ILLINOIS INDEPENDENT TAX TRIBUNAL

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
Petitioner,	)	**Chief Judge James M. Conway**
v.	)	**No. 15-TT-130**
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

THE ILLINOIS DEPARTMENT OF REVENUE'S MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO THE TAXPAYER'S MOTION FOR SUMMARY JUDGMENT

The Illinois Department of Revenue (the "Department") respectfully requests entry of summary judgment against the Petitioner, Waste Management of Illinois, Inc. ("WMI"), finding as a matter of law that: (1) as stated in the thirty-two Notices of Tentative Denial of Claim ("Notices") Compressed Natural Gas ("CNG") used for highway purposes is taxable under the Motor Fuel Tax Law ("MFTL") 35 ILCS 505/1, *et. seq.* (Stips. ¶¶1-2, 26; Stip. Ex. A),[1] and (2) therefore WMI is not entitled to the claims sought within the Notices.

STANDARD FOR SUMMARY JUDGMENT

Under Section 2-1005 of the Illinois Code of Civil Procedure, summary judgment is appropriate where there is no "genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. In particular, questions involving the interpretation or effect of a statute are appropriately resolved under the summary judgment procedure. *Banes v. Western States Ins. Co.*, 247 Ill.App.3d 480, 482 (2d Dist. 1993). In such a situation, summary judgment serves as an efficient manner in which to resolve such

[1] The parties have entered into agreed Stipulation of Facts and Other Matters (hereafter "Stip.") with related exhibits (hereafter "Stip. Ex"), which was attached to the Petitioner's Motion for Summary Judgment as Exhibit 1.

purely legal disputes. *See Bryant v. Glen Oaks Medical Center*, 272 Ill.App.3d 640, 649 (1st Dist. 1995).

There is a long line of Illinois case law which holds that the construction of a statute presents a pure question of law appropriate for summary judgment. *Sage Information Servs. v. Suhr*, 2014 IL App (2d) 130708, ¶7 (Property Tax Code); *Ryan v. Glen Ellyn Raintree Condominium Ass'n*, 2014 IL App (2d) 130682, ¶9 (Snow and Ice Removal Act); *American Home Assurance Co. v. Taylor*, 402 Ill.App.3d 549, 551 (1st Dist. 2010) (Insurance Code); *G.I.S. Venture v. Novak*, 388 Ill.App.3d 184, 187 (2d. Dist. 2009) (School Code); *Allegis Realty Investors v. Novak*, 223 Ill.2d 318, 330 (2006) (Illinois Highway Code); *Bezan v. Chrysler Motors Corp.*, 263 Ill.App.3d 858, 864 (2d. Dist. 1994) (Structural Work Act); *Antonides v. Plascon, Inc.*, 103 Ill.App.3d 78, 81 (3d. Dist. 1981) (Internal Revenue Code); *Martin v. American Legion Post # 784*, 66 Ill.App.3d 116, 118 (5th Dist. 1978) (Dram Shop Act); *People ex rel. Rappaport v. Drazek*, 30 Ill.App.3d 310, 313-14 (1st Dist. 1975) (Personnel Code). Herein the dispute involves the taxability of CNG. This matter involves the interpretation of the provisions of the MFTL and related regulations. *See* Stips. ¶¶26-27. Notably, WMI has also filed a Motion for Summary Judgment. Thus, this matter is ripe for summary judgment.

BACKGROUND OF THE DISPUTE

WMI originally reported its CNG usage for the monthly Motor Fuel Tax ("MFT") liability periods dated from February 2012 through September 2014 (the "Periods at Issue") on thirty-two Department RMFT-71 Liquefied Petroleum Gas Tax Returns ("RMFT-71 Returns"). Stip. ¶14; Stip. Ex. B. For the Periods at Issue, WMI had a Liquefied Petroleum Gas Tax license, which was numbered LP 70095. Stip. ¶28. In the process of calculating the amount of MFT owed by WMI on the RMFT-71 Returns for the Periods at Issue, WMI would "[w]rite the

number of gallons [it] used in motor vehicles on public highways" and would also "[w]rite the number of gallons [it] sold for motor fuel within Illinois…" Stip. Ex. B (Part 2, lines 1 and 2). Subsequently, WMI filed claims for credit of the CNG usage previously reported to the Department on thirty-two RMFT-71-X Amended Liquefied Petroleum Gas Tax Returns/Claims for Credit ("RMFT-71-X Returns"). Stip. ¶15; Stip. Ex. C. The RMFT-71-X Returns also contain the same gallon reporting instructions as the original RMFT-71 Returns. Stip. Ex. C (Part 2, lines 1 and 2).

The claims for credit based on the RMFT-71-X Returns were denied. The crux of this matter involves the Department's denial contained within the thirty-two Notices pertaining to WMI's MFT claims for credit for CNG usage during the Periods at Issue. Stip. ¶1; Stip. Ex. A. The total aggregate amount at issue, as reflected in the Notices, is $200,012.43. Stip. ¶2.

PERTINANT FACTS

WMI's Business And CNG Usage

WMI's services include waste collection, transfer, recycling and resource recovery, and disposal services. WMI was engaged in these services in Illinois during the Periods at Issue. WMI holds a certificate of authority to transact business in Illinois and is in good standing with the Illinois Secretary of State. Stips. ¶¶3, 5. WMI uses motor vehicles ("vehicles") in the performance of its services. Stip. ¶4. Some WMI vehicles operate using diesel fuel and some operate using CNG. Stips. ¶¶6-7. WMI purchases natural gas from a local gas supplier, which is delivered to WMI via a pipeline. Stip. ¶8. During the Periods at Issue, WMI operated natural gas compression and fueling stations at two locations in Illinois, at which its CNG vehicles are refueled. Also, during the Periods at Issue, WMI operated a retail station at which non-WMI

vehicles could purchase CNG to refuel their vehicles.[2] The fueling and retail stations also contain bulk fuel tanks for storage of CNG. Stips. ¶¶9-10.

WMI delivers CNG directly into the fuel supply tanks of vehicles. Stip. ¶11. WMI uses compressors to compress natural gas from 14.7 pounds per square inch ("psi") ("atmospheric pressure" at sea level), to 3,600 psi, for storage as CNG at approximately less than 1% of the volume the natural gas had at atmospheric pressure. Stip. ¶12. When in use by a CNG-powered vehicle, CNG flows from storage through a dispenser into high pressure cylinders located on the vehicle. When the vehicle is in use and accelerates, CNG leaves the on-board storage cylinder, passes along a line to the engine compartment where it flows through a regulator which reduces the pressure from as high as 3,600 psi down to atmospheric pressure, and into a gas mixer or fuel injectors where the CNG is mixed with air and enters an engine's combustion chambers. Stip. ¶13.

Although CNG is taxable under the MFTL, as will be discussed, CNG is not Liquefied Natural Gas ("LNG"). Stip. ¶25. To be a liquid, natural gas would have to be condensed to close to atmospheric pressure by cooling it to approximately negative 260 degrees Fahrenheit, and it would be required to be transported under about 4 psi of pressure at a volume about $1/600^{th}$ the volume of its gaseous state. Stip. ¶24.

PERTINENT MFTL PROVISIONS

WMI And Pertinent Provisions Of The Motor Fuel Tax Law

- Section 1 of the MFTL stated during the Periods at Issue that: "[f]or the purposes of this Act the terms set out in the Sections following [Section 1] and preceding Section 2 have the meanings ascribed to them in those Sections." 35 ILCS 505/1.

[2] WMI states in its Motion Brief that the CNG from the one retail station where non-WMI vehicles obtain CNG is not at issue. (S.J. 3 n.2). Upon research, the Department can neither confirm nor deny that this is factually correct.

- Since 1963, "Motor Fuel" has been defined in the MFTL as "all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. *Among other things*, "Motor Fuel" includes "Special Fuel" as defined in Section 1.13 of this Act." 35 ILCS 505/1.1 (emphasis added). The second sentence of the definition of "Motor Fuel" was added in 1963 and has remained unchanged since that time. Stip. ¶49; Stip. Ex. Q.

- At least as early as 1939, the MFTL stated that the term "Gallon": "means and includes, in addition to its ordinary meaning, its equivalent in a capacity of measurement of … substance in a gaseous state." 35 ILCS 505/1.8; Stip. ¶45; Stip. Ex. N §1.

- Since 1989 and during the Periods at Issue, "Fuel" was defined as: "all liquids defined as "Motor Fuel" in Section 1.1 of this Act and aviation fuels and kerosene, but excluding liquefied petroleum gases." 35 ILCS 505/1.19; P.A. 86-125.

- Since 1983, "Special Fuel" has been defined in the MFTL as: "all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A), of this Act, *or combustible gases as defined in Section 5, example (B)*, of this Act. "Special Fuel" includes diesel fuel as defined in paragraph (b) of Section 2 of this Act." (emphasis added.) 35 ILCS 505/1.13; Stip. ¶50; Stip. Ex. R.

- In 1945, MFTL Section 5 stated in part that: "The types of motor fuel referred to in the preceding paragraph [dealing with licensed distributors] are… (C) all conbustible [combustible] gases which exist in a gaseous state at sixty (60) degrees Fahrenheit and at fourteen and seven-tenths (14.7) pounds per square inch absolute…," which as discussed above is considered standard atmospheric pressure. Stip. ¶46; Stip. Ex. O §5. This language has remained

substantively unchanged since that time, including during the Periods at Issue. Stip. Ex. O. The language of Section 5 of the MFTL, as stated during the Periods at Issue and currently, reads in pertinent part:

> The types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline), gasohol, motor benzol or motor benzene regardless of their classification or uses; and (B) *all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute including, but not limited to*, liquefied petroleum gases used for highway purposes; and (C) special fuel... 35 ILCS 505/5 (emphasis added).[3]

It is undisputed that CNG is a combustible gas that exists in a gaseous state at atmospheric pressure. Stips. ¶¶12-13. Further, a company that holds an active motor fuel distributor license is instructed by the Department to report the product sold for the use of propelling a motor vehicle on public highways on a Schedule GA-1, which is attached to the required RMFT-5 Return for such Distributors. Since 1989, the Schedule GA-1 has contained a space for CNG to be entered. Stip. ¶44; Stip. Ex. M.

- Finally, as far as the purpose and intent of the MFTL, from the time in which the MFTL was enacted in 1929 until the present, Section 2 of the MFTL has stated: a tax is imposed "on the privilege of operating motor vehicles upon the public highways… of this State…. at the rate of… per gallon [of] all motor fuel used in motor vehicles upon such public highways." 35 ILCS 505/2; Stip. ¶51; Stip. Ex. S.

- Also, during the Periods at Issue, Section 17 has stated, in pertinent part:

> It is the purpose of Sections 2 and 13a of this Act to impose a tax upon the privilege of operating each motor vehicle as defined in this Act upon the public highways and the waters of this State, such tax to be based upon the consumption of motor fuel in such motor vehicle, so far as the same may be done, under the Constitution and statutes of the United States, and the Constitution of the State of Illinois… 35 ILCS 505/17.

[3] Although WMI was not a licensed distributor during the Periods at Issue, this provision of the MFTL is relevant to show that CNG is taxable.

