

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 1967, Page 1, Section A, Line 7, by inserting after
2 all of said section and line the following:

3 "136.300. 1. With respect to any issue relevant to ascertaining the tax liability of a taxpayer all laws
4 of the state imposing a tax shall be strictly construed against the taxing authority in favor of the taxpayer. The
5 director of revenue shall have the burden of proof with respect to any factual issue relevant to ascertaining the
6 liability of a taxpayer only if:

7 (1) The taxpayer has produced evidence that establishes that there is a reasonable dispute with respect
8 to the issue; and

9 (2) The taxpayer has adequate records of its transactions and provides the department of revenue
10 reasonable access to these records[; and

11 (3) In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed
12 seven million dollars and the taxpayer does not have more than five hundred employees at the time the final
13 decision of the director of the department of revenue is issued].

14 2. This section shall not apply to any issue with respect to the applicability of any tax [exemption or]
15 credit.

16 142.815. 1. Motor fuel used for the following nonhighway purposes is exempt from the fuel tax
17 imposed by this chapter, and a refund may be claimed by the consumer, except as provided for in subdivision
18 (1) of this subsection, if the tax has been paid and no refund has been previously issued:

19 (1) Motor fuel used for nonhighway purposes including fuel for farm tractors or stationary engines
20 owned or leased and operated by any person and used exclusively for agricultural purposes and including,
21 beginning January 1, 2006, bulk sales of one hundred gallons or more of gasoline made to farmers and
22 delivered by the ultimate [vender] vendor to a farm location for agricultural purposes only. As used in this
23 section, the term "farmer" shall mean any person engaged in farming in an authorized farm corporation, family
24 farm, or family farm corporation as defined in section 350.010. At the discretion of the ultimate [vender]
25 vendor, the refund may be claimed by the ultimate[vender] vendor on behalf of the consumer for sales made to
26 farmers and to persons engaged in construction for agricultural purposes as defined in section 142.800. After
27 December 31, 2000, the refund may be claimed only by the consumer and may not be claimed by the ultimate
28 [vender] vendor unless bulk sales of gasoline are made to a farmer after January 1, 2006, as provided in this
29 subdivision and the farmer provides an exemption certificate to the ultimate [vender] vendor, in which case
30 the ultimate [vender] vendor may make a claim for refund under section 142.824 but shall be liable for any
31 erroneous refund;

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

34 (3) Diesel fuel used as heating oil, or in railroad locomotives or any other motorized flanged-wheel

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1 rail equipment, or used for other nonhighway purposes other than as expressly exempted pursuant to another
2 provision.

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

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

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

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

13 (c) Acquired by a licensed distributor and which the tax imposed by this chapter has previously been
14 paid or accrued either as a result of being stored outside of the bulk transfer system immediately prior to
15 loading or as a diversion across state boundaries properly reported in conformity with this chapter and was
16 subsequently exported from this state on behalf of the distributor; The exemption pursuant to paragraph (a) of
17 this subdivision shall be claimed by a deduction on the report of the supplier which is otherwise responsible
18 for remitting the tax upon removal of the product from a terminal or refinery in this state. The exemption
19 pursuant to paragraphs (b) and (c) of this subdivision shall be claimed by the distributor, upon a refund
20 application made to the director within three years. A refund claim may be made monthly or whenever the
21 claim exceeds one thousand dollars;

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

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

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

44 (5) That portion of motor fuel used to operate equipment attached to a motor vehicle, if the motor fuel
45 was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a
46 highway and for the operation of equipment, or if the motor fuel was placed in a separate fuel tank and used

1 only for the operation of auxiliary equipment. The exemption for use pursuant to this subdivision shall be
 2 claimed by a refund claim filed by the consumer who shall provide evidence of an allocation of use
 3 satisfactory to the director;

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

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

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

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

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

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

26 (9) Motor fuel delivered to any marina within this state that sells such fuel solely for use in any
 27 watercraft, as such term is defined in section 306.010, and not accessible to other motor vehicles, is exempt
 28 from the fuel tax imposed by this chapter. Any motor fuel distributor that delivers motor fuel to any marina in
 29 this state for use solely in any watercraft, as such term is defined in section 306.010, at a location other than a
 30 marina within this state may claim the exemption provided in this subsection by filing a claim for refund of
 31 the fuel tax."; and

32
 33 Further amend said bill, Page 6, Section 144.010, Lines 94-95, by deleting all of said lines and inserting in
 34 lieu thereof the following:

