

CHAPTER 174

TAXATION

HOUSE BILL 02-1364

BY REPRESENTATIVE(S) Swenson, Cadman, Clapp, Fritz, Hefley, Hoppe, Miller, Stafford, and Vigil;
also SENATOR(S) May.

AN ACT**CONCERNING TAX REIMBURSEMENT FOR FUEL THAT IS EXEMPT FROM TAXATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-27-102.5 (2) (a), (2) (b) (I), (2) (b) (II), and (7), Colorado Revised Statutes, are amended to read:

39-27-102.5. Tax imposed on special fuel - exemptions - ex-tax purchases.

(2) (a) Dyed diesel fuel purchased to propel farm vehicles, when the same are being used on farms and ranches, farm tractors, and implements of husbandry only incidentally operated or moved on a highway, when operated off the public highways, and vehicles or construction equipment operated within the confines of highway construction projects when the same are actually being used in the construction of such highways shall be exempt from the excise tax imposed pursuant to this part 1. A person who purchases undyed special fuel for the purposes set forth in this paragraph (a) may, in accordance with ~~section 39-27-103.5~~ SECTION 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(b) (I) All purchases of special fuel for the propulsion of a motor vehicle on the highways of this state by the United States or any of its agencies shall be exempt from the provisions of this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. A person who purchases special fuel for the purposes set forth in this subparagraph (I) may, in accordance with ~~section 39-27-103.5~~ SECTION 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(II) Dyed diesel purchased by the state of Colorado, any of its agencies, any town, city, county, city and county, school district of this state, or any other political subdivision of this state shall be exempt from the excise tax imposed pursuant to this

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. A person who purchases dyed diesel fuel for the purposes set forth in this subparagraph (II) may, in accordance with ~~section 39-27-103.5~~ SECTION 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt from the provisions of subsection (5) of this section and from the special fuel tax imposed by paragraph (c) of subsection (1) of this section upon liquified petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in this subsection (7) may, in accordance with ~~section 39-27-103.5~~ SECTION 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

SECTION 2. 39-27-103 (1), (1.5), (2), (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (f), and (4), Colorado Revised Statutes, are amended to read:

39-27-103. Refunds - penalties - checkoff. (1) A credit or refund shall be allowed for the tax paid or accrued on gasoline ~~which~~ OR SPECIAL FUEL THAT is lost or destroyed by fire, lightning, flood, windstorm, explosion, accident, or other cause beyond the control of the distributor or transporter of such gasoline OR SPECIAL FUEL. This credit or refund shall be allowed only on gasoline OR SPECIAL FUEL in quantities of one hundred gallons or more lost or destroyed at any one time. Any loss of gasoline OR SPECIAL FUEL while in transit or while being loaded or unloaded shall be subject to credit or refund under this section. After any such loss or destruction, the distributor or transporter shall notify the executive director of the department of revenue within seven days of such loss or destruction and, within thirty days after such loss or destruction, shall file with the executive director proof sufficient to establish the loss or destruction as the executive director may require.

(1.5) A refund shall be allowed to a distributor for the tax paid on gasoline OR SPECIAL FUEL pursuant to the provisions of this part 1 ~~which~~ THAT was erroneously paid due to mistake of fact, law, or computation. A distributor who has paid any such tax may, within three years from the date of payment thereof, file with the department of revenue an application for refund of such tax so erroneously paid. Such application shall be on such forms as prescribed by the department of revenue.

(2) Refund shall be made or credit allowed for the tax paid on all gasoline ~~which~~ OR SPECIAL FUEL THAT is purchased and used exclusively, PURSUANT TO SECTIONS 39-27-102 (1) (b) AND 39-27-102.5 (2) (b), by the United States or any of its agencies or by the state or by any town, city, county, or other political subdivision of the state, including specifically any school district therein, solely in any machines owned or operated by the United States or any of its agencies or by the state or by such town, city, county, school district, or other political subdivision of the state. Any other use or any resale for any other use shall be a violation of paragraph (c) of subsection (3) of this section.