Of note, the statutory language contained above from Section 17 is very similar to the same provision from the originally enacted 1929 version of Section 17. *See* S.J. Exhibit 1 §17.[4] As will be discussed in more detail below, these Sections dealing with the purpose of motor vehicle taxation contain no limitations on the type of motor fuel that can be taxed nor do they state that the tax is only for motor fuels which are used in a liquid state.

WMI And The International Fuel Tax Agreement

WMI was a registered International Fuel Tax Agreement ("IFTA") licensee during the Periods at Issue. Stip. ¶29. As agreed to in the Department's Answer to WMI's Petition, the IFTA is a tax collection agreement, which provides for the uniform administration of motor fuel laws regarding motor vehicles that operate in more than one member jurisdiction. Answer ¶36. Illinois joined IFTA in 1994. Stip. ¶40. A Form MFUT-12, Motor Fuel Use Tax IFTA License and Decals Application, must have been completed by WMI in order to operate under an IFTA license. Stip. ¶31. Annually, until these applications became electronic in the Fall of 2012, the Department represents that its practice was to send a renewal packet to WMI. This renewal packet included an MFUT-12 Application, Instructions, and Compliance Manual. Stip. ¶32. The 2012 MFUT-12 Compliance Manual defines "Motor fuel" as: "Any fuel used to operate qualified motor vehicles." Stip. Ex. E, p. 2. A "Qualified motor vehicle" is defined as: "For purposes of this manual… a "'commercial motor vehicle' under the Illinois Motor Fuel Tax Law." Stip. Ex. E, p. 3. Further, according to the Compliance Manual for "Taxable fuels": "All motor fuels are subject to tax in Illinois." Stip. Ex. E, p. 9. The Compliance Manual also states, under "measurement conversion" that IFTA licensees should: "Convert compressed natural gas

[4] Additional S.J. Exhibits, not in conflict with the Stipulated Exhibits, are attached to this Motion and are labeled numerically.

and other fuels that cannot be measured in gallons to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed." Stip. ¶33; Stip. Ex. E, p. 9.

Step 4 of the Instructions to the Form MFUT-12, IFTA License and Decal Application, directs a taxpayer to: "Tell us your fuel types, operations, and bulk fuel storage. Identify the number of vehicles you will operate under your IFTA license, the type of fuels used, and the jurisdictions where you maintain storage of your bulk fuels." Stip. ¶34; Stip. Ex. F. MFUT-12 Forms were completed on behalf of WMI for the Periods at Issue annually for 2012 through 2014. Stips. ¶¶35-38; Stip. Ex. G. WMI indicated that its business was operating between 141 and 155 vehicles during the Periods at Issue. Also, during the Periods at Issue, WMI stated that it maintained bulk storage facilities in Illinois. Finally, these three Applications each contain a check box for "Compressed natural gas" where WMI was instructed to "Check the type of fuels used in the qualified motor vehicles you own or operate." Stips. ¶¶36-38; Stip. Ex. G.[5]

Additionally, WMI filed MFUT-15 IFTA Quarterly Returns during the Periods at Issue. Stip. ¶42; Stip. Ex. K. MFUT-15 IFTA Motor Fuel Use Tax Quarterly Returns are to be filled out by Illinois-based companies, which are required to be licensed under IFTA. Stip. ¶39. Department documents have shown that these Returns have contained a line item or fuel type table for CNG since 1993. Stip. Exs. H, I and J. A fuel type table, which contained the text "CNG – Compressed Natural Gas" was included within the MFUT-15 IFTA Returns for the Periods at Issue. Stip. ¶39; Ex. K.[6]

[5] Notably, although Compressed natural gas is listed in the 2012 through 2014 MFUT-12 Applications, only diesel fuel is either circled or checked. For 2012 and 2013, CNG is checked along with all of the other fuels listed, but is not circled. Stips. ¶¶36-38; Stip. Ex. G.

[6] Interestingly, the MFUT-15 IFTA Returns which WMI filed for the Periods at Issue only reference diesel fuel for the fuel type, even though WMI has conceded that one IFTA decal vehicle runs on CNG. Stip. ¶43; Stip. Exs. K and L.

MFTL Regulations

An MFTL regulation, 500.335(f), was effective on February 28, 1995, long before the Periods at Issue, to include a provision regarding CNG. Specifically, as of 1995, 86 Ill.Admin.Code § 500.335(f) stated:

> "For carriers registered under the IFTA *which consume compressed natural gas and other fuels that cannot be measured in gallons*, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon. (emphasis added). Stip. ¶47; Stip. Ex. P.

Until amended in 2014, 86 Ill.Admin.Code § 500.200 did not provide a conversion rate for CNG, as it was contained in regulation 500.335(f). *See* S.J. Exhibit 2; Stip. Ex. P. Regulation 500.335(f) was later amended again, and effective on August 21, 2014, to add the conversion factor referenced in MFTL related regulation 86 Ill. Admin.Code § 500.200(c). Stip. ¶48; *see also* S.J. Exhibit 3. However, this 2014 amendment only dealt with the conversion factor, not the taxability of CNG as first stated in the 1995 version of the regulation. Thus, the 2014 version of 86 Ill.Admin.Code § 500.335 states:

> For carriers registered under the IFTA that consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. See Section 500.200(c) for the conversion factor used for compressed natural gas. 86 Ill.Admin.Code 500.335(f); *see also* S.J. Exhibit 3.

Finally, a Retailer's Occupation Tax Act ("ROTA") regulation in force during the Periods at Issue provides an applicable definition of the term "Motor Fuel," as stated in MFTL Section 1.1. ROTA regulation 130.101(b)(2)(C) provides, in pertinent part:

> *"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel"*. [35 ILCS 505/1.1]
> i) By way of illustration and not limitation, the following are considered motor fuel:

▪ Gasoline
▪ Diesel fuel
▪ Combustible gases (e.g., liquefied petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
▪ Gasohol…
86 Ill.Admin.Code 130.101(b)(2)(C) (emphasis added for underlined portion, but italicized portion is italicized in original); *see also* Stip. ¶11; S.J. Exhibit 4.

LEGAL ANALYSIS

COUNTS AT ISSUE

WMI has asserted four Counts against the Department in its Petition, three of which are at issue in this Motion.[7] Count I states: "The Illinois MFT does not classify CNG as a 'Motor Fuel' or 'Special Fuel' or a 'Fuel' that is taxable under the Act, and the Department's Motor Fuel regulations in effect during the periods covered by WMI's claims did not classify CNG as a 'motor fuel' or a 'special fuel' or a 'fuel.'" ("Count I"). Count II states: "The Department's inclusion of CNG in the classification of 'Motor Fuel' violates Article IX, Section 1 and Article II, Section 1 of the Illinois Constitution of 1970." ("Count II"). Count III states: "Because the Department denied WMI's claims for refund on the stated basis that 'CNG USED FOR HIGHWAY PURPOSES IS TAXABLE AND HAS ALWAYS BEEN TAXABLE' even though the Department's Illinois MFT regulation did not mention CNG until amended on October 1, 2014, the Department denial is either: (A) applying a policy of broad applicability to WMI that should have been adopted by regulation prior to October 1, 2014, in violation of the Administrative Procedure Act, or (B) applying retroactively an October 1, 2014 regulatory

[7] The Department has previously filed a Motion To Dismiss Count IV, which the Tribunal has stated will be evaluated once the decision is made related to the other three counts. Count IV states: "Under the Illinois APA, WMI is entitled to an award for WMI's reasonable expenses and attorneys' fees to bring this action to invalidate the Department's rule implemented without following the rulemaking requirements of the Illinois APA, and to invalidate the Department's October 1, 2014 amendment to its Motor Fuel rules, which exceeded the scope of the Illinois MFT." WMI did not address Count IV in its Summary Judgment Motion, and the Department refers the Tribunal to the Department's Motion to Dismiss to address Count IV at this stage, prior to the Tribunal's ruling on Counts I-III.

amendment that exceeds the terms and intended scope of the Illinois MFT, also in violation of the Administrative Procedure Act." ("Count III"). The Department addresses each Count below.

I. The Tribunal Should Find For the Department For WMI's Count I

1. The Department Has A *Prima Facie* Case Which WMI Has Not Rebutted

As an initial matter, although not mentioned in WMI's Summary Judgment Motion and Brief, by statute the Department established the *prima facie* correctness of its action when it introduced its Notices into evidence, under the Director's certification. 35 ILCS 505/21 (the provision of the MFTL which incorporates certain provisions of the ROTA, including 35 ILCS 120/6b). The applicable claim for credit Section of the ROTA as incorporated into the MFTL states, in pertinent part:

> As soon as practicable after a claim for credit or refund is filed, the Department shall examine the same and determine the amount of credit or refund to which the claimant… by its Notice of Tentative Determination of Claim, notify the claimant… of such determination, which determination shall be prima facie correct. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto, in the name of the Department under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the Department's determination, as shown therein… 35 ILCS 120/6b.

The Notices are included within the Stipulated Exhibits as Stip. Ex. A, and are covered by the certification of the Department of Revenue's Director. The Department's rebuttable *prima facie* case would be overcome only if WMI presents competent evidence that the Notices are incorrect. *See, e.g., Copilevitz v. Dep't. of Revenue*, 41 Ill.2d 154, 156 (1968); *A.R. Barnes & Co. v. Dep't. of Revenue*, 173 Ill.App.3d 826, 831-32 (1st Dist. 1988). In sum, WMI will only succeed if it meets its burden to rebut the Department's presumption of validity and establishes that the MFTL does not establish that CNG is taxable. WMI has not met its burden.

2. The MFTL Should Be Analyzed As An Ambiguous Statute

The MFTL is ambiguously written. If analyzed in the manner suggested by WMI, the statute would be deprived of its legislative intent and various portions of the MFTL would be rendered superfluous. In sum, as will be discussed in detail within this Section of the Memorandum, Illinois law is clear that: 1) the primary purpose of constructing a statute is to determine legislative intent, 2) legislative intent should be *first* arrived at by looking at the plain language of the statute, 3) the statutory section or specific language at issue should be analyzed with the statute in its entirety to determine legislative intent, 4) no part of a statute should be deemed meaningless, and 5) a statute or statutory provision should not be interpreted to create absurd results.

