

FIRST REGULAR SESSION

SENATE BILL NO. 414

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOLL

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L1750.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 142.815, 142.824, 142.875, 142.905 and 142.908, RSMo Supp. 1998, relating to motor fuel tax, and to enact in lieu thereof five new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 142.815, 142.824, 142.875, 142.905 and 142.908, RSMo Supp. 1998, are repealed and five new sections enacted in lieu thereof, to be known as sections 142.815, 142.824, 142.875, 142.905 and 142.908, to read as follows:

142.815. 1. Motor fuel used for the following nonhighway purposes is exempt from the fuel tax imposed by this chapter, and a refund may be claimed by the consumer, except as provided for in subsection (1) of this section, if the tax has been paid and no refund has been previously issued:

(1) Motor fuel used for nonhighway purposes including fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes. At the discretion of the ultimate vender, the refund may be claimed by the ultimate vender on behalf of the consumer for sales made to farmers and to persons engaged in construction for agricultural purposes as defined in section 142.800. **After December 31, 2000, the refund may be claimed only by the consumer and may not be claimed by the ultimate vender;**

(2) Kerosene sold for use as fuel to generate power in aircraft engines, whether in aircraft or for training, testing or research purposes of aircraft engines;

(3) Diesel fuel used as heating oil, or in railroad locomotives or any other motorized flanged-wheel rail equipment, or used for other nonhighway purposes other than as expressly exempted [under] **pursuant to** another provision.

2. Subject to the procedural requirements and conditions set out in this chapter, the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

following uses are exempt from the tax imposed by section 142.803 on motor fuel, and a deduction or a refund may be claimed:

(1) Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper and which is either:

(a) Exported by a supplier who is licensed in the destination state or through the bulk transfer system;

(b) Removed by a licensed distributor for immediate export to a state for which all the applicable taxes and fees (however nominated in that state) of the destination state have been paid to the supplier, as a trustee, who is licensed to remit tax to the destination state; or which is destined for use within the destination state by the federal government for which an exemption has been made available by the destination state subject to procedural rules and regulations promulgated by the director; or

(c) Acquired by a licensed distributor and which the tax imposed by this chapter has previously been paid or accrued either as a result of being stored outside of the bulk transfer system immediately prior to loading or as a diversion across state boundaries properly reported in conformity with this chapter and was subsequently exported from this state on behalf of the distributor;

The exemption pursuant to paragraph (a) of this subdivision shall be claimed by a deduction on the report of the supplier which is otherwise responsible for remitting the tax upon removal of the product from a terminal or refinery in this state. The exemption pursuant to paragraphs (b) and (c) of this subdivision shall be claimed by the distributor, upon a refund application made to the director within three years. A refund claim may be made monthly or whenever the claim exceeds one thousand dollars;

(2) Undyed K-1 kerosene sold at retail through dispensers which have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank, and undyed K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more than twenty-one gallons for use other than for highway purposes. Exempt use of undyed kerosene shall be governed by rules and regulations of the director. If no rules or regulations are promulgated by the director, then the exempt use of undyed kerosene shall be governed by rules and regulations of the Internal Revenue Service. A distributor or supplier delivering to a retail facility shall obtain an exemption certificate from the owner or operator of such facility stating that its sales conform to the dispenser requirements of this subdivision. A licensed distributor, having obtained such certificate, may provide a copy to his **or her** supplier and obtain undyed kerosene without the tax levied by section 142.803. Having obtained such certificate in good faith, such supplier shall be relieved of any responsibility if the fuel is later used in a taxable manner. An ultimate vendor who obtained undyed kerosene upon which the tax levied by section 142.803 had been paid and makes sales qualifying [under] **pursuant to** this subsection, may apply

for a refund of the tax [upon] **pursuant to** application, as provided in section 142.818, to the director provided the ultimate vendor did not charge such tax to the consumer;

(3) Motor fuel sold to the United States or any agency or instrumentality thereof. This exemption shall be claimed as provided in section 142.818;

(4) Motor fuel used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of this state when leased or owned and when being operated by a federally recognized Indian tribe in the performance of essential governmental functions, such as providing police, fire, health or water services. The exemption for use pursuant to this subdivision shall be made available to the tribal government upon a refund application stating that the motor fuel was purchased for the exclusive use of the tribe in performing named essential governmental services;

(5) Motor fuel sold within an Indian reservation or within Indian country by a federally recognized Indian tribe to a member of that tribe and used in motor vehicles owned by a member of the tribe within Indian country. This exemption does not apply to sales within an Indian reservation or within Indian country by a federally recognized Indian tribe to non-Indian consumers or to Indian consumers who are not members of the tribe selling the motor fuel. This exemption shall be administered as provided in section 142.821;

