

**SB3563**



**101ST GENERAL ASSEMBLY**

**State of Illinois**

**2019 and 2020**

**SB3563**

Introduced 2/14/2020, by Sen. John F. Curran

**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 vehicles operated by a municipal fire department or a fire protection district recognized by the Office of the State Fire Marshal. Effective immediately.

LRB101 18586 HLH 68041 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 directly paid to another state and the  
20 amount of motor fuel used in that state.

21 Claims based in whole or in part on taxes paid to another  
22 state shall include (i) a certified copy of the tax return  
23 filed with such other state by the claimant; (ii) a copy of

1 either the cancelled check paying the tax due on such return,  
2 or a receipt acknowledging payment of the tax due on such tax  
3 return; and (iii) such other information as the Department may  
4 reasonably require. This paragraph shall not apply to taxes  
5 paid on returns filed under Section 13a.3 of this Act.

6 Any person who purchases motor fuel use tax decals as  
7 required by Section 13a.4 and pays an amount of fees for such  
8 decals that exceeds the amount due shall be reimbursed and  
9 repaid the amount of the decal fees that are deemed by the  
10 department to be in excess of the amount due. Alternatively,  
11 any person who purchases motor fuel use tax decals as required  
12 by Section 13a.4 may credit any excess decal payment verified  
13 by the Department against amounts subsequently due for the  
14 purchase of additional decals, until such time as no excess  
15 payment remains.

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

1 allowed. Claims for reimbursement for overpayment of decal fees  
2 shall be made to the Department of Revenue, duly verified by  
3 the claimant (or by the claimant's legal representative if the  
4 claimant has died or become a person under legal disability),  
5 upon forms prescribed by the Department. The claim shall state  
6 facts relating to the overpayment of decal fees, together with  
7 such other information as the Department may reasonably  
8 require. Claims for reimbursement of overpayment of decal fees  
9 paid on or after January 1, 2011 must be filed not later than  
10 one year after the date on which the fees were paid by the  
11 claimant. If it is determined that the Department should  
12 reimburse a claimant for overpayment of decal fees, the  
13 Department shall first apply the amount of such refund against  
14 any tax or penalty or interest due by the claimant under  
15 Section 13a of this Act.

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

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

1           The Department may make such investigation of the  
2 correctness of the facts stated in such claims as it deems  
3 necessary. When the Department has approved any such claim, it  
4 shall pay to the claimant (or to the claimant's legal  
5 representative, as such if the claimant has died or become a  
6 person under legal disability) the reimbursement provided in  
7 this Section, out of any moneys appropriated to it for that  
8 purpose.

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

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

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

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

25           In any case in which there has been an erroneous refund of  
26 tax or fees payable under this Section, a notice of tax

1 liability may be issued at any time within 3 years from the  
2 making of that refund, or within 5 years from the making of  
3 that refund if it appears that any part of the refund was  
4 induced by fraud or the misrepresentation of material fact. The  
5 amount of any proposed assessment set forth by the Department  
6 shall be limited to the amount of the erroneous refund.

7 If no tax is due and no proceeding is pending to determine  
8 whether such distributor or supplier is indebted to the  
9 Department for tax, the credit memorandum so issued may be  
10 assigned and set over by the lawful holder thereof, subject to  
11 reasonable rules of the Department, to any other licensed  
12 distributor or supplier who is subject to this Act, and the  
13 amount thereof applied by the Department against any tax due or  
14 to become due under this Act from such assignee.

15 If the payment for which the distributor's or supplier's  
16 claim is filed is held in the protest fund of the State  
17 Treasury during the pendency of the claim for credit  
18 proceedings pursuant to the order of the court in accordance  
19 with Section 2a of the State Officers and Employees Money  
20 Disposition Act and if it is determined by the Department or by  
21 the final order of a reviewing court under the Administrative  
22 Review Law that the claimant is entitled to all or a part of  
23 the credit claimed, the claimant, instead of receiving a credit  
24 memorandum from the Department, shall receive a cash refund  
25 from the protest fund as provided for in Section 2a of the  
26 State Officers and Employees Money Disposition Act.

1           If any person ceases to be licensed as a distributor or  
2           supplier while still holding an unused credit memorandum issued  
3           under this Act, such person may, at his election (instead of  
4           assigning the credit memorandum to a licensed distributor or  
5           licensed supplier under this Act), surrender such unused credit  
6           memorandum to the Department and receive a refund of the amount  
7           to which such person is entitled.