When there is a conflict between the letter of a statute and its spirit and intent, the spirit and intent is controlling. *Austin Bank of Chicago v. The Village of Barrington Hills*, 396 Ill.App.3d 1, 8-9 (1st Dist. 2009) (the Court declined to apply a provision of the Illinois Municipal Code literally if doing so would have rewarded "blatant manipulation" by the appellant Village of Barrington Hills); *Hayes v. Adams*, 2013 IL App (2d) 120681, ¶14 (the Court refused to apply the literal provision of the Animal Control Act because: "As a result, despite the fact that the express language of the Act appears to be absolute, it has been held not to apply in several situations where plaintiff has brought himself or herself within its express terms"); *Zunamon v. Zehnder*, 308 Ill.App.3d 69, 76 (1st Dist. 1999) (the Court refused to apply to the express effective date an addition modification contained in the Illinois Income Tax Act, essentially deleting or rewriting a specific provision, "thus, in order to harmonize the various statutory provisions and give effect to the true intent of the legislature, we now delete from section 203(c)(2)(F) of the Act the phrase, 'For taxable years ending on or after January 1,

1989.'"); *Costello v. Governing Bd. Of Lee County Special Education Assoc.*, 252 Ill.App.3d 547, 557 (2d Dist. 1993) (holding that statutory language was capable of two reasonable interpretations, thus the School Code at issue was ambiguous and it was proper to resolve the ambiguity in the Court);

WMI has argued in its Motion that the MFTL is clear and unambiguous. This is not so. WMI has stated that *Exelon Corp. v. Dep't. of Revenue*, 234 Ill.2d 266, 275 (2009) stands for the holding that the plain language in a statute is the best indication of legislative intent, thus the MFTL is not ambiguous and CNG is taxable. (S.J. 5-6).[8] However, *Exelon* also states: "Absent statutory definitions indicating a different legislative intent, words in a statute are to be given their ordinary and popularly understood meaning." *Id.* at 275. The Illinois Supreme Court then engaged in an analysis to construe the applicable portion of the Illinois Income Tax Act by looking at similar language from decisions involving the ROTA. *Id.* at 275-76. In other words, the Court did not *just* look at the language of the Act to determine the legislative intent. That is consistent with the Department's position. To be clear, the Department is <u>not</u> stating that this Tribunal should not *first* look to the plain language in its statutory construction of the MFTL. The Department's position is that *after* such plain language is evaluated, the MFTL is still ambiguous. Therefore, the MFTL's meaning and legislative intent must be derived by other common canons of statutory construction.

Notably, the Department agrees with WMI's position that a statute which is capable of more than one reasonable interpretation is considered ambiguous. (S.J. 6 citing *Tri-State Coach Lines, Inc. v. Metropolitan Pier Exposition Authority*, 315 Ill.App.3d 179, 190 (2000) (the Court held that the statute under discussion was ambiguous and susceptible to two reasonable

[8] Throughout, references to WMI's Memorandum in Support of Summary Judgment will be referenced by "S.J." followed by the appropriate page number(s).

interpretations, and further stated that "each section of an act subject to two conflicting interpretations should be accorded the interpretation more harmonious with the act's general purpose."); *Illinois Bell Telephone Co. v. Illinois Commerce Com'n*, 362 Ill.App.3d 652, 662 (4th Dist. 2005) (stating: "Depending on the canons one chooses and how one deploys them, one could agree with either petitioner or respondents. Our duty, then, is clear: we defer to the Commission's interpretation."). The interpretation which most closely reflects the Legislature's intent is the one which should control. *Paciga v. Property Tax Appeal Board*, 322 Ill.App.3d 157, 160-61 (1st Dist. 2001); *see also Tri-State Coach Line, Inc.*, 35 Ill.App.3d at 190.

Applied, the MFTL is ambiguous and, at the very least, subject to two reasonable interpretations. Thus, the main legal issue present in this matter is: How does this Tribunal reconcile the first sentence of Section 1.1, which discusses the term "Motor Fuel" as a liquid, with: 1) the second sentence of Section 1.1, which includes the term "[a]mong other things," and 2) other provisions of the MFTL (e.g. the definition of a "Gallon" in Section 1.8 and the reporting requirements of distributors in Section 5), which clearly indicate that CNG is a taxable motor fuel?

At its core, WMI's position is that CNG cannot be taxable because the Section 1.1 definition of "Motor Fuel" contained within the MFTL during the Periods at Issue only means "all volatile and inflammable *liquids* produced, blended or compounded for the purpose of, or which are suitable and practicable for, operating motor vehicles."[9] (S.J. 5). However, Section 1.1 of the MFTL has also stated since 1963 and during the Periods at Issue that "Motor Fuel" can be, *[a]mong other things,* Special Fuel as defined. Stip. ¶49; Stip. Ex. Q. The inclusion of this

[9] CNG is an inflammable substance compounded for the purpose of operating motor vehicles. As will be discussed, it is clear based on standard statutory construction that the insertion of the word "liquids" as opposed to a word such as "substances" was clearly an oversight given the legislative intent and the other statutory provisions contained within the MFTL.

encompassing term of general applicability, "[a]mong other things," shows that the definition of "Motor Fuel" does not include only liquids or substances that can be defined as Special Fuel. 35 ILCS 505/1.1.

Other MFTL provisions support this analysis. Section 1.8 has defined a "Gallon," since at least 1939, and during the Periods at Issue as: "in addition to its ordinary meaning, *its equivalent in a capacity of measurement of… substance in a gaseous state*." Stip. ¶45; Stip. Ex. N §1; 35 ILCS 505/1.8 (emphasis added). This is a general definition for the MFTL, "[f]or the purpose of this Act," as stated in MFTL Section 1. 35 ILCS 505/1. Thus, to state that a "Gallon" includes its equivalent in a capacity of measurement of "substance in a gaseous state" would be rendered meaningless in a general definition section "[f]or the purposes of this Act" if the definition did not apply to motor fuel substances which are used in a gaseous state, such as CNG. Making the definition of "Gallon" meaningless would be especially harmful, as it is the measuring method for assessing MFT, and has been since the MFTL was enacted in 1929. (35 ILCS 505/2; Stip. ¶51; Stip. Ex. S; S.J. Exhibit 1 §2). Arguably, the provision discussing the tax imposed under the MFTL is the most pertinent provision in the MFTL, so obviously much legislative thought went into defining "Gallon" to include substances in a gaseous state. Thus, rendering the definition of "Gallon" meaningless would make the MFTL itself and its legislative purpose superfluous.[10]

The determination that "Motor Fuel" includes CNG also comes from all of the provisions of the MFTL when read together with Section 1.1. Further support for analyzing the MFTL in

[10] Notably, the term "Gallon" or derivations of that term appear 86 times within the MFTL. The term "Gallon" is contained within the following MFTL Sections, among others: Section 2 (outlining MFTL tax), 2a (describing the tax for privilege of being a receiver of fuel for sale), 2b (regarding reporting requirements), 5 (for distributors), 5a (for licensed suppliers), 5.5 (carrier manifest maintenance requirements), 8 (Department's use of funds), 13a (calculation of tax based on average "selling price"), 13a.2 (motor carrier record requirements), and 13a.3 (technical requirements to claim a credit).

its entirety can be found with Section 5 of the MFTL. Section 5 contains responsibilities for licensed distributors of motor fuel. Of note, WMI is not a licensed distributor of motor fuel. However, the presence of Section 5 is relevant to show that the inclusion of Section 5's language would be rendered meaningless if "Motor Fuel" did not include CNG. Section 5 states, in part:

> The types of motor fuel referred to in the preceding paragraph are:… (B) *all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute* including, but not limited to, liquefied petroleum gases used for highway purposes…
>
> 35 ILCS 505/5 (emphasis added).

The Department has never alleged that WMI owes MFTL Tax for CNG because it is a licensed distributor, as WMI alleges. (S.J. 8-9). However, even though WMI is not a licensed distributor under the MFTL, the Section 1.1 and Section 5 definitions of "Motor Fuel" and the Section 1.8 definition of a "Gallon" show how the definition of "Motor Fuel" is ambiguous and requires that cannons of statutory construction be applied to resolve the ambiguity.

As discussed, when a statute is ambiguous, it is the language of the act as a whole that should be analyzed in total, and not just the words of a section or provision in isolation. Courts should likewise construe the details of an act in conformity with its dominating general purpose. *People ex rel. Barrett v. Anderson*, 398 Ill. 480, 485 (1947). In the *Barrett* matter, the Supreme Court of Illinois held that ambiguous provisions of the Reapportionment Act could be read in a manner to meet the Act's legislative intent when such intent could easily be determined and there would be an absurd result otherwise. *Id.* at 483-90. As stated:

> [W]hile courts are and should be cautious about adding words, as such, to a statute generally, they will not hesitate to read into the sense of some section or provision a qualifying or expanding expression plainly implied by the general context of the act, which has been palpably omitted and which is necessary to prevent the legislative purpose from failing in one of its material aspects. *Id.* at 485-86.

In holding that the ambiguous provision of the Reapportionment Act contained a simple oversight in wording, the Court stated: "when the intention is ascertained the mere matter of rectifying a mistake by changing a word or phrase, or by deleting certain words or disregarding ambiguities, may be properly done if such intent of the legislature is manifest." *Id.* at 490.

Similarly, in *Stewart v. Industrial Com'n*, 115 Ill.2d 337 (1987), the Illinois Supreme Court held that where a section of the Worker's Compensation Act as written would be clearly counter to the legislature's intention, the applicable provision should be read in concert with its legislative intent. *Id.* at 341-42. In conducting its analysis, the Court stated: "The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the legislature's intent… In determining what that intent is, the court may properly consider not only the language used in a statute, but also the reason and necessity for the law, the evils to be remedied, and the purpose to be achieved… In construing a statute, the court must assume that the legislature did not intend an absurd result." *Id.* at 341 (citations omitted); *see also People v. Boykin*, 94 Ill.2d 138 (1983) (the legislative intent derived by evaluating the legislative history could be used to determine the meaning of a statute.) *City of Springfield v. Bd. of Election Commissioners*, 105 Ill.2d 336, 341 (1985) ("A court will examine the entire statute as to that intent."); *Costello*, 252 Ill.App.3d at 556-57 ("In construing the meaning of a statute, the primary rule is to determine and give effect to the intent of the legislature…. The basic intent of the legislature can be ascertained by examining the terminology of the statute, its goals and purposes, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the statute as a whole... It is presumed that statutes which relate to the same subject are governed by one spirit and a single policy… A conflict in the interpretation of a single statute can be resolved by referring to the purposes and

goals of the statute as a whole… Thus, in determining legislative intent, courts should consider the entire statutory scheme *in pari materia* in a fashion which renders the statute consistent, useful, and logical. "); *Antunes v. Soonhakitch*, 146 Ill.2d 477, 484 (1992) (in determining how to apply the Code of Civil Procedure, the Illinois Supreme Court held: "To ascertain the legislative intent, the court must look first to the language of the statute as a whole, and considering each part or section in connection with every other part or section… Where the meaning of a statute is not clear from the statutory language itself, the court also properly considers the purpose of the enactment and the evils to be remedied.")

Finally, in this vein, although WMI cites *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006) for the proposition that the MFTL is clear, so no aids of statutory interpretation are necessary (S.J. 6), the *DeLuna* case actually supports the Department's position that the MFTL is ambiguous and aids of statutory construction, including analyzing the statute in its entirety, are necessary. In *DeLuna*, the Illinois Supreme Court held that a law dealing with a statute for a malpractice action was ambiguous, open to different interpretations, and that all of the provisions of the statute should be looked at as a whole in order to abide by the legislative purpose. *Id.* at 59-60. Further, the Supreme Court acknowledged that a statute's words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute and should not create absurd results. *Id.* at 60.