(6) That portion of motor fuel used to operate equipment attached to a motor vehicle, if the motor fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment, or if the motor fuel was placed in a separate fuel tank and used only for the operation of auxiliary equipment. The exemption for use pursuant to this subdivision shall be claimed by a refund claim filed by the consumer who shall provide evidence of an allocation of use satisfactory to the director;

(7) Motor fuel acquired by a consumer out-of-state and carried into this state, retained within and consumed from the same vehicle fuel supply tank within which it was imported, except interstate motor fuel users;

(8) Motor fuel which was purchased tax-paid and which was lost or destroyed as a direct result of a sudden and unexpected casualty or which had been accidentally contaminated so as to be unsalable as highway fuel as shown by proper documentation as required by the director. The exemption pursuant to this subdivision shall be refunded to the person or entity owning the motor fuel at the time of the contamination or loss. Such person shall notify the director in writing of such event and the amount of motor fuel lost or contaminated within ten days from the date of discovery of such loss or contamination, and within thirty days after such notice, shall file an affidavit sworn to by the person having immediate custody of such motor fuel at the time of the loss or contamination, setting forth in full the circumstances and the amount of the loss or contamination and such other information with respect thereto as the director may require;

(9) Dyed diesel fuel or dyed kerosene used for an exempt purpose. This exemption shall be claimed as follows:

(a) A supplier or importer shall take a deduction against motor fuel tax owed on their monthly report for those gallons of dyed diesel fuel or dyed kerosene imported or removed from a terminal or refinery destined for delivery to a point in this state as shown on the shipping papers;

(b) This exemption shall be claimed by a deduction on the report of the supplier which is otherwise responsible for remitting the tax on removal of the product from a terminal or refinery in this state;

(c) This exemption shall be claimed by the distributor, upon a refund application made to the director within three years. A refund claim may be made monthly or whenever the claim exceeds one thousand dollars.

142.824. 1. To claim a refund in accordance with section 142.815, a person shall present to the director a statement containing a written verification that the claim is made under penalties of perjury and lists the total amount of motor fuel purchased and used for exempt purposes. The claim shall not be transferred or assigned and shall be filed not more than three years after the date the motor fuel was imported, removed or sold if the claimant is a supplier, importer, exporter or distributor. If the claim is filed by the ultimate consumer, a consumer must file the claim [not later than] **within one year of the date of purchase or** April fifteenth following the year of purchase, **whichever is later**. The claim statement shall be supported by the original sales slip, invoice or other documentation as approved by the director and shall include the following information:

- (1) Date of sale;
- (2) Name and address of purchaser;
- (3) Name and address of seller;
- (4) Number of gallons purchased and base price per gallon;
- (5) Number of gallons purchased and charged Missouri fuel tax, as a separate item;
- (6) Number of gallons purchased and charged sales tax, if applicable, as a separate item;
- (7) Marked paid by the seller.

2. If the original sales slip or invoice is lost or destroyed, a statement to that effect shall accompany the claim for refund, and the claim statement shall also set forth the serial number of the invoice. If the director finds the claim is otherwise regular, [he] **the director** may allow such claim for refund.

3. The director may make any investigation necessary before refunding the motor fuel tax to a person and may investigate a refund after the refund has been issued and within the time frame for making adjustments to the tax [under] **pursuant to** this chapter.

4. In any case where a refund would be payable to a supplier pursuant to this chapter, the supplier may claim a credit in lieu of such refund for a period not to exceed three years.

5. Every person shall maintain and keep for a period of three years records to substantiate

all claims for refund of the motor fuel tax, together with invoices, bills of lading, and other pertinent records and paper as may be required by the director for reasonable administration of this chapter.

6. Motor fuel tax that has been paid more than once with respect to the same gallon of motor fuel shall be refunded by the director to the person who last paid the tax after the subsequent taxable event upon submitting proof satisfactory to the director.

7. Motor fuel tax that has otherwise been erroneously paid by a person shall be refunded by the director upon proof shown satisfactory to the director.

8. If a refund is not issued within ninety days of [the] **an accurate and complete** filing, **as** required by this chapter, the director shall pay interest at the rate set out in section 32.065, RSMo, accruing after the expiration of the ninety-day period until the date the refund is issued. **After December 31, 2000, if a refund is not issued within thirty days of an accurate and complete filing, as required by this chapter, the director shall pay interest at the rate provided in section 32.065, RSMo, accruing after the expiration of the thirty-day period until the date the refund is issued.**

142.875. 1. Every licensee shall, upon the discontinuance, sale, or transfer of the business or upon the cancellation, revocation or termination by law of a license [under] **pursuant to** section 142.899, or as otherwise provided, within fifteen days, make a report as required [under] **pursuant to** this chapter marked "Final Report", and shall pay all motor fuel taxes, penalties and interest that may be due the state except as may otherwise be provided by law.

