



**WEST VIRGINIA  
SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 1)**

AGENCY **Tax**  
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of  
the Motor Fuel Excise Tax**  
CITE AUTHORITY **W. Va. Code §11-10-5**

COMMENTS LIMITED TO  
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS  
**Friday, January 26, 2018 5:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO  
**Mark S. Morton, Esq., General Counsel  
P.O. Box 1005  
Charleston, WV 25324-1005**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE 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-Series: 110-41



Rule Id: 16655



Document: 50139



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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE  
(Page 2)**

AGENCY **Tax**  
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**  
CITE AUTHORITY **W. Va. Code §11-10-5**

**PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL**

The motor fuel excise tax has two components: a flat rate component and a variable rate component. In 2016 the Legislature passed S.B. 582 which amends W. Va. Code §11-14C-9. The bill provides a refundable exemption from the flat rate component of the motor fuel excise tax on all gallons sold for use or consumed in railroad diesel locomotives beginning January 1, 2018 up to an aggregate refund amount of \$4.3 million annually. Whenever the aggregate refund claims exceed \$4.3 million, the Tax Commissioner must proportionally distribute no more than \$4.3 million among all claimants. There is no change in the refundable exemption from the flat rate component of the motor fuel excise tax for railroad diesel locomotive operators under W. Va. Code §11-14C-9(c)(14). The rule is necessary to administer the refundable flat rate exemption for railroad diesel locomotives and to administer the proportional distribution among the claimants when the aggregate amount exceeds \$4.3 million annually.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE 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.



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**FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY **Tax**  
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**  
CITE AUTHORITY **W. Va. Code §11-10-5**

**PRIMARY CONTACT**

Mark Morton  
P.O. Box 1005

Charleston, West Virginia 25324

**SECONDARY CONTACT**

Stephen Stockton  
P.O. Box 1005

Charleston, West Virginia 25324

**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.**



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**FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY      **Tax**

RULE TYPE   **Procedural**                      **AMENDMENT TO EXISTING RULE**      No      TITLE-SERIES      **110-**

RULE NAME   **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**

CITE AUTHORITY   **W. Va. Code §11-10-5**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**The stated purpose of this bill is to provide a refundable tax credit for motor fuel sold for use or consumed in railroad diesel locomotives.**

**According to our interpretation, this bill provides a refundable exemption, not a credit, from the variable rate or the sales tax rate portion of the motor fuel tax, as the fuel is already exempt from the fixed portion of the tax. The current variable rate is at 12.7 cents per gallon. The bill provides for the limit of the refundable exemption in the aggregate to equal \$4.3 million. According to available information, this is close to the amount collected for this tax from railroad diesel locomotives. It is anticipated that gas prices, and thus the variable rate of tax, should rise by the effective date of this bill. The exemption should reach its maximum by 2018 and could either rise or fall depending on the average wholesale price of fuel. The variable sales tax level may vary by up to 10 percent per year based on these changes.**

**Administrative costs to the Tax Department will be \$63,000 in FY2017 and \$35,000 in each year thereafter.**

**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.**



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**FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 2)**

AGENCY **Tax**  
 RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
 RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**  
 CITE AUTHORITY **W. Va. Code §11-10-5**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
<b>ESTIMATED TOTAL COST</b>	<b>0</b>	<b>63000</b>	<b>35000</b>
<b>PERSONAL SERVICES</b>	<b>0</b>	<b>35000</b>	<b>35000</b>
<b>CURRENT EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REPAIRS AND ALTERATIONS</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ASSETS</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>OTHER</b>	<b>0</b>	<b>28000</b>	<b>0</b>
<b>ESTIMATED TOTAL REVENUES</b>	<b>0</b>	<b>0</b>	<b>-4300000</b>

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.



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**FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)**

AGENCY      **Tax**

RULE TYPE   **Procedural**                      **AMENDMENT TO EXISTING RULE**      No      TITLE-SERIES      **110-**

RULE NAME   **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**

CITE AUTHORITY   **W. Va. Code §11-10-5**

**3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.**

**According to our interpretation, this bill provides a refundable exemption, not a credit, from the variable rate or the sales tax rate portion of the motor fuel tax, as the fuel is already exempt from the fixed portion of the tax. The current variable rate is at 12.7 cents per gallon. The bill provides for the limit of the refundable exemption in the aggregate to equal \$4.3 million. According to available information, this is close to the amount collected for this tax from railroad diesel locomotives. It is anticipated that gas prices, and thus the variable rate of tax, should rise by the effective date of this bill. The exemption should reach its maximum by 2018 and could either rise or fall depending on the average wholesale price of fuel. The variable sales tax level may vary by up to 10 percent per year based on these changes. Administrative costs to the Tax Department will be \$63,000 in FY2017 and \$35,000 in each year thereafter.**

**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.**



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Rule Id: 16655



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**FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)**

AGENCY **Tax**  
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**  
CITE AUTHORITY **W. Va. Code §11-10-5**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND/OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

**none**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**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.**



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**FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY **Tax**  
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **110-**  
RULE NAME **Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax**  
CITE AUTHORITY **W. Va. Code §11-10-5**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The motor fuel excise tax has two components: a flat rate component and a variable rate component. In 2016 the Legislature passed S.B. 582 which amends W. Va. Code §11-14C-9. The bill provides a refundable exemption from the flat rate component of the motor fuel excise tax on all gallons sold for use or consumed in railroad diesel locomotives beginning January 1, 2018 up to an aggregate refund amount of \$4.3 million annually. Whenever the aggregate refund claims exceed \$4.3 million, the Tax Commissioner must proportionally distribute no more than \$4.3 million among all claimants. There is no change in the refundable exemption from the flat rate component of the motor fuel excise tax for railroad diesel locomotive operators under W. Va. Code §11-14C-9(c) (14). The rule is necessary to administer the refundable flat rate exemption for railroad diesel locomotives and to administer the proportional distribution among the claimants when the aggregate amount exceeds \$4.3 million annually.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE 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.**



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**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). The rule includes requirements to apply for the refundable exemption from the variable rate component of the motor fuel excise tax for railroad diesel locomotives including time to apply for the refund, information required, and payment of any variable rate not refunded, if any.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§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 operates in whole or in part in West Virginia.