As for legislative intent, the legislature intended since the MFTL's inception in 1929 that the general purpose of the MFTL is to encapsulate "all motor fuel used in… motor vehicles upon such public highways." 35 ILCS 505/2; *see also* Stip. ¶51. Logically, *all motor fuel* would include substances, whether used in a liquid or a gaseous state, as long as the vehicles using those substances are 1) not specifically *excluded* by the MFTL or 2) not used on public

highways. Further support for this legislative intent comes from the MFTL's section 17, which again specifically addresses the purpose of the MFTL by stating, in pertinent part: "It is the purpose of Sections 2 and 13a of this Act to impose a tax upon the privilege of operating *each motor vehicle* as defined in this Act *upon the public highways* and the waters of this State, such tax to be *based upon the consumption of motor fuel* in such motor vehicle..." 35 ILCS 505/17 (emphasis added). It is undisputed that WMI uses CNG for its motor vehicles and that those vehicles operate on public highways. Therefore, CNG is intended to be taxable by the MFTL under the MFTL's stated provisions and purpose. Given the specific provisions of the statute, any other reading would have an absurd result not intended by the legislature.[11]

In sum, the legislative intent of Section 1.1 of the MFTL should be determined by analyzing Section 1.1 in two ways: 1) as a whole and 2) in the context and in harmony with the other provisions of the MFTL. Within the second sentence of the general definition Section of 1.1, there is a qualifier, "[a]mong other things." 35 ILCS 505/1.1. The *full* second sentence has been part of the definition for over 50 years. Stip. ¶49. The second sentence of Section 1.1 should not be deemed superfluous. Further, the other portions of the MFTL, including definitional Section 1.8 and Section 5 (as well as legislative intent Sections 2 and 17) are also applicable in determining the definition of "Motor Fuel." *See Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189 (1990) (in determining a statute's intent based on legislative intent, the Illinois Supreme Court held that: "A statute should be construed so that no word or phrase is rendered superfluous or meaningless."); *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill.2d 262, 269-72 (1998)

[11] This reasoning is supported by the *United Airlines, Inc. v. Dep't. of Revenue.*, 367 Ill.App.3d 42 (1st Dist. 2006), which is actually cited by WMI. (S.J. 8 n. 3). In *United Airlines*, the Court held that the MFTL did not apply because even though the kerosene type jet fuel was deemed a "Special Fuel," it was not a "Motor Fuel" used for a motor vehicle. Further, the MFTL should be analyzed in total when evaluating the specific MFTL statutory provision. *Id.* at 46-48. This supports the Department's interpretation that the purpose behind the MFTL is to tax motor fuel used for motor vehicles used on public highways and that the Tribunal should analyze the MFTL by analyzing the motor fuel's use.

(the Illinois Supreme Court held that a statute should be evaluated as a whole and construed so that no term is rendered superfluous or meaningless.)

Similarly, WMI's Brief also advances the position that the definitional Sections of 1.1, 1.13, and 1.19 of the MFTL would be rendered superfluous if "Motor Fuel" included CNG. (S.J. 6-7). This is incorrect because these three sections could still exist without impacting the applicability of CNG as a taxable "Motor Fuel."

First, Section 1.1's inclusion of the term "[a]mong other things" would be rendered meaningless by WMI's argument. The term "[a]mong other things" is purposefully general and encapsulating to implement the clearly stated legislative intent as described in MFTL Sections 2 and 17 – taxing the privilege of using motor vehicles on public highways, unless specifically excluded.

Second, Section 1.13 defines "Special Fuel" and is merely a type of substance within the broader definition of "Motor Fuel." *See United Airlines*, 367 Ill.App.3d at 46-48. The definition of "Special Fuel" specifically discusses "liquids" defined as "Motor Fuel." Section 1.13 does not state all liquids are "Motor Fuel." If anything, the fact that the general MFTL definition of "Special Fuel" specifies that it only includes "liquids," provides more support that the general definition term "Motor Fuel" in Section 1.1 includes more than only liquids. Further, "Special Fuel" excludes Section 5 combustible gases. 35 ILCS 505/1.13. Thus, Section 1.13 would not be deemed meaningless if the Section 1.1 definition of "Motor Fuel" includes CNG. Also, Section 5 of the MFTL, which includes combustible gases which exist at a gaseous state under atmospheric pressure (like CNG), includes a definition of Motor Fuel to be applied for that specific statutory provision. This is not to say that Section 5 is not related to the general definition of "Motor Fuel." In fact, the language of Section 5 shows that CNG is a taxable

"Motor Fuel," or else Section 5 could not include CNG. Thus, neither Section 1.1 nor the applied Section 1.13/Section 5 definitions would be deemed meaningless if Section 1.1 includes CNG within the definition of "Motor Fuel."

Third, Section 1.19's definition of "Fuel" states that it "means all liquids defined as 'Motor Fuel' in Section 1.1 of this Act and aviation fuels and kerosene, but excluding liquefied petroleum gases." 35 ILCS 505/1.19. The definition of "Fuel" does not become meaningless if "Motor Fuel" includes, "[a]mong other things," CNG. The definition of "Fuel" specifically discusses "liquids" defined as "Motor Fuel". Section 1.19 does not state all liquids are "Motor Fuel." Since the general MFTL definition of "Fuel" specifies that it only includes the "liquids defined as 'Motor Fuel,'" there is more support that the term "Motor Fuel" in Section 1.1 includes more than only liquids. Otherwise, why would the definition of "Fuel" have to state that it "means all liquids?" Also, Section 1.19's definition of "Fuel" does not include liquefied petroleum gases. As stipulated, this is irrelevant to this analysis because Liquefied Natural Gas is not CNG. Stip. ¶25. Finally, the Section 1.19 definition of "Fuel" was added in 1989 for a different purpose than the definition of "Motor Fuel." Section 1.19 was added concurrently with various sections of the MFTL in 1989, including Sections 1.20 (defining a "Receiver") and 2a, which deal with the taxation upon the privilege of being a defined Receiver of "Fuel" for sale or use. P.A. 86-125; 35 ILCS 505/1.19; 35 ILCS 505/1.20; 35 ILCS 505/2a. Further, Section 17 was amended at the same time to add, in pertinent part: "It is the purpose of Section 2a of this Act to impose a tax upon the privilege of importing or receiving in this State fuel for sale or use, such tax to be used to fund the Underground Storage Tank Fund…" P.A. 86-125; 35 ILCS 505/17. So, "Fuel" is limited to liquids because it is related to the clean-up of spills. There is no need to clean up CNG spills because any leak would be when CNG is a gas. This leads to the

conclusion that not all "Fuel" taxed under the MFTL is "Motor Fuel." In other words, the definition of the word "Fuel" from MFTL Section 1.19 is purposefully different than the term "Motor Fuel." Thus, there is yet another reason why the definition of "Fuel" does not contain CNG.

Fourth, at least two previously discussed definitions contained within the MFTL, the Section 1.8 definition of a "Gallon" and the Section 5 language regarding combustible gases, would be rendered meaningless if WMI's interpretation of the non-taxability of CNG was deemed correct.

Additionally, WMI has discussed non-analogous cases. WMI states that *McNamee v. Federated Equipment & Supply Co*., *Inc.*, 181 Ill.2d 415, 422 (1988) supports its view on how portions of the MFTL would be deemed meaningless if the definition of "Motor Fuel" encompassed CNG. (S.J. 6-7). However, *McNamee* dealt with the Pension Code and determined that even though the plain language of a statute should be looked at first, the intent of the legislature is paramount and the Court will avoid an interpretation of a statute that would render any portion of it meaningless or void and the Court could analyze language using a similar statute. *Id.* at 423-24. Similarly, WMI cites *McMahon v. Industrial Com'n*, 183 Ill. 2d. 499, 513-14 (1998) (S.J. 7), which involved an interpretation of the Worker's Compensation Act, and held that it would be absurd to construe that Act in a manner which did not enforce rights of workers whose employers refuse to pay required medical expenses even though not specifically stated in the relevant statutory provision. *Id.* at 513-14. As stated previously, the Department is not arguing that this Tribunal should not look at the plain language *first*. The Department's position is that the plain language is ambiguous, or at the very least in conflict. So, canons of statutory construction, including that no part of a statute should be rendered meaningless or have

absurd results, should be implemented in order to achieve the legislature's intent in taxing substances used to operate motor vehicles on public highways (including CNG), unless specifically excluded, as a "Motor Fuel."

3. The Provisions At Issue Which Show That CNG Is Taxable Have Remained Primarily Unchanged For Decades

Much of the pertinent statutory provisions have existed substantively unaltered for years. Illinois jurisprudence holds that the longer the legislature shows acquiescence in retaining statutory language, the more validity that language should have in the reading and upholding of a statutory provision. In *People ex rel. Birkett, v. City of Chicago*, 202 Ill.2d 36 (2002), the Illinois Supreme Court interpreted a potential violation of a Section of the Illinois Aeronautics Act. The Court upheld the applicable Illinois Department of Transportation interpretation and related administrative regulation because the Court knew that reaching a different conclusion would lead to an absurd result. *Id.* at 47. The Court also noted that some of the applicable provisions of the Act at issue remained as originally enacted in 1945. The Court explained: "That the statute has remained unaltered through successive sessions of the General Assembly * * * indicates legislative acquiescence in the contemporary and continuous administrative interpretation. *Id.* at 53 (citing *People ex rel. Spiegel v. Lyons,* 1 Ill.2d 409, 414 (1953)). Notably, the *Birkett* Court also held that a reasonable construction of an ambiguous statute by the agency charged with that statute's enforcement, if contemporaneous, consistent, long–continued, and in concurrence with legislative acquiescence, creates a presumption of correctness that is only slightly less persuasive than a judicial construction of the same act. *Id.* at 45-46.

Applying the same reasoning: 1) The definition of "Motor Fuel" from Section 1.1 has had the additional second sentence, which includes the term "[a]mong other things," for over 50 years. Stip. ¶49; Stip. Ex. Q. 2) Since the MFTL's original enactment in 1929, over 85 years

ago, the purpose of the MFTL as stated in Section 2 has remained consistent as stating: "A tax is … imposed on the privilege of operating motor vehicles upon the public highways… of this State…. at the rate of… per gallon [of] all motor fuel used in motor vehicles upon such public highways." Stip. ¶51; Stip. Ex. S. 3) For over 75 years, the definition of the term "Gallon" as stated in Section 1.8 has remained virtually unchanged as containing capacity for substances in a gaseous state. Stip. ¶45; Stip. Ex. N §1. 4) Section 5 of the MFTL shows that the language regarding the taxability of combustible gases has substantively remained unchanged since at least 1945. Stip. ¶46; Stip. Ex. O §5. 5) During the Periods at Issue, Section 17 has stated, in pertinent part:

> It is the purpose of Sections 2 and 13a of this Act to impose a tax upon the privilege of operating each motor vehicle as defined in this Act upon the public highways and the waters of this State, such tax to be based upon the consumption of motor fuel in such motor vehicle, so far as the same may be done, under the Constitution and statutes of the United States, and the Constitution of the State of Illinois…

Of note, the statutory language contained above from Section 17 is very similar to the same provision from the originally enacted 1929 version of Section 17. *See* S.J. Exhibit 1 §17. As will be discussed in more detail in Section I.5 of this memorandum, *infra*, the Department's MFTL regulation, 86 Ill.Admin.Code § 500.335(f), has been in effect since 1995. Section 500.335(f) has contained language regarding CNG for over twenty years. Stip. ¶47; Stip. Ex. P. Further, as discussed in Section I.5, *infra*, regulatory and additional Department guidance regarding the taxability and inclusion of CNG is also due a high level of deference in determining the long-standing MFTL provisions at issue.