2. For purposes of this section, any person who was licensed to remit motor fuel taxes by this state prior to January 1, 1999, and who is not licensed as a supplier [under] **pursuant to** this chapter shall be deemed to have the license terminated [under] **pursuant to** this section as of January 1, 1999.

3. Any distributor licensed prior to January 1, 1999, who is ineligible to elect eligible purchaser status, or who otherwise does not apply for or not receive eligible purchaser status in accordance with section 142.851, may in the alternative elect to make payment of the tax calculated and interest provided for in section [32.067] **32.065**, RSMo, pursuant to the final report provided for in this section if the tax is paid in installments agreed to by the director not to exceed twelve months after January 1, 1999.

4. If a person elects [under] **pursuant to** subsection 3 of this section to defer payment, the person shall not be eligible to claim eligible purchaser status pursuant to section 142.851 for a period of thirty-six months following the election.

5. Any former licensee shall be given the opportunity to apply for eligible purchaser status as provided in sections 142.848 and 142.851, prior to January 1, 1999. Should such determination not be complete before January 1, 1999, collection of tax shown on the final report of the former licensee shall be delayed until the determination is complete. However, the final report shall be

due not later than thirty days after a denial of eligible purchaser status becomes final.

6. The final report required by this chapter shall be accompanied by payment of the liability of the final month. A one-time alternative payment method is set out in this section upon January 1, 1999, as part of the conversion from the predecessor act.

142.905. 1. The director may revoke the license of a person who refuses or neglects to comply with any provision of this chapter or any regulation promulgated pursuant to this chapter. Any person whose license is revoked may seek review of the director's decision by the administrative hearing commission.

2. No person shall engage in any business activity in this state as to which a license is required by this chapter unless the person shall have first obtained the license. Any person who negligently violates this section is subject to a civil penalty in the amount of one thousand dollars. Any person who knowingly violates or knowingly aids and abets another to violate this section with the intent to evade the tax levied by this chapter shall be guilty of a class A misdemeanor.

3. The director may impose a civil penalty against any person who fails to file a return or retain records required by this chapter in the amount of one hundred dollars for the first offense and increasing by that amount for each additional occurrence.

4. If a monthly report is filed or the amount due is remitted later than the time required by this chapter, the tax remitter shall pay to the director all of the motor fuel tax without the reduction allowed by subdivision (2) of section 142.836 or subsection 5 of section 142.842 in addition to penalties and interest.

5. A supplier, permissive supplier, or distributor who knowingly fails to precollect or timely remit tax otherwise required to be paid over to the director pursuant to this chapter, or pursuant to a tax precollection agreement **[under] pursuant to** this chapter shall be liable for the uncollected tax plus a penalty of five percent per month for each month or part of a month for which the amount remains unpaid up to a maximum of twenty-five percent and interest as provided in section **[32.067] 32.065**, RSMo.

6. A person who fails to pay the tax collected on motor fuel at the time required in this chapter or who fraudulently withholds or appropriates or otherwise uses the money or any portion thereof belonging to the state shall be guilty of the crime of stealing and subject to punishment **[under] pursuant to** section 570.030, RSMo.

7. If any person liable for the tax **[under] pursuant to** this chapter files a false or fraudulent return with the intent to evade the tax, then fifty percent of the total amount of any deficiency, in addition to the deficiency, including interest as provided in section **[32.067] 32.065**, RSMo, shall be added, collected and paid.

8. All civil penalties imposed **[under] pursuant to** this chapter, with any interest, shall be deposited to the credit of the motor fuel tax fund created in section 142.345.

142.908. In the event the tax imposed by this chapter is not precollected and must be paid by the consumer in accordance with section 142.866, the tax is due and payable by the consumer on the last day of each month for the purchases made in the preceding calendar month. The consumer shall file with the director, on forms furnished by the director, a return showing in detail the total purchase price of the motor fuel, the number of gallons purchased or blended, the location of the purchase, the blend stocks and motor fuel components and any other information the director may deem reasonably necessary. With each return, the consumer shall remit to the director the amount of tax shown on the return to be due. Reports timely mailed shall be considered timely filed. If a report is not timely filed, penalties and interest shall be charged from the date the report should have been filed until the report is actually filed and taxes are paid. Penalties shall be five percent of the tax due per month for each month or part of a month for which the amount remains unpaid up to a maximum of twenty-five percent plus interest as provided in section [32.067] **32.065**, RSMo.

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