8           For claims based upon taxes paid on or before December 31,  
9           2000, a claim based upon the use of undyed diesel fuel shall  
10          not be allowed except (i) if allowed under the following  
11          paragraph or (ii) for undyed diesel fuel used by a commercial  
12          vehicle, as that term is defined in Section 1-111.8 of the  
13          Illinois Vehicle Code, for any purpose other than operating the  
14          commercial vehicle upon the public highways and unlicensed  
15          commercial vehicles operating on private property. Claims  
16          shall be limited to commercial vehicles that are operated for  
17          both highway purposes and any purposes other than operating  
18          such vehicles upon the public highways.

19          For claims based upon taxes paid on or after January 1,  
20          2000, a claim based upon the use of undyed diesel fuel shall  
21          not be allowed except (i) if allowed under the preceding  
22          paragraph or (ii) for claims for the following:

23                 (1) Undyed diesel fuel used (i) in a manufacturing  
24                 process, as defined in Section 2-45 of the Retailers'  
25                 Occupation Tax Act, wherein the undyed diesel fuel becomes  
26                 a component part of a product or by-product, other than



1 fuel or motor fuel, when the use of dyed diesel fuel in  
2 that manufacturing process results in a product that is  
3 unsuitable for its intended use or (ii) for testing  
4 machinery and equipment in a manufacturing process, as  
5 defined in Section 2-45 of the Retailers' Occupation Tax  
6 Act, wherein the testing takes place on private property.

7 (2) Undyed diesel fuel used by a manufacturer on  
8 private property in the research and development, as  
9 defined in Section 1.29, of machinery or equipment intended  
10 for manufacture.

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

16 (4) Undyed diesel fuel used by a commercial motor  
17 vehicle for any purpose other than operating the commercial  
18 motor vehicle upon the public highways. Claims shall be  
19 limited to commercial motor vehicles that are operated for  
20 both highway purposes and any purposes other than operating  
21 such vehicles upon the public highways.

22 (5) Undyed diesel fuel used by a unit of local  
23 government in its operation of an airport if the undyed  
24 diesel fuel is used directly in airport operations on  
25 airport property.

26 (6) Undyed diesel fuel used by refrigeration units that

1 are permanently mounted to a semitrailer, as defined in  
2 Section 1.28 of this Law, wherein the refrigeration units  
3 have a fuel supply system dedicated solely for the  
4 operation of the refrigeration units.

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

7 (8) Beginning on the effective date of this amendatory  
8 Act of the 94th General Assembly, undyed diesel fuel used  
9 by tugs and spotter equipment to shift vehicles or parcels  
10 on both private and airport property. Any claim under this  
11 item (8) may be made only by a claimant that owns tugs and  
12 spotter equipment and operates that equipment on both  
13 private and airport property. The aggregate of all credits  
14 or refunds resulting from claims filed under this item (8)  
15 by a claimant in any calendar year may not exceed \$100,000.  
16 A claim may not be made under this item (8) by the same  
17 claimant more often than once each quarter. For the  
18 purposes of this item (8), "tug" means a vehicle designed  
19 for use on airport property that shifts custom-designed  
20 containers of parcels from loading docks to aircraft, and  
21 "spotter equipment" means a vehicle designed for use on  
22 both private and airport property that shifts trailers  
23 containing parcels between staging areas and loading  
24 docks.

25 (9) Beginning on the effective date of this amendatory  
26 Act of the 101st General Assembly, undyed diesel fuel used

1       by vehicles operated by a municipal fire department or a  
2       fire protection district recognized by the Office of the  
3       State Fire Marshal. A claim may not be made under this item  
4       (9) by the same claimant more often than once each calendar  
5       quarter.

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

20       The Department shall promulgate regulations establishing  
21 specific limits on the amount of undyed diesel fuel that may be  
22 claimed for refund.

23       For purposes of claims for refund, "loss" means the  
24 reduction of motor fuel resulting from fire, theft, spillage,  
25 spoilage, leakage, or any other provable cause, but does not  
26 include a reduction resulting from evaporation, or shrinkage

1 due to temperature variations. In the case of losses due to  
2 fire or theft, the claimant must include fire department or  
3 police department reports and any other documentation that the  
4 Department may require.

5 (Source: P.A. 100-1171, eff. 1-4-19.)

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.