In sum, all of these long-standing statutory and regulatory provisions support the finding that the legislature has acquiesced in the Department's interpretation. These provisions show that both the definitions and legislative intent as interpreted by the Department should be given a

high level of deference when conducting the statutory construction at issue. In light of the above, 1) the inclusion of the language "among other things" within the definition of "Motor Fuel" for over 50 years in Section 1.1 means the legislature intended those words to be included and have meaning to purposely encapsulate many types of motor fuel (in particular, CNG), 2) the definitions of "Gallon" and how to measure substances in a gaseous state and Section 5's language regarding combustible gases have been included for over 70 years to show that the definition of "Motor Fuel" includes motor fuel both measured and used in either a liquid and a gaseous state for the purpose of taxation, and 3) since the MFTL's enactment, the purpose, as stated in Sections 2 and 17, has been clear to tax the privilege of using "Motor Fuel" to operate motor vehicles, without any specific limitations for "Motor Fuel" used in a gaseous state. In fact, Section 17 states that: "such tax to be based upon the consumption of motor fuel in such vehicle, *so much as the same may be done*, under the Constitution and statutes of the United States, and the Constitution of the State of Illinois." 35 ILCS 505/17 (emphasis added). It is clear that WMI's statement, "under the MFTL taxable fuel is always a liquid" (S.J. 5) is neither what the legislature intended nor consistent with the Department's interpretation.

4. *In Pari Materia* Regulation Shows That CNG Is Taxable Under MFTL

Additionally, Illinois law holds that: "Statutes which relate to the same thing or to the same subject or object are *in pari materia* although they were enacted at different times. It is a primary rule of statutory construction that not only should the intention of the legislature be deduced from a view of the whole statute and from every material part, but statutes *in pari materia* should be construed together." *Chicago Tribune Co. v. Johnson*, 119 Ill.App.3d 270, 273-74 (1st Dist. 1983) (citing *People ex rel. Harrell v. Baltimore and Ohio R.R. Co.*, 411 Ill. 55, 58-59 (1951).) This is known as the statutory construction doctrine of *in pari materia.*

Further, regulations have the force and effect of law, and must be construed under the same standards which govern other statutes. *See, e.g., Birkett*, 202 Ill.2d at 47-48 (the Illinois Supreme Court used an IDOT regulation to construe an ambiguous statute); *see also Union Elec. Co. v. Dep't. of Revenue*, 136 Ill.2d 385, 391 (1990). Administrative rules and regulations also generally enjoy a presumption of validity. *See, e.g., Northern Illinois Auto. Wreckers and Rebuilders Ass'n v. Dixon*, 75 Ill.2d 53, 58 (1979); *see also* cases cited in Section I.5 of this Memorandum, *infra*. In sum, a statute or regulation which pertains to a similar subject can be useful for a Court in determining the meaning behind statutory language.

During the Periods at Issue, there was a regulation in effect under the ROTA which defines "Motor Fuel" for the purposes of ROTA taxability. Section 130.101 of the ROTA regulations deals with the character and rate of ROTA Tax. 86 Ill.Admin.Code 130.101(b)(1) addresses the taxability of motor fuel under the ROTA. 86 Ill.Admin.Code 130.101(b)(2)(C) provided during the Periods at Issue and currently, in pertinent part:

> *"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel"*. [35 ILCS 505/1.1]
> i) By way of illustration and not limitation, the following are considered motor fuel:
> ▪ Gasoline
> ▪ Diesel fuel
> ▪ Combustible gases (e.g., liquified petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
> ▪ Gasohol…
> 86 Ill.Admin.Code 130.101(b)(2)(C) (emphasis added for underlined portion, but italicized portion is italicized in original) (See S.J. Exhibit 4).

It is stipulated and restated in WMI's Motion that WMI delivers CNG directly into the fuel supply tanks of motor vehicles. Stip. ¶11; S.J. 3. Using the doctrine of *in pari materia*, it is clear that this ROTA regulation is meant to define "Motor Fuel" in the same manner as Section 1.1 of the MFTL. It is also clear that, as discussed previously, taxable "Motor Fuel" is meant to

be based on substances which can be used to operate motor vehicles, not on the liquid or gaseous nature of the substance. Additional support for the use of the *in pari materia* doctrine comes from the regulation itself, which specifically cross references Section 1.1 of the MFTL within its language. Thus, because this regulation specifically discusses how CNG delivered directly into the fuel supply tanks of motor vehicles is taxable, the CNG at issue in this matter should also be deemed taxable. Notably, this regulation also contains the same Section 1.1 language defining "Motor Fuel," as including the broad and encapsulating term "[a]mong other things."

5. CNG Is Taxable Under MFTL Regulations and Department Guidance

As discussed in Section I.4, *supra*, it is standard Illinois law that regulations are treated and interpreted in the same manner as statutes. *See also Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶38 ("Administrative regulations have the same force and effect of law and are interpreted with the same cannons as statutes."); *Du-Mont Ventilating Co. v. Dep't. of Revenue*, 52 Ill.App.3d 59, 63 (3d Dist. 1977) (in discussing how to apply a section of the ROTA, the Court held that when promulgated pursuant to legislative authority the administrative agencies' regulations have the force and effect of statutes, and that like statutes, the administrative rules enjoy a presumption of validity). Another example of this reasoning can be found in *Illinois State Chamber of Commerce v. Pollution Control Bd.*, 49 Ill.App.3d 954 (1st Dist. 1977). In *Illinois Chamber of Commerce*, the Court held that the burden to establish the invalidity of the applicable Pollution Control Board regulation fell on the Petitioners and that, in serving in a quasi-legislative function, such administrative agencies are inherently more qualified to decide technical problems and are thus are more qualified to deal with potentially technical problems with the regulation. So, a Petitioner must show that such a regulation is clearly arbitrary, capricious, and unreasonable. *Id.* at 959-60. Further, in terms of weight to be given to any regulation, the U.S. Supreme Court employed a statutory construction test that has become the

standard for statutory and regulatory interpretation. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). In *Chevron*, the U.S. Supreme Court held:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Id.*

Further, the Supreme Court ruled that when an administrative agency administers congressionally created programs, gaps left, implicitly or explicitly by Congress, should be filled by making rules. A court should not substitute its own construction of an administrative rule for a reasonable interpretation by the agency. *Id.* at 843-44. Illinois courts have repeatedly adopted the *Chevron* test in determining how to interpret regulations. *See Church v. State*, 164 Ill.2d 153, 161-62 (1995) ("Where the legislature expressly or implicitly delegates to an agency the authority to clarify and define a specific statutory provision, administrative interpretations of such statutory provisions should be given substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute… A court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration." (citing *Chevron* among other cases)); *see also Illinois Bell Telephone*, 362 Ill.App.3d at 656-57 (4th Dist. 2005) (in deferring to the Illinois Commerce Commission, the Court stated "if the Commission's interpretation is a permissible one, the fact that we ourselves might have interpreted the statute differently will not justify reversal."); *Board of Trustees of University of Illinois v. Illinois Educ. Labor Relations Bd.*, 2012 IL App (4th) 110836, ¶ 24 (holding that, "[i]f the legislature has given an agency the responsibility of administrating a

statute and if the statute is ambiguous, a court should not simply interpret the statute on its own, as the court would do in the absence of an administrative interpretation; rather, the court should defer to the agency's interpretation if the interpretation is reasonably defensible… In the words of the Supreme Court, 'if the statute is *** ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.'" (citing cases, including *Chevron*)). Further, as discussed in Section I.3, *supra*, Illinois courts have held that the longer a regulation has been in effect, the greater the weight or deference a court will give to the regulation in construing a statute which could be interpreted as ambiguous. *Birkett,* 202 Ill.2d 36; *see also Illinois Bell Telephone Co.*, 362 Ill.App.3d at 657. Also, when a reasonable interpretation of a statutory provision could lead to two conclusions, a court should defer to an administrative agency's interpretation. *Illinois Bell Telephone Co.,* 362 Ill.App.3d at 662.

Taken in tandem, the Department's MFTL regulations regarding the taxability of CNG as a "Motor Fuel" are due a high level of deference. Of note, the regulations beginning with the prefix "86 Ill.Admin.Rule § 500" relate to the MFTL. It is undisputed that since February 28, 1995, the Department has had in effect a regulation which states that CNG is taxable under the MFTL. Stip. ¶47; Stip. Ex. P. As of that date and during the Periods at Issue, 86 Ill.Admin.Code § 500.335(f) stated:

> For carriers registered under the IFTA *which consume compressed natural gas and other fuels that cannot be measured in gallons*, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon." (emphasis added) Stip. ¶47; Stip. Ex. P; S.J. Exhibit 3.

Until amended in 2014, 86 Ill.Admin.Code § 500.200 did not provide a conversion rate for CNG, because the conversion rate was previously contained in regulation 500.335(f). *See* Stip. ¶48; S.J.

Exhibits 2 and 3. These MFTL regulations were merely updated in 2014 to specify the conversion factor for CNG. Stip. ¶48. In other words, an MFTL regulation has incorporated and contemplated the taxability of CNG since 1995, well before the Periods at Issue. Stip. ¶47; Stip. Ex. P; S.J. Exhibits 2 and 3. As will be discussed in more detail, *infra*, in the Count II Section of this Memorandum, the MFTL regulations were in effect during the Periods at Issue and provided administrative guidance, which should not be dismissed unless deemed arbitrary and capricious. As already discussed in detail within this Section I, the MFTL contemplated CNG as being taxable. So, a corresponding regulation provides useful Department guidance and does not go beyond the scope of the MFTL itself.

Additionally, other Department guidance regarding the taxability of CNG has existed for decades. For instance, ST 83-0718 is a letter ruling from August 31, 1983 which discusses how CNG was deemed taxable for nondistributors. S.J. Exhibit 5. The letter ruling stated, in pertinent part:

> (1) ABC, as a result of its preparation and use of CNG in its motor vehicles, is subject to the return requirements of a nondistributor and must pay Motor Fuel Tax on such use.
>
> Yes, this is correct. S.J. Exhibit 5.

Similarly, the Department released informational bulletins in 1984 which show the Department's contemplation that CNG has clearly been taxable under the MFTL. S.J. Exhibit 6.[12] As discussed in the afore-mentioned case-law, *supra* in this Section I.5, deference should be given to the Department's interpretation of the MFTL.

