TITLE 110
PROCEDURAL RULE
STATE TAX DEPARTMENT**

**SERIES 41
RAILROAD DIESEL LOCOMOTIVE REFUNDABLE EXEMPTION FROM
THE VARIABLE RATE COMPONENT OF THE MOTOR FUEL EXCISE TAX**

§110-41-1. General.

1.1. Scope. -- This procedural rule sets forth the procedure the State Tax Department will use in administering W. Va. Code §11-14C-9(d)(10), applicable to certain entities operating railroad diesel locomotives in West Virginia. The rule includes requirements to report the variable rate portion of the motor fuel tax, pay the tax, and apply for the refundable exemption within the aggregate cap of \$4,300,000. This procedural rule also sets forth the prerequisites and requirements for requesting the credit under W. Va. Code §11-15A-10a.

1.2. Authority. -- W. Va. Code §11-10-5.

1.3. Filing Date. -- November 29, 2018.

1.4. Effective Date. -- December 31, 2018.

§110-41-2. Definitions.

2.1. Unless the context in which a term is used clearly requires a different meaning, the definitions contained in W. Va. Code §11-14C-1 *et seq.* apply to this rule.

2.2. "Taxpayer," for the purposes of this rule, means the operator, owner or entity operating one or more railroad diesel locomotives which operate in whole or in part in West Virginia.

2.3. "Qualified taxpayer," for purposes of this rule, means a taxpayer who has properly and timely filed its quarterly report and payment electronically on WV/MFT-USE. The qualified taxpayer must have a current business registration certificate issued by the West Virginia State Tax Department.

§110-41-3. The refundable exemption from the variable rate component for railroad diesel locomotives.

3.1. Beginning January 1, 2018, all gallons of motor fuel sold for use or consumed in the operation of railroad diesel locomotives in West Virginia are subject to a refundable exemption from the variable rate component of the motor fuel excise tax subject to the following:

3.1.a. Only the variable rate tax paid on diesel fuel consumed in West Virginia in the operation of a locomotive is subject to the refundable exemption;

3.1.b. The aggregate amount of the refundable exemption available to all taxpayers in a calendar year is limited to \$4,300,000;

3.1.c. If the total amount claimed by all railroad diesel locomotive operators is greater than \$4,300,000 in a calendar year, then the amount to be refunded is distributed proportionately to the taxpayers as set forth in this rule; and

3.1.d. The credit allowable under W. Va. Code §11-15A-10a is only allowable to the extent the credit exceeds the allowable refundable exemption amount authorized under this rule for the calendar year.

3.2. The exemption is refundable.

3.2.a. The variable rate component of the motor fuel tax must first be paid as specified in this rule as a prerequisite for applying for the refund. *See* W. Va. Code §11-14C-9(d).

3.2.b. A taxpayer will receive the portion of the refundable exemption based only on the amount of tax actually paid on the variable component of the motor fuel excise tax.

§110-41-4. Reporting, payment, and application for refund: due dates, requirements, and limitations.

4.1. The exemption is exclusively a refundable exemption for motor fuel used or consumed in railroad diesel locomotives. Therefore, the West Virginia Motor Carrier Quarterly Report, MFT-USE, the WV fuel use tax return, will be used in reporting the use, making the payment and claiming the refund.

4.1.a. MFT-USE is found on the Tax Department web site at <http://tax.wv.gov/Documents/TaxForms/2013/mftuse.quarterly.pdf>

4.1.b. The report must be filed and payment must be made electronically.

4.1.b.1. To file and pay electronically go to https://mytaxes.wvtax.gov/_/.

4.1.b.2. Information on filing electronically is found on the Tax Department web site at <https://tax.wv.gov/Business/ElectronicFiling/Pages/BusinessElectronicFiling.aspx>.

4.2. W. Va. Code §11-14C-31(c)(3) requires the petition for refund under W. Va. Code §11-14C-9(d)(10) to be filed on or before the last day of January, April, July, and October for purchases of motor fuel during the immediately preceding calendar quarter.

4.2.a. This means that the report, payment and request for refund as reported on MFT-USE must be filed on or before the date indicated below for the corresponding period:

For Periods	Filing Due Date
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	October 31
October 1 – December 31	January 31

4.2.b. Because the refund amount is capped, and because the refund must be proportionately distributed if refunds are claimed in excess of \$4,300,000 per calendar year, the following rules apply to each quarterly report:

4.2.b.1. THERE WILL BE NO EXTENSION OF TIME TO REPORT, PAY, OR FILE A CLAIM FOR REFUND;

4.2.b.2. NO REPORT OR CLAIM FOR REFUND CAN BE AMENDED AFTER IT IS FILED;

4.2.b.3. The restrictions in this section will be enforced even in years where the aggregate amount of refund claimed is equal to or less than \$4,300,000.

4.2.b.4. MFT-USE must be complete, signed and electronically sent to the West Virginia State Tax Department on or before the filing due date set forth above. The electronic funds transfer must be submitted on the same day as the report is filed.