2.3. "Qualified taxpayer," for purposes of this rule, means a taxpayer who has properly completed its application for refund, with the signature of the authorized person or persons, and timely filed its application electronically.

**§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 railroad diesel locomotives is subject to a refundable exemption from the variable rate component of the motor fuel excise tax subject to the following:

3.1.a. Only 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 qualified taxpayer must have a current business registration certificate issued by the West Virginia State Tax Department in order to claim the exemption.

**§110-41-4. Application for refund: due dates, filing and payment.**

4.1. The application for the exemption from the variable rate component of the motor fuel excise tax must be made on an annual basis for the previous calendar year.

4.2. The application for the refundable exemption must be complete, signed and electronically sent to the West Virginia State Tax Department on or before March 15<sup>th</sup> of the current calendar year for the prior calendar year.

4.2.a. 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 application for the refundable exemption for calendar year 2018 will be due on or before March 15, 2019.

4.2.b. Information on filing electronically is found on the Tax Department web site at [www.wvtax.gov](http://www.wvtax.gov).

4.3. Because the refund amount is capped, it must be proportionately distributed if refunds are claimed in excess of \$4,300,000 per calendar year:

4.3.a. THERE WILL BE NO EXTENSION OF TIME TO FILE A CLAIM FOR REFUND;

4.3.b. NO CLAIM FOR REFUND CAN BE AMENDED AFTER IT IS FILED and

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

4.4. 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.

4.5. The variable rate 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.

4.6. For those calendar years where the aggregate amount of refunds claimed is greater than \$4,300,000, the amount of a taxpayer's variable rate component not refunded is subject to payment electronically on or before April 30<sup>th</sup> on a form designated by the Tax Commissioner.

**§110-41-5. Application for refund: form and information required.**

5.1. The taxpayer must use the form prescribed by the Tax Commissioner to apply for the refundable exemption from the variable rate component of the motor fuel excise tax.

5.1.a. Application for both the refund and the credit for sales tax paid to another state under W. Va. Code §11-15A-10a will be made on the same form.

5.2. The taxpayer must provide all the information requested by the Tax Commissioner on the form. An application that does not include all of the required information will be rejected.

5.3. The application of each qualifying taxpayer must list all the following information and any other information required by the Tax Commissioner.

5.3.a. Identifying information including, but not limited to:

5.3.a.1. The taxpayer's FEIN;

5.3.a.2. The taxpayer's West Virginia Motor Fuel tax account number;

5.3.a.3. The taxpayer's West Virginia Sales and Use tax account number;

5.3.a.4. The name, title and other identifying information for the person or persons having authority to sign the application for refund; and

5.3.a.5. Any other information required by the Tax Commissioner.

5.3.b. The total number of gallons of dyed diesel fuel purchased for the taxpayer's entire system for the relevant calendar year.

5.3.c. The total number of gallons of undyed diesel fuel purchased for the taxpayer's entire system for the relevant calendar year.

5.3.d. The total number of gallons of dyed diesel fuel purchased in West Virginia by the taxpayer for the relevant calendar year.

5.3.e. The total number of gallons of undyed diesel fuel purchased in West Virginia by the taxpayer for the relevant calendar year.

5.3.f. The total miles the taxpayer's locomotives were operated in the taxpayer's entire system for the relevant calendar year.

5.3.g. The total number of miles locomotives were operated in West Virginia by the taxpayer for the relevant calendar year.

5.3.h. Any other information requested by the Tax Commissioner.

**§110-41-6. Record keeping and audits.**

6.1. Documentation verifying the information on the application and in reporting the tax, where applicable, must be kept by the taxpayer for audit and inspection by the Tax Commissioner. The documentation includes, but is not limited to those listed in this section.

6.2. Invoices of the following must be kept by the taxpayer:

6.2.a. Invoices for the amounts of dyed diesel fuel purchased for the taxpayer's entire system during the calendar year for which the claim for refund was filed;

6.2.b. Invoices for the amounts of undyed diesel fuel purchased for the taxpayer's entire system during the calendar year for which the claim for refund was filed;

6.2.c. Invoices for the amounts of dyed diesel fuel purchased in West Virginia by the taxpayer during the calendar year for which the claim for refund was filed; and

6.2.d. Invoices for the amounts of undyed diesel fuel purchased in West Virginia by the taxpayer during the calendar year for which the claim for refund was filed;

6.3. Documentation showing the total number of miles taxpayer's locomotives were operated in the taxpayer's entire system during the calendar year for which the claim for refund was filed.

6.4. Documentation showing the total number of miles taxpayer's locomotives were operated in West Virginia by the taxpayer during the calendar year for which the claim for refund was filed.

6.5. Records necessary to verify the application and payment of tax, if any, for each calendar year must be kept for a period of three years after application for the refund is due or three years after the tax was due or paid, whichever is the latest date.

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

6.7. 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 methods and practices concerning the taxpayer's record keeping.