Finally, it is at least worth mentioning that the forms, returns, and other Department documentation provided to WMI and available to other taxpayers before and during the Periods

[12] S.J. Exhibit 6 shows examples of the definition of "Motor Fuel" as including CNG.

at Issue show how CNG has been taxable by the Department under the MFTL. WMI has agreed that it was a registered IFTA licensee during the Periods at Issue.[13] Stip. ¶29. Until the required Form MFUT-12 Motor Fuel Use Tax IFTA License and Decals Applications became electronic in the Fall of 2012, the Department represents that it was its practice to send an IFTA license renewal packet to WMI via mail. The renewal packet included an MFUT-12 Application, Instructions, and Compliance Manual. Stips. ¶¶31-32. Under "Reporting Requirements," the Compliance Manual stated under "Measurement conversion": "Convert compressed natural gas and other fuels that cannot be measured in gallons to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed." Stip. ¶33; Stip. Ex. E, p. 9. The MFUT-12 Applications for 2012 through 2014 state that WMI operated between 141 and 155 vehicles during the Periods at Issue. Stips. ¶¶36-38; Stip. Ex. G. One IFTA WMI vehicle ran on CNG during the Periods at Issue. Stip. ¶43. Step 4, Item 14 of these MFUT-12 Applications state that WMI should: "Check the types of fuels used in qualified motor vehicles you own or operate." Stips. ¶¶36-38; Stip. Ex. G. Included as a choice among the check boxes is Compressed natural gas. It appears that only diesel is indicated as a reportable fuel by WMI from 2012 through 2014. Stips. ¶¶36-38; Stip. Ex. G.[14] WMI also filed required MFUT-15 IFTA Quarterly Returns during the Periods at issue. Stip. ¶42; Stip. Ex. K. These Quarterly Returns all contain Fuel Type Tables, which include CNG as a reportable fuel. Stip. Ex. K.[15] The related IFTA Fuel Tax Rate Sheet contains a listing of various fuels, including CNG. Stip. ¶41; Stip. Ex. J. Further,

[13] WMI asserts that the Department may argue that Illinois' membership in IFTA makes CNG taxable by reference to IFTA rules. (S.J. 11.) Although the facts clearly show that the Department, through Illinois' MFTL-implemented returns, forms, guidance, etc. includes CNG in regard to IFTA, the Department has not and is not making the argument that merely because Illinois is a member of IFTA, CNG is taxable. However, the Department regulations and forms do support the Department's position that CNG is taxable under the MFTL and MFTL regulations.

[14] It is unclear why WMI has agreed that it has one CNG vehicle that operated under an IFTA license (Stip. ¶43), yet the required MFUT-12 Forms do not have CNG listed as a reportable fuel.

[15] Again, it is unclear why MFUT-15 IFTA Quarterly Returns only include the fuel type of diesel listed, even though WMI has stated that one of the IFTA vehicles operated using CNG. Stips. ¶¶42-43; Stip. Ex. K.

although WMI is not a distributor for purposes of the MFTL, it is worth noting that the required Schedule GA-1, which is attached to the required RMFT-5 Return for such distributors, has indicated since 1989 that combustible gases or CNG are reportable products. Stip. ¶44; Stip. Ex. M. As discussed at length, when based on the proper statutory construction of the MFTL these regulations and Department guidance show further proof that CNG is clearly contemplated by the MFTL as a taxable motor fuel, and this Department interpretation should not be altered unless the Department's interpretation of the MFTL is deemed arbitrary and capricious.

6. The Canons Of Construction Advanced By WMI Are Misplaced

The Department is compelled to respond specifically to a few additional arguments advanced by WMI, which are misplaced. In its motion, WMI states that the canon of statutory construction known as *inclusio unius est exclusio alterius* ("*inclusio*") ("inclusion of the one is the exclusion of the other") applies in arguing that the MFTL is not ambiguous. In advancing its position, WMI incorrectly states: 1) the Section 1.13 definition of "Special Fuel" specifically mentions gasoline and diesel fuel, and specifically excludes combustible gases and 2) the Section 1.19 definition of "Fuel" includes "all liquids defined as 'Motor Fuel' in Section 1.1 of this Act" in addition to specifically including aviation fuels and kerosene, and explicitly excluding liquefied petroleum gases. (S.J. 7-8). This exclusion argument is also based on the statements that the MFTL does not mention "natural gas," "compressed natural gas," or "CNG." (S.J. 7-8).

First, contrary to WMI's statements, the MFTL **does** include similar terms. Section 5 does specifically state, now and during the Periods at issue, how licensed distributors are to indicate the invoiced gallons of motor fuel of the types specified in Section 5 which were used in various ways. Specifically, Section 5 provides:

> The types of motor fuel referred to in the preceding paragraph are: (A) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or *natural gasoline*), gasohol, motor benzol or motor benzene regardless of their classification or uses; and (B) *all combustible gases which exist in a gaseous state at 60 degrees Fahrenheit and at 14.7 pounds per square inch absolute including, but not limited to*, liquefied petroleum gases used for highway purposes; and (C) special fuel…
>
> 35 ILCS 505/5 (emphasis added).

So first, the *inclusio* construction does not apply because natural gasoline and combustible gases, which exist in a gaseous state at atmospheric pressure, (which includes CNG) are specifically mentioned within the MFTL. Second, as discussed, during the Periods at Issue, the Section 1.8 definition of "Gallon" includes "its equivalent in a capacity of measurement of substance in a gaseous state." 35 ILCS 505/1.8. This definition is specifically included within the general MFTL definitions and is meant to encompass fuels such as CNG. Third, as discussed in Section I.2 of this Memorandum, *supra*, the Section 1.19 term "Fuel" was added in 1989 for a different taxation purpose. *See* 35 ILCS 505/1.19; P.A. 86-125. Thus, that term is inapplicable to the *inclusio* argument. Fourth, the Section 1.13 definition of "Special Fuel" excludes combustible gases, such as CNG, as defined in MFTL Section 5. 35 ILCS 505/1.13. However, the definition of "Motor Fuel" contained within MFTL Section 1.1 specifically states that, "[a]mong other things," "Special Fuel" is included within "Motor Fuel." 35 ILCS 505/1.1. Thus, "Special Fuel" is only a subset of taxable "Motor Fuel." So, "Motor Fuel" does not have to be a "Special Fuel" to be taxable. Fifth, the cases cited by WMI are not analogous. *Rochelle Disposal Serv., Inc. v. Ill. Pollution Control Bd.*, 266 Ill.App.3d 192, 201 (2d Dist. 1994) is inapplicable because in *Rochelle* the Court held that an Environmental Protection Act administrative citation provision did not specifically include mitigation of penalties, but there was no discussion of an Act that included broad encapsulating language such as "[a]mong other things." Further, it was clear that the only penalty to be imposed was a fine. *See also Costello*, 252 Ill.App.3d at 561-62 (the Court in determining different school tenure rights based on

different parts of the same statute used the *inclusio* construction to determine tenure rights, while acknowledging the importance of legislative intent avoiding construing the construction of the statute in a manner which would render any part of it meaningless or void). In the case at bar, the Tribunal is determining the single definition of "Motor Fuel," as enumerated in Section 1.1 and as contemplated by the MFTL as a whole. The legislative intent, as also described in MFTL Sections 2 and 17, is also pertinent in this analysis, as described above.

WMI also similarly argues that a legislature does not "hide elephants in mouseholes." (S.J. 9-11). In other words, WMI has argued that "Motor Fuel" should only contain liquids because the MFTL can only possibly indicate otherwise in "scattered ancillary provisions." This is false. First, Section 1.1's definition of "Motor Fuel" itself has contained the language "[a]mong other things" for over 50 years. Stip. ¶49; Stip. Ex. Q. The second sentence of Section 1.1 is not an "ancillary" provision, but part of the specific statutory section most at issue in this matter. Second, the definition of "Gallon" from Section 1.8 is also within the same general definition section as the definition of "Motor Fuel," so its definition regarding measurement in a gaseous state is certainly connected. Third, the definition of "Special Fuel" found within the same general definition Sections specifically references Section 5 regarding distributors' reporting requirements for gaseous substances, which include CNG. So, these provisions are also connected. Fourth, the cases that WMI cites for its rationale are not supportive. *People ex rel. Ryan v. Agpro Inc.*, 214 Ill.2d 222, 228 (2005) holds that an ambiguous statute should be read to invoke the legislative intent and, if needed, should be construed as a whole. Similarly, *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457 (2001) dealt with the alteration of the regulatory scheme of the Clean Air Act and discussed how Congress would not only implicitly give certain power to the Environmental Protection Agency. In other words, the issue would have been

surely expressed. *Id.* at 468-69. In the current matter, the inclusion of CNG is expressed, as discussed *supra.* Further, neither of these cases are analogous with the current situation where the primary Section and statute at issue contain specific language indicating that the substance at issue is meant to be over-encapsulating. Additionally, as discussed in Section II of this Memorandum, *infra*, Section 14 of the MFTL provides the Department the ability to make rules and regulations to administer and enforce the MFTL. 35 ILCS 505/14.

Finally, WMI argues that all tax statutes are to be strictly construed against the government and in favor of the taxpayer. (S.J. 12). So, even if an ambiguity exists, the Tribunal should rule against the Department simply because of the ambiguity. This reasoning is flawed. If the Tribunal followed WMI's reasoning to its logical conclusion in every instance where there is a statutory ambiguity in a tax matter, the Tribunal would always find for the taxpayer. Taken to the next logical conclusion, if WMI's position was correct, why would canons of statutory construction be applicable at all in any instance involving the Department and the interpretation of an ambiguous taxation statute?

Conversely, Illinois case law holds that: "Tax laws… must be given a reasonable construction, without bias or prejudice against either the taxpayer or the State, in order to carry out the intention of the legislature and 'the long range objective of all tax measures: the accomplishment of good for the social order.'" *United Legal Foundation v. Dep't. of Revenue*, 272 Ill.App.3d 666, 677 (1st Dist. 1995) (finding for the Department in regard to property tax issues) citing *People ex rel. Conner v. Burgess-Norton Manufacturing Co.*, 49 Ill.2d 397, 400-01 (1971) (the Illinois Supreme Court held that after considering the relevant sections of a revenue act and a statutory ambiguity, that tax law should be analyzed as a whole and reasonably construed in order to carry out the intent of the legislature and that the purpose of a tax statute is

the "accomplishment of good for the social order."); *Nw Airlines, Inc. v. Dep't. of Revenue*, 295 Ill.App.3d 889, 893-94 (1st Dist. 1998) (cited by WMI, but held that the proper interpretation of a provision of the Illinois Income Tax Act could not be based solely on the statutory language, but also on the nature, object, and consequences of construing the provision in one manner as opposed to another, and only found for the taxpayer because the nexus requirement at issue could not be met).

The additional cases cited by WMI further show the inadequacy of its position. In *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill.2d 498 (2008) the Illinois Supreme Court held that the provision's language "for gain" as used in the Illinois Municipal Code was ambiguous and that the charitable golf tournament at issue was not subject to taxation based on the facts and circumstances of that case. *Id.* at 507-517. In making this determination, the Court emphasized the intent of the legislature and how each word, clause, or sentence is to be given its reasonable meaning and not be deemed superfluous. *Id.* at 508. Additionally, the Court determined that the term "for gain" is susceptible to two reasonable and conflicting interpretations. *Id.* The Court also emphasized using "common sense" in figuring out what the legislature intended and not making the term meaningless. *Id.* at 509; *see also People ex rel. Ramey v. Gulf, Mobile and Ohio R.R. Co.*, 15 Ill.2d 126, 128-30 (1958) (discussed how Sangamon County had no inherent authority to levy taxes and found that statutory language was defective, so the Court held that the tax law should be construed against the government without citation to any authority). Applied, the Department is simply asking this Tribunal to use common sense in determining the legislature's intent, as specifically stated in Sections 1.1, 2 and 17 of the MFTL, to determine that CNG is a taxable "Motor Fuel" under the MFTL.

