

SECOND REGULAR SESSION

# HOUSE BILL NO. 2654

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MAYHEW.

3318H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 142.815, 142.822, and 142.824, RSMo, and to enact in lieu thereof three new sections relating to motor fuel tax refunds.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 142.815, 142.822, and 142.824, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 142.815, 142.822, and 142.824,  
3 to read as follows:

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

5 (1) Motor fuel used for nonhighway purposes including fuel for farm tractors or  
6 stationary engines owned or leased and operated by any person and used exclusively for  
7 agricultural purposes and including, beginning January 1, 2006, bulk sales of one hundred  
8 gallons or more of gasoline made to farmers and delivered by the ultimate vender to a farm  
9 location for agricultural purposes only. As used in this section, the term "farmer" shall mean  
10 any person engaged in farming in an authorized farm corporation, family farm, or family farm  
11 corporation as defined in section 350.010. At the discretion of the ultimate vender, the refund  
12 may be claimed by the ultimate vender on behalf of the consumer for sales made to farmers  
13 and to persons engaged in construction for agricultural purposes as defined in section  
14 142.800. After December 31, 2000, the refund may be claimed only by the consumer and  
15 may not be claimed by the ultimate vender unless bulk sales of gasoline are made to a farmer  
16 after January 1, 2006, as provided in this subdivision and the farmer provides an exemption

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 certificate to the ultimate vender, in which case the ultimate vender may make a claim for  
18 refund under section 142.824 but shall be liable for any erroneous refund;

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

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

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

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

29 ~~[(a)]~~ a. Exported by a supplier who is licensed in the destination state or through the  
30 bulk transfer system;

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

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

42 (b) The exemption pursuant to **subparagraph a. of** paragraph (a) of this subdivision  
43 shall be claimed by a deduction on the report of the supplier which is otherwise responsible  
44 for remitting the tax upon removal of the product from a terminal or refinery in this state.

45 (c) The ~~[exemption]~~ **exemptions** pursuant to ~~[paragraphs (b) and (c)]~~ **subparagraphs**  
46 **b. and c. of paragraph (a)** of this subdivision shall be claimed by the distributor, upon a  
47 refund application made to the director within three years.

48 (d) A refund claim may be made monthly or whenever the claim exceeds one  
49 thousand dollars;

50 (2) Undyed K-1 kerosene sold at retail through dispensers which have been designed  
51 and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank,  
52 and undyed K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not  
53 more than twenty-one gallons for use other than for highway purposes. Exempt use of

54 undyed kerosene shall be governed by rules and regulations of the director. If no rules or  
55 regulations are promulgated by the director, then the exempt use of undyed kerosene shall be  
56 governed by rules and regulations of the Internal Revenue Service. A distributor or supplier  
57 delivering to a retail facility shall obtain an exemption certificate from the owner or operator  
58 of such facility stating that its sales conform to the dispenser requirements of this subdivision.  
59 A licensed distributor, having obtained such certificate, may provide a copy to his or her  
60 supplier and obtain undyed kerosene without the tax levied by section 142.803. Having  
61 obtained such certificate in good faith, such supplier shall be relieved of any responsibility if  
62 the fuel is later used in a taxable manner. An ultimate vendor who obtained undyed kerosene  
63 upon which the tax levied by section 142.803 had been paid and makes sales qualifying  
64 pursuant to this subsection may apply for a refund of the tax pursuant to application, as  
65 provided in section 142.818, to the director provided the ultimate vendor did not charge such  
66 tax to the consumer;

67 (3) Motor fuel sold to the United States or any agency or instrumentality thereof.  
68 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 by a  
71 federally recognized Indian tribe in the performance of essential governmental functions,  
72 such as providing police, fire, health or water services. The exemption for use pursuant to  
73 this subdivision shall be made available to the tribal government upon a refund application  
74 stating that the motor fuel was purchased for the exclusive use of the tribe in performing  
75 named essential governmental services;

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

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

85 (7) Motor fuel which was purchased tax-paid and which was lost or destroyed as a  
86 direct result of a sudden and unexpected casualty or which had been accidentally  
87 contaminated so as to be unsalable as highway fuel as shown by proper documentation as  
88 required by the director. The exemption pursuant to this subdivision shall be refunded to the  
89 person or entity owning the motor fuel at the time of the contamination or loss. Such person  
90 shall notify the director in writing of such event and the amount of motor fuel lost or

91 contaminated within ten days from the date of discovery of such loss or contamination, and  
92 within thirty days after such notice, shall file an affidavit sworn to by the person having  
93 immediate custody of such motor fuel at the time of the loss or contamination, setting forth in  
94 full the circumstances and the amount of the loss or contamination and such other information  
95 with respect thereto as the director may require;