35 "(a) Sales of admission tickets[, cash admissions,] and charges and fees for admission to [or in places
 36 of amusement, entertainment and recreation, games and athletic events] view sporting events, dance
 37 performances, theater performances, orchestra, concerts, and other performing arts productions, and amounts
 38 paid for admission to racetracks, arcades, theme and amusement parks, water parks, circuses, carnivals,
 39 festivals, air shows, museums, marinas, motion picture theaters, and other commercial attractions. Such sales
 40 shall not include the amount paid that results in the first opportunity to purchase or decline tickets for
 41 admission to events, but does not itself result in admission;"; and

42
 43 Further amend said bill, Page 11, Section 144.020, Lines 15-17, by deleting all of said lines and inserting in
 44 lieu thereof the following:

45 "(2) [A tax equivalent to four percent of] The amount paid for admission tickets and [seating
 46 accommodations, or] charges and fees [paid] to, or in any place of amusement, entertainment or recreation,

1 games and athletic events] view sporting events, dance performances, theater performances, orchestra,
 2 concerts and other performing arts productions, and amounts paid for admission to racetracks, arcades, theme
 3 and amusement parks, water parks, circuses, carnivals, festivals, air shows, museums, marinas, motion picture
 4 theaters, and other commercial attractions. Such tax shall not include any sales regardless of how offered and
 5 sold as a right of first refusal, right to purchase, single admission ticket, bundled package or season pass for
 6 admission and seating accommodations, or fees paid to, or in any place exempt from taxation under
 7 subdivision (21) of subsection 2 of section 144.030;"; and
 8

9 Further amend said bill, Page 21, Section 144.030, Line 304, by inserting after all of said line the following:

10 "(30) All sales of motor fuel, as defined in section 142.800, used in any watercraft, as defined in
 11 section 306.010"; and
 12

13 Further amend said bill, Page 23, Section 144.030, Line 373, by inserting after all of said section and line the
 14 following:

15 "144.044. 1. As used in this section, the following terms mean:

16 (1) "Sale of a modular unit", a transfer of a modular unit as defined in section 700.010;

17 (2) "Sale of a new manufactured home", a transfer of a manufactured home, as defined in section
 18 700.010, which involves the delivery of the document known as the manufacturer's statement of origin to a
 19 person other than a manufactured home dealer, as dealer is defined in section 700.010, for purposes of
 20 allowing such person to obtain a title to the manufactured home from the department of revenue of this state
 21 or the appropriate agency or officer of any other state;

22 (3) "Sale of a used manufactured home", any subsequent sale of a manufactured home as defined in
 23 section 700.010, which does not qualify as "new" as defined in subdivision (9) of section 700.010.

24 2. In the event of the sale of a new manufactured home, forty percent of the purchase price, as defined
 25 in section 700.320, shall be considered the sale of a service and not the sale of tangible personal property. In
 26 addition to the exemptions granted under the provisions of section 144.030, the sale of services as defined in
 27 this section shall be specifically exempted from the provisions of sections 238.235 and 238.410, the local
 28 sales tax law as defined in section 32.085, sections 144.010 to 144.525 and 144.600 to 144.745, and from the
 29 computation of the tax levied, assessed or payable under sections 238.235 and 238.410, the local sales tax law
 30 as defined in section 32.085, sections 144.010 to 144.525 and 144.600 to 144.745, and section 238.235.

31 3. In the event of the sale of a new modular unit, forty percent of the retail sale of the unit or forty
 32 percent of the manufacturer's sales price of the unit if the manufacturer makes a sale to a consumer that is not a
 33 retail sale, plus any carrier charge and freight charges shall be considered the sale of a service and sixty
 34 percent shall be the retail sale of tangible personal property. In addition to the exemptions granted under the
 35 provisions of section 144.030, the sale of services as defined in this section shall be specifically exempted
 36 from the provisions of sections 238.235 and 238.410, the local sales tax law as defined in section 32.085,
 37 sections 144.010 to 144.525 and 144.600 to 144.745, and from the computation of the tax levied, assessed, or
 38 payable under sections 238.235 and 238.410, the local sales tax law as defined in section 32.085, sections
 39 144.010 to 144.525 and 144.600 to 144.745, and section 238.235.

40 4. In addition to the exemptions granted under the provisions of section 144.030, the sale of a used
 41 manufactured home as defined in this section shall be specifically exempted from the provisions of sections
 42 238.235 and 238.410, the local sales tax law as defined in section 32.085, sections 144.010 to 144.525 and
 43 144.600 to 144.745, and from the computation of the tax levied, assessed, or payable under sections 238.235
 44 and 238.410, the local sales tax law as defined in section 32.085, sections 144.010 to 144.525 and 144.600 to
 45 144.745, and section 238.235."; and
 46

- 1 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.