

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 528
93RD GENERAL ASSEMBLY

Reported from the Committee on Transportation, April 12, 2005, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

0071S.02C

TERRY L. SPIELER, Secretary.

AN ACT

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

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Section A. Section 142.815, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 142.815, to read as follows: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 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 family farm corporation as defined in section 350.010, RSMo.** 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 **unless bulk sales of gasoline are made to a farmer after January 1, 2006, as provided in this subdivision and the farmer provides an exemption certificate to the ultimate vender, in which case the ultimate vender may make a claim for refund under section 142.824;**

(2) Kerosene sold for use as fuel to generate power in aircraft engines, whether

21 in aircraft or for training, testing or research purposes of aircraft engines;

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

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

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

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

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

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

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

49 (2) Undyed K-1 kerosene sold at retail through dispensers which have been
50 designed and constructed to prevent delivery directly from the dispenser into a vehicle
51 fuel supply tank, and undyed K-1 kerosene sold at retail through nonbarricaded
52 dispensers in quantities of not more than twenty-one gallons for use other than for
53 highway purposes. Exempt use of undyed kerosene shall be governed by rules and
54 regulations of the director. If no rules or regulations are promulgated by the director,
55 then the exempt use of undyed kerosene shall be governed by rules and regulations of
56 the Internal Revenue Service. A distributor or supplier delivering to a retail facility

57 shall obtain an exemption certificate from the owner or operator of such facility stating
58 that its sales conform to the dispenser requirements of this subdivision. A licensed
59 distributor, having obtained such certificate, may provide a copy to his or her supplier
60 and obtain undyed kerosene without the tax levied by section 142.803. Having obtained
61 such certificate in good faith, such supplier shall be relieved of any responsibility if the
62 fuel is later used in a taxable manner. An ultimate vendor who obtained undyed
63 kerosene upon which the tax levied by section 142.803 had been paid and makes sales
64 qualifying pursuant to this subsection, may apply for a refund of the tax pursuant to
65 application, as provided in section 142.818, to the director provided the ultimate vendor
66 did not charge such tax to the consumer;

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

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

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

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

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

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

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

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

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

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

117 **3. Notwithstanding any law or rule to the contrary, the ultimate vender**
118 **shall not be liable in any way for a farmer or other fuel consumer's actions**
119 **or inactions including but not limited to fraud, deception, fuel tax evasion or**
120 **improper use of any motor fuel, diesel fuel or gasoline.**

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