4.2.c. The refundable exemption from the variable rate component is effective January 1, 2018, for motor fuel consumed in the operation of a locomotive on or after January 1, 2018. Therefore, the first report, payment and application for the refundable exemption will be due on or before April 30, 2018, for the motor fuel used or consumed in railroad diesel locomotives in the first quarter of 2018.

4.3. When the total amount of refundable exemption claimed by all qualified taxpayers in a calendar year exceeds \$4,300,000, then the Tax Commissioner will determine the proportional amount of the aggregate \$4,300,000 refund to distribute amongst the qualified taxpayers as set forth in this rule.

4.4. The variable rate of the motor fuel tax, as published in the State Register and in the Administrative Notice or Notices issued by the Tax Commissioner for the relevant calendar year, shall be used to calculate the distribution of the refundable exemption.

4.5. The Tax Commissioner may request further information in writing, including by email. The taxpayer has thirty days from receipt of the request to provide the information.

§110-41-5. Application for credit for sales tax liability paid to another state, prerequisites, required information and calculation of credit.

5.1. The credit under W. Va. Code §11-15A-10a is only applicable for the tax actually paid by the taxpayer which exceeds the taxpayer's portion of the \$4,300,000 cap.

5.1.a. The taxpayer's portion of the \$4,300,000 of motor fuel variable rate component paid and refunded, is not subject to the application for credit under W.Va. Code §11-15A-10a. In other words, only the amount of motor fuel tax actually paid above the \$4,300,000 refunded amount is subject to the application for credit.

5.1.b. In years where the cap is not exceeded, no requests for credit for sales tax paid to another state as defined in W. Va. Code §11-15A-10a will be granted.

5.2. As required by W. Va. Code §11-15A-10a, the sales tax must be lawfully paid to another state as a prerequisite for application for the sales tax credit.

5.3. To determine the amount of credit for sales tax actually paid to another state, the Tax Department will apply the following steps:

5.3.a. Multiply all gallons of fuel upon which tax was paid in other states by the taxpayer's West Virginia apportionment factor.

5.3.b. Multiply gallons upon which credit can be taken by the lesser of the West Virginia fuel tax rate or the amount of tax actually paid per gallon. The product of $((a \times b) \times \text{Min}(c, d))$ is the potential credit.

5.3.c. Multiply the potential credit by a factor:

5.3.c.1. The numerator of which is the difference between the total gallons used in West Virginia and the total amount of gallons upon which the railroad diesel locomotive exemption applied.

5.3.c.2. The denominator of which is the total amount of gallons used in WV.

5.3.c. The result is the amount of credit allowed for tax paid to other states.

5.3.d. The result of 5.3.c is the amount of credit allowed for tax paid to other states.

5.3.e. The above four steps are represented algebraically as:

$$((a \times b) \times \text{Min}(c, d)) \times \frac{e - f}{f}$$

Where:

a = Gallons upon which tax was paid to other states

b = West Virginia apportionment factor

c = West Virginia motor fuel variable tax rate

d = Actual rate paid per gallon

e = Total Gallons used in West Virginia

f = Gallons exempt due to railroad diesel locomotive exemption.

5.4. To apply for the credit for sales tax paid to another state, the information above must be timely filed along with the MFT-USE report and payment for each quarter.

5.4.a. That is, all information for the previous quarter must be provided by the due date of the return for that quarter as set out in section 4.

5.4.b. The number of gallons upon which tax was paid to other states is the actual number of gallons, not an estimate and not an average.

5.4.c. The actual rate paid per gallon is to be reported, not an estimate or average rate.

§110-41-6. Record keeping and audits.

6.1. Documentation verifying the information on MFT-USE for each calendar year, verification of payment of the variable rate component of the motor fuel tax, verification of the sales or use tax paid to other states for the calendar year for those years where such sales tax credit is requested, and verification of any other information requested by the Tax Commissioner, must be kept by the taxpayer for audit and inspection by the Tax Commissioner:

6.1.a. For tax years where there is no application for credit under W. Va. Code §11-15A-10a, the documentation must be kept for a period of three years after January 31, of the year following the calendar tax year.

6.1.b. For those years where a request for credit under W. Va. Code §11-15A-10a, is timely filed, the documentation supporting the information on MFT-USE, payment of the variable rate component of the motor fuel tax, verification of payment of the sales tax actually paid to other states and all information required in section five of this rule, must be kept for a period of three years after the request for credit is filed or January 31 of the year immediately following the taxable year, whichever is later.

6.2. Taxpayer records are subject to audit by the Tax Commissioner during reasonable business hours.

6.3. Persons are to be made available and are subject to interview and questioning during reasonable business hours by the Tax Commissioner or his or her designee concerning the content of the taxpayer's records, the taxpayer's methods and means of gathering the information, and the taxpayer's methods and practices concerning its record keeping.

6.4. The documentation includes, but is not limited to: invoices, sales slips, billing slips, and logs showing mileage the taxpayer's locomotives operated within and without West Virginia, all to support the information requested in sections four and five of this rule and any additional information the Tax Commissioner requested for the applicable tax year.