



Sen. Kirk W. Dillard

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1 AMENDMENT TO SENATE BILL 1233

2 AMENDMENT NO. _____. Amend Senate Bill 1233 by replacing
3 everything after the enacting clause with the following:

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

1 by the Department. The claim must state such facts relating to
2 the purchase, importation, manufacture or production of the
3 motor fuel by the claimant as the Department may deem
4 necessary, and the time when, and the circumstances of its loss
5 or the specific purpose for which it was used (as the case may
6 be), together with such other information as the Department may
7 reasonably require. No claim based upon idle time shall be
8 allowed.

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

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

20 The Department may make such investigation of the
21 correctness of the facts stated in such claims as it deems
22 necessary. When the Department has approved any such claim, it
23 shall pay to the claimant (or to the claimant's legal
24 representative, as such if the claimant has died or become a
25 person under legal disability) the reimbursement provided in
26 this Section, out of any moneys appropriated to it for that
27 purpose.

28 Any distributor or supplier who has paid the tax imposed by
29 Section 2 of this Act upon motor fuel lost or used by such
30 distributor or supplier for any purpose other than operating a
31 motor vehicle upon the public highways or waters may file a
32 claim for credit or refund to recover the amount so paid. Such
33 claims shall be filed on forms prescribed by the Department.
34 Such claims shall be made to the Department, duly verified by

1 the claimant (or by the claimant's legal representative if the
2 claimant has died or become a person under legal disability),
3 upon forms prescribed by the Department. The claim shall state
4 such facts relating to the purchase, importation, manufacture
5 or production of the motor fuel by the claimant as the
6 Department may deem necessary and the time when the loss or
7 nontaxable use occurred, and the circumstances of its loss or
8 the specific purpose for which it was used (as the case may
9 be), together with such other information as the Department may
10 reasonably require. Claims must be filed not later than one
11 year after the 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 approves a claim, the Department
15 shall issue a refund or credit memorandum as requested by the
16 taxpayer, to the distributor or supplier who made the payment
17 for which the refund or credit is being given or, if the
18 distributor or supplier has died or become incompetent, to such
19 distributor's or supplier's legal representative, as such. The
20 amount of such credit memorandum shall be credited against any
21 tax due or to become due under this Act from the distributor or
22 supplier who made the payment for which credit has been given.

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

26 In case the distributor or supplier requests and the
27 Department determines that the claimant is entitled to a
28 refund, such refund shall be made only from such appropriation
29 as may be available for that purpose. If it appears unlikely
30 that the amount appropriated would permit everyone having a
31 claim allowed during the period covered by such appropriation
32 to elect to receive a cash refund, the Department, by rule or
33 regulation, shall provide for the payment of refunds in
34 hardship cases and shall define what types of cases qualify as

1 hardship cases.

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

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

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

30 If any person ceases to be licensed as a distributor or
31 supplier while still holding an unused credit memorandum issued
32 under this Act, such person may, at his election (instead of
33 assigning the credit memorandum to a licensed distributor or
34 licensed supplier under this Act), surrender such unused credit

1 memorandum to the Department and receive a refund of the amount
2 to which such person is entitled.

3 For claims based upon taxes paid on or before December 31,
4 2000, a claim based upon the use of undyed diesel fuel shall
5 not be allowed except (i) if allowed under the following
6 paragraph or (ii) for undyed diesel fuel used by a commercial
7 vehicle, as that term is defined in Section 1-111.8 of the
8 Illinois Vehicle Code, for any purpose other than operating the
9 commercial vehicle upon the public highways and unlicensed
10 commercial vehicles operating on private property. Claims
11 shall be limited to commercial vehicles that are operated for
12 both highway purposes and any purposes other than operating
13 such vehicles upon the public highways.

14 For claims based upon taxes paid on or after January 1,
15 2000, a claim based upon the use of undyed diesel fuel shall
16 not be allowed except (i) if allowed under the preceding
17 paragraph or (ii) for claims for the following:

18 (1) Undyed diesel fuel used (i) in a manufacturing
19 process, as defined in Section 2-45 of the Retailers'
20 Occupation Tax Act, wherein the undyed diesel fuel becomes
21 a component part of a product or by-product, other than
22 fuel or motor fuel, when the use of dyed diesel fuel in
23 that manufacturing process results in a product that is
24 unsuitable for its intended use or (ii) for testing
25 machinery and equipment in a manufacturing process, as
26 defined in Section 2-45 of the Retailers' Occupation Tax
27 Act, wherein the testing takes place on private property.

28 (2) Undyed diesel fuel used by a manufacturer on
29 private property in the research and development, as
30 defined in Section 1.29, of machinery or equipment intended
31 for manufacture.

32 (3) Undyed diesel fuel used by a single unit
33 self-propelled agricultural fertilizer implement, designed
34 for on and off road use, equipped with flotation tires and

1 specially adapted for the application of plant food
2 materials or agricultural chemicals.

3 (4) Undyed diesel fuel used by a commercial motor
4 vehicle for any purpose other than operating the commercial
5 motor vehicle upon the public highways. Claims shall be
6 limited to commercial motor vehicles that are operated for
7 both highway purposes and any purposes other than operating
8 such vehicles upon the public highways.

9 (5) Undyed diesel fuel used by a unit of local
10 government in its operation of an airport if the undyed
11 diesel fuel is used directly in airport operations on
12 airport property.

13 (6) Undyed diesel fuel used by refrigeration units that
14 are permanently mounted to a semitrailer, as defined in
15 Section 1.28 of this Law, wherein the refrigeration units
16 have a fuel supply system dedicated solely for the
17 operation of the refrigeration units.

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

20 (8) Beginning on the effective date of this amendatory
21 Act of the 94th General Assembly, undyed diesel fuel used
22 by tugs and spotter equipment that is owned by a taxpayer
23 and that is used for shifting vehicles or parcels on
24 private or airport property. Any claim under this item (8)
25 may be made only by a taxpayer that owns or operates
26 equipment on both private and airport property. A taxpayer
27 may not receive more than \$100,000 per year from the
28 aggregate of all refunds or credits resulting from claims
29 under this item (8). A claim may not be made under this
30 item (8) by the same taxpayer more often than once each
31 quarter.

32 Any person who has paid the tax imposed by Section 2 of
33 this Law upon undyed diesel fuel that is unintentionally mixed
34 with dyed diesel fuel and who owns or controls the mixture of

1 undyed diesel fuel and dyed diesel fuel may file a claim for
2 refund to recover the amount paid. The amount of undyed diesel
3 fuel unintentionally mixed must equal 500 gallons or more. Any
4 claim for refund of unintentionally mixed undyed diesel fuel
5 and dyed diesel fuel shall be supported by documentation
6 showing the date and location of the unintentional mixing, the
7 number of gallons involved, the disposition of the mixed diesel
8 fuel, and any other information that the Department may
9 reasonably require. Any unintentional mixture of undyed diesel
10 fuel and dyed diesel fuel shall be sold or used only for
11 non-highway purposes.

12 The Department shall promulgate regulations establishing
13 specific limits on the amount of undyed diesel fuel that may be
14 claimed for refund.

15 For purposes of claims for refund, "loss" means the
16 reduction of motor fuel resulting from fire, theft, spillage,
17 spoilage, leakage, or any other provable cause, but does not
18 include a reduction resulting from evaporation or shrinkage due
19 to temperature variations.

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."