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

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

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

105 (c) This exemption shall be claimed by the distributor, upon a refund application  
106 made to the director within three years. A refund claim may be made monthly or whenever  
107 the claim exceeds one thousand dollars; **and**

108 (9) Motor fuel delivered to any marina within this state that sells such fuel solely for  
109 use in any watercraft, as such term is defined in section 306.010, and not accessible to other  
110 motor vehicles, is exempt from the fuel tax imposed by this chapter. Any motor fuel  
111 distributor that delivers motor fuel to any marina in this state for use solely in any watercraft,  
112 as such term is defined in section 306.010, may claim the exemption provided in this  
113 subsection. Any motor fuel customer who purchases motor fuel for use in any watercraft, as  
114 such term is defined in section 306.010, at a location other than a marina within this state may  
115 claim the exemption provided in this subsection by filing a claim for refund of the fuel tax.

116 **3. (1) Beginning on October 1, 2022, an entity exempt from taxation as provided**  
117 **by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501), as**  
118 **amended, to which an individual, person, or entity that is eligible to claim a refund as**  
119 **provided in this section submits all documentation and information required to make a**  
120 **refund application may make a claim for such individual's, person's, or entity's refund**  
121 **as provided in this section. Upon approval, the refund shall be made to such exempt**  
122 **entity.**

123 **(2) A taxpayer who is an individual, person, or entity that submits the required**  
124 **information to an exempt entity as described in subdivision (1) of this subsection shall be**  
125 **allowed to subtract from such taxpayer's Missouri adjusted gross income to determine**  
126 **Missouri taxable income an amount equal to the total amount eligible for a refund**  
127 **submitted to an exempt entity under subdivision (1) of this section for the same tax year.**

128 **Such amount shall be deductible only to the extent that such amount is not deducted on**  
129 **the taxpayer's federal income tax return for that tax year. The department of revenue**  
130 **shall promulgate rules and regulations to administer the provisions of this section.**

142.822. 1. (1) **As used in this section and section 142.824, "nonprofit entity"**  
2 **means any entity that is exempt from taxation as provided in Section 501(c)(3) of the**  
3 **Internal Revenue Code of 1986 (26 U.S.C. Section 501), as amended.**

4 (2) **Motor fuel used for purposes of propelling motor vehicles on highways shall be**  
5 **exempt from the fuel tax collected under subsection 3 of section 142.803, and an exemption**  
6 **and refund may be claimed by the taxpayer if the tax has been paid and no refund has been**  
7 **previously issued, provided that the taxpayer applies for the exemption and refund as**  
8 **specified in this section. Beginning on October 1, 2022, any nonprofit entity to which a**  
9 **taxpayer who is eligible to claim a refund as provided in this section submits all**  
10 **documentation and information required to make a refund application may make a**  
11 **claim for such taxpayer's refund as provided in this section. Upon approval, the refund**  
12 **shall be made to such nonprofit entity.** The exemption and refund shall be issued on a  
13 fiscal year basis to each person who pays the fuel tax collected under subsection 3 of section  
14 142.803 and who claims an exemption and refund in accordance with this section, and shall  
15 apply so that the fuel taxpayer has no liability for the tax collected in that fiscal year under  
16 subsection 3 of section 142.803.

17 2. To claim an exemption and refund in accordance with this section, a person shall  
18 present to the director a statement containing a written verification that the claim is made  
19 under penalty of perjury and that states the total fuel tax paid in the applicable fiscal year for  
20 each vehicle for which the exemption and refund is claimed. The claim shall ~~not be~~  
21 ~~transferred or assigned, and shall~~ be filed on or after July first, but not later than September  
22 thirtieth, following the fiscal year for which the exemption and refund is claimed. The claim  
23 statement may be submitted electronically, and shall at a minimum include the following  
24 information:

25 (1) Vehicle identification number of the motor vehicle into which the motor fuel was  
26 delivered;

27 (2) Date of sale;

28 (3) Name and address of purchaser;

29 (4) Name and address of seller;

30 (5) Number of gallons purchased; ~~and~~

31 (6) Number of gallons purchased and charged Missouri fuel tax, as a separate item;

32 **and**

33 (7) **If the claim is submitted by a nonprofit entity:**

34 (a) **Documentation of the nonprofit entity's tax-exempt status; and**

35           **(b) A statement signed by the purchaser indicating that the nonprofit entity is**  
36 **entitled to the purchaser's refund.**

37           3. Every person shall maintain and keep records supporting the claim statement filed  
38 with the department of revenue for a period of three years to substantiate all claims for  
39 exemption and refund of the motor fuel tax, together with invoices, original sales receipts  
40 marked paid by the seller, bills of lading, and other pertinent records and paper as may be  
41 required by the director for reasonable administration of this chapter. **The requirement to**  
42 **maintain records shall be the responsibility of any nonprofit entity to which a purchaser**  
43 **submits claim records required by this section.**

44           4. The director may make any investigation necessary before issuing an exemption  
45 and refund under this section, and may investigate an exemption and refund under this section  
46 after it has been issued and within the time frame for making adjustments to the tax pursuant  
47 to this chapter.

