

SB1233



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB1233

Introduced 2/18/2005, by Sen. Kirk W. Dillard - Martin A. Sandoval - Louis S. Viverito

SYNOPSIS AS INTRODUCED:

35 ILCS 505/13

from Ch. 120, par. 429

Amends the Motor Fuel Tax Law. In a provision concerning refunds, allows claims for taxes paid for undyed diesel fuel used by a commercial motor vehicle for the purpose of shifting other vehicles solely on private property and by equipment that is used solely on airport property for moving aircraft or freight. Effective immediately.

LRB094 07133 BDD 37286 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Motor Fuel Tax Law is amended by changing
5 Section 13 as follows:

6 (35 ILCS 505/13) (from Ch. 120, par. 429)

7 Sec. 13. Refund of tax paid. Any person other than a
8 distributor or supplier, who loses motor fuel through any cause
9 or uses motor fuel (upon which he has paid the amount required
10 to be collected under Section 2 of this Act) for any purpose
11 other than operating a motor vehicle upon the public highways
12 or waters, shall be reimbursed and repaid the amount so paid.

13 Any person who purchases motor fuel in Illinois and uses
14 that motor fuel in another state and that other state imposes a
15 tax on the use of such motor fuel shall be reimbursed and
16 repaid the amount of Illinois tax paid under Section 2 of this
17 Act on the motor fuel used in such other state. Reimbursement
18 and repayment shall be made by the Department upon receipt of
19 adequate proof of taxes paid to another state and the amount of
20 motor fuel used in that state.

21 Claims for such reimbursement must be made to the
22 Department of Revenue, duly verified by the claimant (or by the
23 claimant's legal representative if the claimant has died or
24 become a person under legal disability), upon forms prescribed
25 by the Department. The claim must state such facts relating to
26 the purchase, importation, manufacture or production of the
27 motor fuel by the claimant as the Department may deem
28 necessary, and the time when, and the circumstances of its loss
29 or the specific purpose for which it was used (as the case may
30 be), together with such other information as the Department may
31 reasonably require. No claim based upon idle time shall be
32 allowed.

1 Claims for full reimbursement for taxes paid on or before
2 December 31, 1999 must be filed not later than one year after
3 the date on which the tax was paid by the claimant. If,
4 however, a claim for such reimbursement otherwise meeting the
5 requirements of this Section is filed more than one year but
6 less than 2 years after that date, the claimant shall be
7 reimbursed at the rate of 80% of the amount to which he would
8 have been entitled if his claim had been timely filed.

9 Claims for full reimbursement for taxes paid on or after
10 January 1, 2000 must be filed not later than 2 years after the
11 date on which the tax was paid by the claimant.

12 The Department may make such investigation of the
13 correctness of the facts stated in such claims as it deems
14 necessary. When the Department has approved any such claim, it
15 shall pay to the claimant (or to the claimant's legal
16 representative, as such if the claimant has died or become a
17 person under legal disability) the reimbursement provided in
18 this Section, out of any moneys appropriated to it for that
19 purpose.

20 Any distributor or supplier who has paid the tax imposed by
21 Section 2 of this Act upon motor fuel lost or used by such
22 distributor or supplier for any purpose other than operating a
23 motor vehicle upon the public highways or waters may file a
24 claim for credit or refund to recover the amount so paid. Such
25 claims shall be filed on forms prescribed by the Department.
26 Such claims shall be made to the Department, duly verified by
27 the claimant (or by the claimant's legal representative if the
28 claimant has died or become a person under legal disability),
29 upon forms prescribed by the Department. The claim shall state
30 such facts relating to the purchase, importation, manufacture
31 or production of the motor fuel by the claimant as the
32 Department may deem necessary and the time when the loss or
33 nontaxable use occurred, and the circumstances of its loss or
34 the specific purpose for which it was used (as the case may
35 be), together with such other information as the Department may
36 reasonably require. Claims must be filed not later than one

1 year after the date on which the tax was paid by the claimant.

2 The Department may make such investigation of the
3 correctness of the facts stated in such claims as it deems
4 necessary. When the Department approves a claim, the Department
5 shall issue a refund or credit memorandum as requested by the
6 taxpayer, to the distributor or supplier who made the payment
7 for which the refund or credit is being given or, if the
8 distributor or supplier has died or become incompetent, to such
9 distributor's or supplier's legal representative, as such. The
10 amount of such credit memorandum shall be credited against any
11 tax due or to become due under this Act from the distributor or
12 supplier who made the payment for which credit has been given.

13 Any credit or refund that is allowed under this Section
14 shall bear interest at the rate and in the manner specified in
15 the Uniform Penalty and Interest Act.

16 In case the distributor or supplier requests and the
17 Department determines that the claimant is entitled to a
18 refund, such refund shall be made only from such appropriation
19 as may be available for that purpose. If it appears unlikely
20 that the amount appropriated would permit everyone having a
21 claim allowed during the period covered by such appropriation
22 to elect to receive a cash refund, the Department, by rule or
23 regulation, shall provide for the payment of refunds in
24 hardship cases and shall define what types of cases qualify as
25 hardship cases.

26 In any case in which there has been an erroneous refund of
27 tax payable under this Section, a notice of tax liability may
28 be issued at any time within 3 years from the making of that
29 refund, or within 5 years from the making of that refund if it
30 appears that any part of the refund was induced by fraud or the
31 misrepresentation of material fact. The amount of any proposed
32 assessment set forth by the Department shall be limited to the
33 amount of the erroneous refund.