(3) (a) (I) Any person who purchases ~~or uses any gasoline for the purpose of operating stationary gas engines, motor vehicles operated on or over fixed rails, tractors, trucks, or other farm implements or machinery when being used for~~

~~agricultural purposes on farms or ranches, state-licensed agricultural applicator aircraft used solely and exclusively for agricultural applications using only private landing facilities to the extent of fifty percent of taxes payable pursuant to section 39-27-102 (1) (a) (IV), motor boats, or aircraft operated by scheduled air carriers or commuter airline operators or who purchases or uses any gasoline for cleaning or dyeing or for any other commercial use, except highway use; GASOLINE OR SPECIAL FUEL AND PAYS THE TAX THEREON AT THE TIME OF SUCH PURCHASE shall be entitled to a refund by the controller, upon voucher certified by the department of revenue of the amount of such tax paid by him OR HER upon complying with the applicable conditions and provisions of this section, except that such person shall not be entitled to a refund on purchases of gasoline in quantities less than twenty gallons IF THE GASOLINE OR SPECIAL FUEL IS USED FOR THE PURPOSE OF:~~

(A) OPERATING A STATIONARY GAS ENGINE;

(B) OPERATING A MOTOR VEHICLE ON OR OVER FIXED RAILS;

(C) OPERATING A TRACTOR, TRUCK, OR OTHER FARM IMPLEMENT OR MACHINE FOR AGRICULTURAL PURPOSES ON A FARM OR RANCH;

(D) OPERATING A STATE-LICENSED AGRICULTURAL APPLICATOR AIRCRAFT FROM A PRIVATE LANDING FACILITY USED SOLELY AND EXCLUSIVELY FOR AGRICULTURAL APPLICATIONS, TO THE EXTENT OF FIFTY PERCENT OF TAXES PAYABLE PURSUANT TO SECTION 39-27-102 (1) (a) (IV);

(E) OPERATING A MOTOR BOAT;

(F) OPERATING AN AIRCRAFT BY A SCHEDULED AIR CARRIER OR COMMUTER AIRLINE OPERATOR;

(G) CLEANING OR DYEING;

(H) ANY COMMERCIAL USE OTHER THAN THE OPERATION OF A MOTOR VEHICLE UPON THE HIGHWAYS OF THIS STATE; OR

(I) ANY OTHER USE THAT ENTITLES A PERSON TO A REFUND UNDER THE PROVISIONS OF THIS PART 1 OR FEDERAL LAW.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO PERSON SHALL BE ENTITLED TO A REFUND ON PURCHASES OF GASOLINE OR SPECIAL FUEL IN QUANTITIES OF LESS THAN TWENTY GALLONS.

(III) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL CALCULATE THE AMOUNT OF THE REFUND ALLOWED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) FOR GASOLINE OR SPECIAL FUEL USE IN ACCORDANCE WITH THE INDUSTRY-SPECIFIC PERCENTAGES OF SUCH FUEL USE EXEMPTED BY SAID SUBPARAGRAPH (I) THAT CAN BE JUSTIFIED BY STUDIES DONE BY INDUSTRIES THAT USE THE FUEL FOR SUCH EXEMPT PURPOSES, STUDIES DONE BY OTHER STATES FOR REFUNDS OF TAX IMPOSED ON THE FUEL USED FOR SUCH EXEMPT PURPOSES, OR STUDIES DONE BY THE DEPARTMENT ABOUT THE HISTORICAL FUEL USAGE FOR SUCH EXEMPT PURPOSES. THE EXECUTIVE DIRECTOR SHALL SET SUCH PERCENTAGES BY