7. WMI Is Not Exempt From Paying MFTL Tax For CNG

Finally, in stating that "taxable fuel is always a liquid," (S.J. 5) WMI is essentially arguing that CNG and any "Motor Fuel" which exists in a gaseous state is *exempt* from taxation under the MFTL. Notably, Illinois law requires that exemptions from tax – any tax - are to be construed against the exemption and in favor of taxation. *See, e.g. Provena Covenant Medical Center v. Dep't. of Revenue*, 236 Ill.2d 368, 388 (2010) (property tax); *McCoy Ford, Inc. v. Dep't. of Revenue,* 60 Ill.App.3d 429, 432 (4th Dist. 1978) (retailers' occupation tax); *LeaderTreks, Inc. v. Dep't. of Revenue*, 385 Ill.App.3d 442, 446 (2nd Dist. 2008) (property tax); *Metro Developers, LLC v. City of Chicago Dep't. of Revenue*, 377 Ill.App.3d 395, 397 (1st Dist. 2007) (Chicago real property transfer tax); *LeTourneau R.R. Services, Inc. v. Dep't. of Revenue,* 134 Ill.App.3d 638, 642 (4th Dist. 1985) (retailers' occupation tax); *Thomas M. Madden and Co. v. Dep't. of Revenue*, 272 Ill.App.3d 212, 215 (2nd Dist. 1995) (held no manufacturing exemption for use tax); *Schawk, Inc. v. Zehnder*, 326 Ill.App.3d 752, 755 (1st Dist. 2001) (held no manufacturing-related credit for income tax). The taxpayer bears the burden of proof for the exemption and any and all doubts surrounding the exemption must be construed against exemption and in favor of taxation. "This derives from the fact that deductions and exemptions are privileges created by statute as a matter of legislative grace." *Balla v. Dep't. of Revenue*, 96 Ill.App.3d 293, 295 (1st Dist. 1981). This standard further deflates WMI's argument that tax statutes must be strictly construed against the Department.

In sum, based on the afore-mentioned Illinois precedent: 1) the MFTL is ambiguous and the MFTL's Section 1.1 generally defining "Motor Fuel" and the MFTL itself should be read together and in harmony in order to meet the legislative purpose, and 2) the MFTL should not be read to render statutory provisions, such as a) the second sentence of Section 1.1 including

"[a]mong other things," b) the definition of "Gallon" in Section 1.8, c) the "Motor Fuel" taxed for licensed distributors under Section 5, or d) the stated purposes of the MFTL as stated in Sections 2 and 17, as superfluous, meaningless, or with absurd results. In essence, the MFTL should be analyzed as discussed *supra,* within Section I of this Memorandum, to straighten out the ambiguity and derive the true legislative intent of the MFTL – Taxing the use of Motor Fuel, which includes CNG.

II. The Tribunal Should Find For The Department For WMI's Count II

WMI argues that the Department cannot make rules that are inconsistent with underlying statutes or violate Article IX, Section 1 and Article II, Section 1 of the Illinois Constitution of 1970 (the "Constitution"). (S.J. 13-16). This argument is misguided and meaningless if the Tribunal finds that WMI's Count I is unsupported. As described in detail in Section I of this Memorandum, *supra*, after a reasonable analysis of the MFTL, CNG is a taxable "Motor Fuel." Further, Count II against the Department should not stand because the Department has been delegated authority from the MFTL to administer and enforce the MFTL and MFTL regulations. The MFTL and regulations do not violate the Constitution.

1. Because CNG Is Taxable Under The MFTL And The MFTL Provides Authority For The Department To Make Regulations, The Corresponding Regulations Are Appropriate

As conceded by WMI (S.J. 13), the MFTL provides now and during the Periods at Issue that: "The Department of Revenue is authorized to make such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act, as may be deemed expedient." 35 ILCS 505/14. In spite of this, WMI makes the argument that the Department had improperly usurped legislative authority by making changes in 2014 to MFTL regulations, including 86 Ill.Admin.Code §§ 500.100, 500.200(c), and 500.335(f). (S.J. 13-14).

First, WMI states that the Illinois Register 38 Ill. Reg. 18586-7 (Sep. 5, 2014) indicates that the need for the 2014 rulemaking arose because CNG is not sold on a per gallon basis; instead CNG is sold at an established price per cubic foot or pound. In other words, WMI's position is that the regulatory changes dealt with the calculation of the measurement of CNG, not the existence of CNG as a taxable "Motor Fuel." Further, the definition of "Gallon" was not added to 86 Ill.Admin.Code § 500.100 until 2014. Even though the timing of the definition of "Gallon" within Regulation Section 500.100 is accurate, it is immaterial. The parties have agreed that the definition of "Gallon" has been contained within the MFTL itself at least as early as 1939 to state that "Gallon" means and includes, "in addition to its ordinary meaning, its equivalent in a capacity of measurement of… substance in a gaseous state." Stip. ¶45; Stip. Ex. N §1. So, even if the term "Gallon" was not contained in the MFTL regulation prior to 2014, it is irrelevant. The term "Gallon" was defined in the MFTL statute itself *decades before* the 2014 changes to 86 Ill.Admin.Code §§ 500.200(c) and 500.335(f).

Further, the MFTL regulations at issue were originally effective in 1995. Stip. ¶47; Stip. Ex. P; S.J. Exhibit 2. 86 Ill.Admin.Code § 500.335(f) stated from 1995 and until August 21, 2014:

> For carriers registered under the IFTA *which consume compressed natural gas and other fuels that cannot be measured in gallons*, the fuels must be converted to *gallons* using the conversion factor used by the jurisdiction in which the fuel was consumed. The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 *gallon* or 1.24 therms of compressed natural gas for 1 *gallon*." (emphasis added). Stip. ¶47; Stip. Ex. P; *see also* S.J. Exhibits 2 and 3.

This makes two points clear. First the 1995 MFTL regulations, which were permitted to be created by the Department under 35 ILCS 505/14, contemplated a measurement of taxable CNG as related to gallons. Second, CNG was specifically added to the relevant MFTL regulation 500.335(f) in 1995 to clarify that CNG was taxable under the MFTL.

Further support for this second point comes from the stated purpose of the 1995 regulations, which is contained within 19 Ill. Reg. 3008 (Feb. 28, 1995). S.J. Exhibit 7. Of note, the statutory authority cited for the 1995 version of 86 Ill.Admin.Code § 335(f) is the MFTL. S.J. Exhibit 7, p. 3009. The stated primary purpose was: "implementing the provisions of the International Fuel Tax Agreement (IFTA)… IFTA affects the payment and reporting of motor fuel use taxes. It is designed to simplify fuel use tax reporting and payment by consolidating all reporting and payment obligations in a base state… Changes have also been made in the rulemaking to reflect recent legislative changes to the Motor Fuel Tax Law…" S.J. Exhibit 7, p. 3012.[16] So, the Department clearly did not usurp legislative authority in implementing the MFTL regulations.

2. The Department Did Not Violate Administrative Law Principles By Promulgating A Regulation That Is Contrary To The MFTL

As stated in Section II.1, *supra*, Section 14 of the MFTL states now and during the Periods at Issue: "The Department of Revenue is authorized to make such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act, as may be deemed expedient." 35 ILCS 505/14. This clearly provides the legislative authority for the Department to create the regulations at issue.

At the outset, it is crucial to note that, as stated in Section II.1, *supra*, the MFTL regulations relevant to CNG were promulgated in 1995, almost two decades before the Periods at Issue. Stip. ¶47; Stip. Ex. P; S.J. Exhibit 2. The Periods at Issue cover February 2012 through September 2014. Stip. ¶1; Stip. Ex. A. Thus, the August 2014 versions of the regulations 86

[16] Note that P.A. 88-480, effective January 1, 1995, contained an amendment that stated that: "The Department shall adopt rules and regulations to implement the provisions of the [IFTA] Agreement." 35 ILCS 505/14a; S.J. Exhibit 8 §14a. Although the MFTL regulation changes were properly created under the provisions of the MFTL, it is worth noting for the purpose of Section II herein that the MFTL regulations were also properly created under this MFTL authority as well.

Ill.Admin.Code §§ 500.100, 500.200, and 500.335 have little, if any, impact on the taxability of CNG for the Periods at Issue.

With these facts in mind, to the extent still relevant, WMI has advanced two main arguments as to why the Department was allegedly incorrect in promulgating the MFTL regulations. First, the regulations impermissibly expand the scope of the underlying MFTL. Second, the MFTL regulations are impermissible under the Illinois Constitution because the MFTL does not contemplate CNG as being taxable. Therefore, any regulatory change would require an Act of the General Assembly to delegate to the Department the authority to promulgate regulations stating that CNG is taxable. For the reasoning that follows, both of these arguments are faulty.

A. <u>The MFTL Regulations Do Not Impermissibly Expand The Scope Of The MFTL</u>

Under the *Chevron* two-part test discussed in Section I.5, *supra*, for judicial review of an agency's construction of a statute the court must first determine whether the legislature has directly addressed the precise question at issue. If the legislature's intent is clear, the inquiry ends and the court and the agency must give effect to the unambiguously expressed intent. If the legislature has not directly addressed the specific issue or if the statute is ambiguous, the court must determine if the agency's interpretation is permissible. The agency's interpretation of a statutory scheme for which it is entrusted to administer is given considerable weight, unless it is arbitrary, capricious, or manifestly contrary to the statute at issue. The agency's regulation should also not be altered in a judicial proceeding unless arbitrary, capricious, or unreasonable. *Chevron*, 467 U.S. at 842-844; *see also* multiple *Chevron* cases cited *supra* in Section I.5 including *Church v. State*, 164 Ill.2d 153, 161-62 ("Where the legislature expressly or implicitly delegates to an agency the authority to clarify and define a specific statutory provision,

administrative interpretations of such statutory provisions should be given substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute… A court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration.").[17]

Section 14 specifically provides that regulations can be created by the Department to administer and enforce the MFTL. 35 ILCS 505/14. As discussed at length within Section I, *supra*, the MFTL clearly contemplates CNG as taxable based on a reasonable reading of the statutory language. The Department incorporates that analysis here. Assuming the Tribunal agrees with this analysis, the MFTL regulations during the Periods at Issue and thereafter do not expand beyond the breadth of the MFTL. In other words, the MFTL regulations at issue are not in conflict with the MFTL since the MFTL includes the taxability of CNG. In sum, the Department was entitled to create regulations to administer and enforce CNG as taxable under the MFTL because CNG is determined to be taxable by the Department. Thus, the MFTL regulations (the 1995 and 2014 versions) are permissible to administer and enforce the MFTL.