34 If no tax is due and no proceeding is pending to determine
35 whether such distributor or supplier is indebted to the
36 Department for tax, the credit memorandum so issued may be

1 assigned and set over by the lawful holder thereof, subject to
2 reasonable rules of the Department, to any other licensed
3 distributor or supplier who is subject to this Act, and the
4 amount thereof applied by the Department against any tax due or
5 to become due under this Act from such assignee.

6 If the payment for which the distributor's or supplier's
7 claim is filed is held in the protest fund of the State
8 Treasury during the pendency of the claim for credit
9 proceedings pursuant to the order of the court in accordance
10 with Section 2a of the State Officers and Employees Money
11 Disposition Act and if it is determined by the Department or by
12 the final order of a reviewing court under the Administrative
13 Review Law that the claimant is entitled to all or a part of
14 the credit claimed, the claimant, instead of receiving a credit
15 memorandum from the Department, shall receive a cash refund
16 from the protest fund as provided for in Section 2a of the
17 State Officers and Employees Money Disposition Act.

18 If any person ceases to be licensed as a distributor or
19 supplier while still holding an unused credit memorandum issued
20 under this Act, such person may, at his election (instead of
21 assigning the credit memorandum to a licensed distributor or
22 licensed supplier under this Act), surrender such unused credit
23 memorandum to the Department and receive a refund of the amount
24 to which such person is entitled.

25 For claims based upon taxes paid on or before December 31,
26 2000, a claim based upon the use of undyed diesel fuel shall
27 not be allowed except (i) if allowed under the following
28 paragraph or (ii) for undyed diesel fuel used by a commercial
29 vehicle, as that term is defined in Section 1-111.8 of the
30 Illinois Vehicle Code, for any purpose other than operating the
31 commercial vehicle upon the public highways and unlicensed
32 commercial vehicles operating on private property. Claims
33 shall be limited to commercial vehicles that are operated for
34 both highway purposes and any purposes other than operating
35 such vehicles upon the public highways.

36 For claims based upon taxes paid on or after January 1,

1 2000, a claim based upon the use of undyed diesel fuel shall
2 not be allowed except (i) if allowed under the preceding
3 paragraph or (ii) for claims for the following:

4 (1) Undyed diesel fuel used (i) in a manufacturing
5 process, as defined in Section 2-45 of the Retailers'
6 Occupation Tax Act, wherein the undyed diesel fuel becomes
7 a component part of a product or by-product, other than
8 fuel or motor fuel, when the use of dyed diesel fuel in
9 that manufacturing process results in a product that is
10 unsuitable for its intended use or (ii) for testing
11 machinery and equipment in a manufacturing process, as
12 defined in Section 2-45 of the Retailers' Occupation Tax
13 Act, wherein the testing takes place on private property.

14 (2) Undyed diesel fuel used by a manufacturer on
15 private property in the research and development, as
16 defined in Section 1.29, of machinery or equipment intended
17 for manufacture.

18 (3) Undyed diesel fuel used by a single unit
19 self-propelled agricultural fertilizer implement, designed
20 for on and off road use, equipped with flotation tires and
21 specially adapted for the application of plant food
22 materials or agricultural chemicals.

23 (4) Undyed diesel fuel used by a commercial motor
24 vehicle for any purpose other than operating the commercial
25 motor vehicle upon the public highways. Claims shall be
26 limited to commercial motor vehicles that are operated for
27 both highway purposes and any purposes other than operating
28 such vehicles upon the public highways.

29 (5) Undyed diesel fuel used by a unit of local
30 government in its operation of an airport if the undyed
31 diesel fuel is used directly in airport operations on
32 airport property.

33 (6) Undyed diesel fuel used by refrigeration units that
34 are permanently mounted to a semitrailer, as defined in
35 Section 1.28 of this Law, wherein the refrigeration units
36 have a fuel supply system dedicated solely for the

1 operation of the refrigeration units.

2 (7) Undyed diesel fuel used by power take-off equipment
3 as defined in Section 1.27 of this Law.

4 (8) Beginning on the effective date of this amendatory
5 Act of the 94th General Assembly, undyed diesel fuel used
6 by a commercial motor vehicle for the purpose of shifting
7 other vehicles solely on private property and by equipment
8 that is used solely on airport property for moving aircraft
9 or freight.

10 Any person who has paid the tax imposed by Section 2 of
11 this Law upon undyed diesel fuel that is unintentionally mixed
12 with dyed diesel fuel and who owns or controls the mixture of
13 undyed diesel fuel and dyed diesel fuel may file a claim for
14 refund to recover the amount paid. The amount of undyed diesel
15 fuel unintentionally mixed must equal 500 gallons or more. Any
16 claim for refund of unintentionally mixed undyed diesel fuel
17 and dyed diesel fuel shall be supported by documentation
18 showing the date and location of the unintentional mixing, the
19 number of gallons involved, the disposition of the mixed diesel
20 fuel, and any other information that the Department may
21 reasonably require. Any unintentional mixture of undyed diesel
22 fuel and dyed diesel fuel shall be sold or used only for
23 non-highway purposes.

24 The Department shall promulgate regulations establishing
25 specific limits on the amount of undyed diesel fuel that may be
26 claimed for refund.

27 For purposes of claims for refund, "loss" means the
28 reduction of motor fuel resulting from fire, theft, spillage,
29 spoilage, leakage, or any other provable cause, but does not
30 include a reduction resulting from evaporation or shrinkage due
31 to temperature variations.

32 (Source: P.A. 91-173, eff. 1-1-00; 92-30, eff. 7-1-01.)

33 Section 99. Effective date. This Act takes effect upon
34 becoming law.