RULE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(b) All applicants claiming a refund under the provisions of this section shall obtain a refund permit from the department of revenue by application therefor on such forms as it prescribes. Such permits shall be obtained before or at the time the first application for refund is made. The application shall be made under oath and shall contain, among other things, the name, address, and occupation of the applicant, and the nature of the business, and a sufficient description of the machines and equipment in which the gasoline OR SPECIAL FUEL is to be used for which A refund may be claimed. ~~but it will only be necessary to list additions or subtractions of any machines or equipment used by the applicant after the initial list has been filed with the department.~~ Upon approval of the application, the department of revenue shall issue to the applicant a refund permit number, and ~~all applications for refund shall bear the number of the permit under which it is claimed~~ REFUND CLAIM FORMS WITH THE APPROVED EXEMPTION PERCENTAGE TO CALCULATE THE AMOUNT OF THE REFUND ALLOWED. The department shall make additional copies of the application for refund forms available to dealers. It is the duty of the department of revenue to keep a record for twenty-four months of all permits issued and cumulative records of the amount of refund claimed and paid thereon.

(c) Refund permits shall be cancelled by the department of revenue if no claim is filed by the permit holder for a period of twenty-four months. If any person makes any false statement in an application for a permit or upon any claim for refund or submits with any claim for refund an invoice ~~which~~ THAT does not represent a bona fide purchase of gasoline OR SPECIAL FUEL at the time and place and in the quantity indicated on the invoice, or if any dealer or other person prepares an invoice ~~which~~ THAT does not represent a bona fide sale of gasoline OR SPECIAL FUEL at the time and place and in the quantity indicated in the invoice, or if any person uses gasoline OR SPECIAL FUEL on which refunds are claimed in any motor vehicle on the public highways of this state, except as provided in subsection (2) of this section, said person or dealer is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition, the executive director shall forthwith cancel the permit of such person, and such person shall not be issued a new permit within one year after such cancellation.

(d) Application for a refund under this section shall be made within twelve months after the date of purchase of the gasoline OR SPECIAL FUEL but not more than once each calendar quarter. Such application shall be made on forms prescribed and furnished by the executive director, which shall contain such information as the executive director may deem necessary. ~~and which refund forms shall be available at gasoline dealers, and shall be accompanied by the affidavit of the purchaser.~~ At the time of making each sale and delivery of gasoline OR SPECIAL FUEL upon which a refund of tax may be claimed, the dealer shall prepare an invoice, in duplicate, in a form approved by the executive director and containing such information as the executive director may deem necessary and carrying a serial number that shall not be repeated through any one calendar year. No additional invoices covering the same sale and delivery of gasoline OR SPECIAL FUEL shall be issued by the dealer. The original copy of such invoice shall be delivered to the purchaser of the gasoline OR SPECIAL FUEL, and, upon payment in full of such invoice, the dealer shall enter thereon the dealer's full name and a notation showing payment thereof. With respect

to invoices covering the sale and delivery of gasoline OR SPECIAL FUEL to the state or those political subdivisions of the state specified in subsection (2) of this section, it shall not be necessary for the dealer to enter the dealer's name and the notation showing payment thereof. Upon proper application, refund shall be made directly to such political subdivisions upon presentation of the COMPLETED REFUND CLAIM FORM. Original invoices together with a certification of the date and number of the warrant by which such invoices were paid SHALL BE RETAINED BY SUCH POLITICAL SUBDIVISIONS FOR A PERIOD OF TWENTY-FOUR MONTHS. The duplicate copy of the invoice shall be retained by the dealer for a period of twenty-four months at the place of business where issued, and such duplicate invoices and other records of the dealer shall be available for examination by the executive director or the executive director's representatives. The executive director shall make demand for repayment of any refund of tax that has been illegally or erroneously made to any person, and the executive director is authorized to request the attorney general or any district attorney of the state to institute a suit for collection of any money illegally or erroneously refunded to any person.

(e) No refund shall be claimed by or allowed to any person on account of any gasoline OR SPECIAL FUEL carried from this state in the ordinary fuel tank of a motor vehicle or aircraft. The application for a refund shall be made by the same person who purchased the gasoline OR SPECIAL FUEL and paid the tax thereon as shown in the invoice of the seller thereof. The right of any person to a refund under this part 1 shall not be assignable. No refund of the gasoline OR SPECIAL FUEL tax shall be claimed by or allowed to any person on any gasoline OR SPECIAL FUEL used for propelling motor vehicles operated in whole or in part during the calendar year upon public highways of the state or upon the streets of any city or town in the state, except as otherwise provided in this subsection (3) or subsection (2) of this section.

