

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 528

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CUNNINGHAM (145).

Read 1st time February 10, 2005 and copies ordered printed.

Read 2nd time February 14, 2005 and referred to the Committee on Agriculture Policy February 24, 2005.

Reported from the Committee on Agriculture Policy March 10, 2005 with recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 15, 2005 with recommendation that the bill Do Pass by Consent with no time limit for debate.

Perfectured by Consent March 30, 2005.

STEPHEN S. DAVIS, Chief Clerk

0071L.01P

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### AN ACT

To repeal section 142.815, RSMo, and to enact in lieu thereof one new section relating to motor fuel tax.

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

Section A. Section 142.815, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 142.815, to read as follows: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 **and including, beginning January 1, 2006, bulk sales of one hundred gallons or more of gasoline made to farmers and delivered by the ultimate vender to a farm location for agricultural purposes only. As used in this section, the term "farmer" shall mean any person engaged in farming in an authorized farm corporation, family farm, or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 **family farm corporation as defined in section 350.010, RSMo.** At the discretion of the  
12 ultimate vender, the refund may be claimed by the ultimate vender on behalf of the consumer for  
13 sales made to farmers and to persons engaged in construction for agricultural purposes as defined  
14 in section 142.800. After December 31, 2000, the refund may be claimed only by the consumer  
15 and may not be claimed by the ultimate vender **unless bulk sales of gasoline are made to a**  
16 **farmer after January 1, 2006, as provided in this subdivision and the farmer provides an**  
17 **exemption certificate to the ultimate vender, in which case the ultimate vender may make**  
18 **a claim for refund under section 142.824 but shall be liable for any erroneous refund;**

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

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

24 2. Subject to the procedural requirements and conditions set out in this chapter, the  
25 following uses are exempt from the tax imposed by section 142.803 on motor fuel, and a  
26 deduction or a refund may be claimed:

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

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

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

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

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43 The exemption pursuant to paragraph (a) of this subdivision shall be claimed by a deduction on  
44 the report of the supplier which is otherwise responsible for remitting the tax upon removal of  
45 the product from a terminal or refinery in this state. The exemption pursuant to paragraphs (b)  
46 and (c) of this subdivision shall be claimed by the distributor, upon a refund application made

47 to the director within three years. A refund claim may be made monthly or whenever the claim  
48 exceeds one thousand dollars;

49 (2) Undyed K-1 kerosene sold at retail through dispensers which have been designed and  
50 constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank, and  
51 undyed K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more  
52 than twenty-one gallons for use other than for highway purposes. Exempt use of undyed  
53 kerosene shall be governed by rules and regulations of the director. If no rules or regulations are  
54 promulgated by the director, then the exempt use of undyed kerosene shall be governed by rules  
55 and regulations of the Internal Revenue Service. A distributor or supplier delivering to a retail  
56 facility shall obtain an exemption certificate from the owner or operator of such facility stating  
57 that its sales conform to the dispenser requirements of this subdivision. A licensed distributor,  
58 having obtained such certificate, may provide a copy to his or her supplier and obtain undyed  
59 kerosene without the tax levied by section 142.803. Having obtained such certificate in good  
60 faith, such supplier shall be relieved of any responsibility if the fuel is later used in a taxable  
61 manner. An ultimate vendor who obtained undyed kerosene upon which the tax levied by  
62 section 142.803 had been paid and makes sales qualifying pursuant to this subsection, may apply  
63 for a refund of the tax pursuant to application, as provided in section 142.818, to the director  
64 provided the ultimate vendor did not charge such tax to the consumer;

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

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

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

80 (6) That portion of motor fuel used to operate equipment attached to a motor vehicle, if  
81 the motor fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel  
82 reservoir for travel on a highway and for the operation of equipment, or if the motor fuel was

83 placed in a separate fuel tank and used only for the operation of auxiliary equipment. The  
84 exemption for use pursuant to this subdivision shall be claimed by a refund claim filed by the  
85 consumer who shall provide evidence of an allocation of use satisfactory to the director;

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

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

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

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

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

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