48           5. If an exemption and refund is not issued within forty-five days of an accurate and  
49 complete filing, as required by this chapter, the director shall pay interest at the rate provided  
50 in section 32.065 accruing after the expiration of the forty-five-day period until the date the  
51 exemption and refund is issued.

52           6. The exemption and refund specified in this section shall be available only with  
53 regard to motor fuel delivered into a motor vehicle with a gross weight, as defined in section  
54 301.010, of twenty-six thousand pounds or less.

55           7. The director shall promulgate rules as necessary to implement the provisions of  
56 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
57 created under the authority delegated in this section shall become effective only if it complies  
58 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
59 This section and chapter 536 are nonseverable and if any of the powers vested with the  
60 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
61 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
62 rulemaking authority and any rule proposed or adopted after August 28, 2021, shall be invalid  
63 and void.

142.824. 1. To claim a refund in accordance with section 142.815, a person shall  
2 present to the director a statement containing a written verification that the claim is made  
3 under penalties of perjury and lists the total amount of motor fuel purchased and used for  
4 exempt purposes. **Beginning on October 1, 2022, any nonprofit entity to which a person**  
5 **who is eligible to claim a refund as provided in this section submits all documentation**  
6 **and information required to make a refund application may make a claim for such**  
7 **person's refund as provided in this section. Upon approval, the refund shall be made to**  
8 **such nonprofit entity.** The claim shall ~~[not be transferred or assigned and shall]~~ be filed not

9 more than three years after the date the motor fuel was imported, removed or sold if the  
10 claimant is a supplier, importer, exporter or distributor. If the claim is filed by the ultimate  
11 consumer, a consumer must file the claim within one year of the date of purchase or April  
12 fifteenth following the year of purchase, whichever is later. The claim statement may be  
13 submitted electronically, and shall be supported by documentation as approved by the director  
14 and shall include the following information:

- 15 (1) Date of sale;
- 16 (2) Name and address of purchaser;
- 17 (3) Name and address of seller;
- 18 (4) Number of gallons purchased and base price per gallon;
- 19 (5) Number of gallons purchased and charged Missouri fuel tax, as a separate item;

20 [~~and~~]

- 21 (6) Number of gallons purchased and charged sales tax, if applicable, as a separate  
22 item; **and**

23 (7) **If the claim is submitted by a nonprofit entity:**

24 (a) **Documentation of the nonprofit entity's tax-exempt status; and**

25 (b) **A statement signed by the purchaser indicating that the nonprofit entity is**  
26 **entitled to the purchaser's refund.**

27 2. If the original sales slip or invoice is lost or destroyed, a statement to that effect  
28 shall accompany the claim for refund, and the claim statement shall also set forth the serial  
29 number of the invoice. If the director finds the claim is otherwise regular, the director may  
30 allow such claim for refund.

31 3. The director may make any investigation necessary before refunding the motor fuel  
32 tax to a person and may investigate a refund after the refund has been issued and within the  
33 time frame for making adjustments to the tax pursuant to this chapter.

34 4. In any case where a refund would be payable to a supplier pursuant to this chapter,  
35 the supplier may claim a credit in lieu of such refund for a period not to exceed three years.

36 5. Every person shall maintain and keep for a period of three years records to  
37 substantiate all claims for refund of the motor fuel tax, together with invoices, original sales  
38 slips marked paid by the seller, bills of lading, and other pertinent records and paper as may  
39 be required by the director for reasonable administration of this chapter. **The requirement to**  
40 **maintain records shall be the responsibility of any nonprofit entity to which a purchaser**  
41 **submits claim records required by this section.**

42 6. Motor fuel tax that has been paid more than once with respect to the same gallon of  
43 motor fuel shall be refunded by the director to the person who last paid the tax after the  
44 subsequent taxable event upon submitting proof satisfactory to the director.

45           7. Motor fuel tax that has otherwise been erroneously paid by a person shall be  
46 refunded by the director upon proof shown satisfactory to the director.

47           8. If a refund is not issued within forty-five days of an accurate and complete filing,  
48 as required by this chapter, the director shall pay interest at the rate provided in section 32.065  
49 accruing after the expiration of the forty-five-day period until the date the refund is issued.

50           9. The director shall promulgate rules as necessary to implement the provisions of  
51 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
52 created under the authority delegated in this section shall become effective only if it complies  
53 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
54 This section and chapter 536 are nonseverable and if any of the powers vested with the  
55 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
56 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
57 rulemaking authority and any rule proposed or adopted after August 28, 2021, shall be invalid  
58 and void.

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