~~(f) When a person purchases and uses gasoline in a vehicle equipped with a power take-off unit, a refund may be claimed for all tax paid on gasoline used to operate said power take-off unit provided the vehicle is equipped with a metering device approved by the department of revenue and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of gasoline measured by the metering device shall be presumed to be the quantity of gasoline consumed by the operation of the power take-off unit.~~

(4) Any applicant for refund under the provisions of this section who willfully makes any false statement in connection with an application for a permit or an application for a refund of any taxes, or who uses the gasoline OR SPECIAL FUEL other than as stated in the permit and application, shall be punished as provided by section 39-21-118, and by suspension or revocation of his OR HER permit or license. These penalties shall be in addition to any other penalty imposed by this part 1. If any applicant for refund under the provisions of this section makes any false statement on any application for permit or credit for refund, or submits any invoices on which erasures, changes, alterations, or additions have been made, or ~~which~~ THAT are otherwise incorrect, the executive director shall cancel all or part of any pending claim for refund of such applicant and shall also deduct from any subsequent claims an amount equal to one hundred percent of the amount claimed on any altered or incorrect invoice.

SECTION 3. Repeal. 39-27-103.5, Colorado Revised Statutes, is repealed as

follows:

39-27-103.5. Refunds of the tax paid on special fuel. ~~(1)(a) Any person who purchased special fuel and paid the tax thereon to the vendor at the time of such purchase, who used the diesel engine fuel, kerosene, liquefied petroleum gases, and natural gas for purposes other than the operation of a motor vehicle upon the highways of this state, or who is otherwise entitled to a refund under the provisions of this part 1 or of federal law shall be entitled to a refund by the controller upon vouchers certified by the department of revenue for the amount of tax paid on such fuel; except that such person shall not be entitled to a refund on purchases of special fuel in quantities of less than twenty gallons. When a person purchases and uses special fuel, a refund may be claimed for all tax paid on special fuel used for purposes other than the operation of a motor vehicle upon the highways of this state. The executive director of the department of revenue shall calculate the amount of the refund allowed by this paragraph (a) for such special fuel use in accordance with industry-specific percentages of off road special fuel use that can be justified by studies done by industries that use special fuel off roads and studies done by other states for refunds of tax imposed on special fuel used off roads. The executive director shall set such percentages by rule promulgated in accordance with article 4 of title 24, C.R.S.~~

~~(b) All applicants claiming a refund under the provisions of paragraph (a) of this subsection (1) shall be subject to the applicable provisions of section 39-27-103 (3) to (5), and, for purposes of such subsections (3) to (5), special fuel shall be treated as if it were gasoline.~~

~~(2) A refund shall be allowed to a distributor for the tax paid on special fuel pursuant to the provisions of this part 1 that was erroneously paid due to mistake of fact, law, or computation. A special fuel distributor who has paid any such tax may, within three years from the date of payment thereof, file with the department of revenue an application for refund of such tax so erroneously paid. Said application shall be on such forms as prescribed by the department of revenue.~~

SECTION 4. 39-27-105 (4) (b) and (5) (b) (II), Colorado Revised Statutes, are amended to read:

39-27-105. Collection of tax on gasoline and special fuel. (4) (b) From the tax due, an authorized user may claim credit for tax paid on purchases of special fuel from vendors within this state. Any credit in excess of the tax due from a user under this part 1 may be claimed on a consolidated report authorized under paragraph (c) of this subsection (4) as a credit against the taxes imposed under section 42-3-134, C.R.S. Otherwise, such credit is refundable under the provisions of ~~section 39-27-103.5~~ SECTION 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

(5) (b) (II) The refund allowed by this paragraph (b) shall be issued under the provisions of ~~section 39-27-103.5~~ SECTION 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 24, 2002