B. CNG's Taxability Under The MFTL Does Not Violate The Illinois Constitution[18]

In sum, WMI has argued that because the Department is an agency under the State's executive branch, any Department attempt to include CNG (a non-liquid motor fuel) as a taxable substance, pursuant to Department regulations and forms, is a violation of the Article II, Section

[17] Although the Department agrees that a regulation should not surpass the authority or directive of the underlying statute, the Department notes that the cases cited by WMI (S.J. 14) are distinguishable. *Tulcem v. Chicor Title Ins. Co.*, 2015 IL App (1st) 140808, ¶¶33, 41-42 (held that under *Chevron*, the Court must give considerable weight to an agency's interpretation of an ambiguous statute, that statutory provisions should be harmonized, and that the Court did not consider *Chevron* deference here because judicial analysis of a HUD policy statement is not always warranted); *Ill. Dep't. of Revenue v. Ill. Civil Service Com'n*, 357 Ill.App.3d 352, 364-67 (1st Dist. 2005) (not analogous as the statutory amendment at issue clearly conflicted with the specifics of the prior legislative authority); *Utility Regulatory Group v. EPA*, 134 S.Ct. 2427, 2445-46 (2014) (merely holds that an agency may adopt policies to execute the laws as written, if such interpretations are reasonable); *City of Arlington, Tex. V. F.C.C.*, 133 S.Ct. 1863 (2013) (contained thorough discussion of the *Chevron* analysis and how it applies to grant deference to an agency in making statutory interpretations).

[18] It is worth noting that the Tribunal has jurisdiction to decide the constitutionality of statutes and rules as related to a particular taxpayer, but not to declare a statute or rule unconstitutional on its face. 35 ILCS 1010/1-45(f).

1 and Article IX, Section 1 of the Constitution. (S.J. 11, 15-16). Of note, Article II, Section 1 provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Article IX, Section 1 provides: "The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away."

There are several flaws in WMI's argument. First, Section 14 of the MFTL specifically provides that the Department may create rules to administer and enforce the MFTL. 35 ILCS 505/14. Although WMI argues that the limitation is to the law as written, that argument is meaningless should this Tribunal decide that the MFTL includes CNG as taxable. In sum, the only way in which WMI can advance this argument is if this Tribunal finds that "the MFTL only imposes tax on fuels that are in liquid form." (S.J. 16). For the reasons advanced in detail in Section I, *supra*, this is not the case.

Regardless, the Tribunal should not find that Count II is actionable against the Department. First, as stated by the case law cited by WMI (S.J. 15), there is a fundamental distinction between the power to make the law, which involves a discretion of what the law should be, and conferring authority or discretion as to a law's execution. Conferring discretion for a law's execution is not objectionable. *Chicagoland Chamber of Commerce v. Pappas*, 378 Ill.App.3d 334, 349 (1st Dist. 2007). Similarly, although an extreme extension of this principle, in *Rogers v. Desiderio*, 274 Ill.App.3d 446, 449-50 (3d Dist. 1995) the Court held that a section of a School Code which allowed actual voters limited privileges was deemed permissible. In addition, the Department is vested with broad powers to administer its statutes beyond what is stated specifically in MFTL Section 14. *See, e.g., Clark Oil & Refining Corp. v. Johnson*, 154 Ill.App.3d 773, 778-79 (1st Dist. 1987) ("It has been recognized that '[t]he legislature cannot deal

with the details of every particular case, and reasonable discretion as to the manner of executing a law must necessarily be given to administrative officers'… Our supreme court recognized long ago that '[t]o establish the principle that whatever the legislature shall do it shall do in every detail or else it will be undone, would, in effect, destroy the government.'") (citations omitted). Second, as discussed in Section II.2, *supra*, the amended MFTL regulations cited by WMI were: 1) not at issue during the vast majority of the Periods at Issue and 2) did not impact the taxability of CNG as contemplated by the MFTL and as greatly detailed in Section I, *supra*. CNG's taxability was merely referenced by the applicable MFTL regulations. Third, as discussed in Section II.2.A., *supra*, the MFTL regulations are deemed valid and should be upheld unless they are deemed arbitrary and capricious. Finally, it is worth noting that under Illinois law, a court should not address constitutional issues that are unnecessary for the disposition of a case. *See, e.g.*, *Exelon Corp.*, 234 Ill.2d at 273, 286 (cited by WMI, but holding that if Exelon qualified for the tax credit at issue based on statutory construction, there was no reason to reach the alternative constitutional issue); *Mattis v. State Universities Retirement System*, 212 Ill.2d 58, 74-75 (2004) (Illinois Supreme Court holding that questions regarding the constitutionality of statutes should be considered only where essential to the disposition of a case). As discussed, this matter can be decided summarily by the Tribunal finding for the Department for Count I. In that case, addressing any constitutional issues under Count II would be unnecessary.

III. The Tribunal Should Find For the Department For WMI's Count III

It is undisputed that the Notices, which were issued for the Periods at Issue on May 1, 2015, all state:

> BASED ON SEVERAL CONFERENCE CALLS WITH THE DEPARTMENT'S GENERAL COUNSEL, YOU HAVE BEEN INFORMED THAT CNG USED FOR HIGHWAY PURPOSES IS TAXABLE AND HAS ALWAYS BEEN TAXABLE. YOU WITHDREW YOUR PRIVATE LETTER RULING REQUEST BASED ON THE

> DEPARTMENT'S DETERMINATION. YOUR CREDIT REQUEST IS ALSO DENIED. Stip. Ex. A.

WMI has argued that the Illinois Administrative Procedure Act ("APA") applies to the MFTL through Section 18. (S.J. 16-19). Section 18 of the MFTL currently provides:

> The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Revenue under this Act, except that (1) paragraph (b) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to final orders, decisions and opinions of the Department, (2) subparagraph (a)2 of Section 5-10 of the Illinois Administrative Procedure Act does not apply to forms established by the Department for use under this Act, and (3) the provisions of Section 10-45 of the Illinois Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Act to the extent Section 10-45 applies to hearings not otherwise subject to the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 505/18.

Under the APA, a "Rule" means: "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy… but does not include… informal advisory rulings issued under Section 5-150…" 5 ILCS 100/1-70. WMI further argues that the APA states:

> No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act... 35 ILCS 100/5-10.

In essence, WMI asserts that the Department's statements of denial were "Rules" under the APA and are not enforceable because these statements were not subject to public inspection. Further, WMI argues that: 1) there was a violation of the APA because a policy of broad applicability should have been adopted by regulation prior to October 1, 2014 and 2) applying a regulatory amendment that exceeds the terms and intended scope of the Illinois MFT is a violation of the MFTL. (S.J. 16-19).[19] However, these arguments are misplaced.

[19] WMI states the MFTL regulations at issue were effective on October 1, 2014, even though the **amended** regulations were effective on August 21, 2014. Stip. ¶48; S.J. Exhibit 3.

First, these statements made within the Notices are not "Rules" under the APA. The Notices state that the Department's position regarding CNG's taxability was discussed in regard to a previously withdrawn private letter ruling request. Stip. Ex. A. The APA definition of a "Rule" states that a "Rule" does not include advisory rulings issued under APA Section 5-150. 5 ILCS 100/1-70. Section 5-150 provides, in pertinent part:

> (a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency… 5 ILCS 100/5-150.

The Department's regulation for providing a private letter ruling ("PLR") is under 2 Ill.Admin.Code § 1200.110. Thus, because these statements contained within these Notices were issued in relation to information provided during the investigation into a PLR regarding the applicability of the MFTL and MFTL regulations, the content of the Notices do not contain a "Rule" under the APA.

Second, there is no violation of the APA because the Department's statement is based on the properly promulgated MFTL and MFTL regulations. As discussed in Section I.5, *supra*, the MFTL regulations were in effect in 1995, so there is no inappropriate statement based on the 2014 amendments. Further, the Notices likely require a "determination" of the reasoning behind the denial of the claims. *See* 35 ILCS 120/6b (as incorporated by 35 ILCS 505/21). So, if the Tribunal followed WMI's logic, a taxpayer would never be notified for the reasoning behind a claim denial. This is obviously not the purpose of the APA.

Third, if the Tribunal determines that the statements within the Notices are "Rules," there is still no APA violation. WMI acknowledges that the Department's statements were of general applicability by the Department. (S.J. 18). Further, WMI discusses cases which concern public bodies not abiding by formal adoption of administrative regulations and/or applying proposed

rules that come from a statute itself. (S.J. 17-19). These are not cases which involve the simple statement of applicability of a properly promulgated statute and regulations, as there is in the current matter. Therefore, the Tribunal should find for the Department for Count III. *See generally* Sections I and II, *supra* (which discuss the inclusion of CNG a taxable "Motor Fuel" in the MFTL and MFTL regulations in detail).

Although cited by WMI, in *Riverboat Dev. Corp. v. Ill. Gaming Bd.*, 268 Ill.App.3d 257 (1st Dist. 1994), the matter dealt with proposed rules that the Illinois Gaming Board specifically did not publish or formalize. Thus, the Court held that the proposed rules which disallowed a gaming license were invalid. However, this is not analogous to this Tribunal matter in which the Notices contain general statements of what the law is as stated within properly promulgated law and regulations. In other words, the Notices to WMI did not require any public approval, because they were merely implementing an existing statute and regulations. *See also People v. Carpenter*, 385 Ill.App.3d 156, 165-66 (2d Dist. 2008) (holding that an authorized application of the regulation was not a new Rule for purposes of the APA, but was merely an implementation of an existing regulation). Similarly, the case *Senn Park Nursing Ctr. V. Miller*, 104 Ill. 2d 169 (1984), cited by WMI, involved an amendment to a Medicaid plan that was specifically not contained within in the Illinois Register for public review and comment as was contemplated. *Id.* at 177-79. Obviously, the facts in these matters are distinguishable from the current Notices which merely involve statements of pre-existing Department law. In other words, there is support for the common-sense result that the "Rule" in the current matter is simply a restatement of what has already been incorporated by the MFTL and MFTL regulations. As stated in *Riverboat*: "We agree that the Board does have the statutory authority to review, accept and deny applications for riverboat gambling licenses. An agency need not promulgate rules before it can

adjudicate facts to implement its statutory mandate." *Riverboat*, 268 Ill.App.3d at 260 (emphasis added) (citing *Boffa v. Ill. Dept. of Public Aid*, 168 Ill.App.3d 139 (1st Dist. 1988) (holding that administrative agencies have full discretion to establish standards of conduct in applying statutes by either rulemaking or adjudication). In the same manner, the Department need not be limited by stating in its Notices that CNG is taxable when, as detailed thoroughly in Section I, *supra*, the Department knows and can support that CNG is already taxable under the MFTL and MFTL regulations. In other words, because the Department's denial contained in the Notices was based on formalized and properly promulgated law, Count III should be found for the Department.

Conclusion

Consequently, the Department respectfully requests that summary judgment be granted in favor of the Department for the reasons stated above, that WMI's Notices of Tentative Denial of Claim be finalized as issued, and for any other relief that is just.

Dated: June 22, 2016

Respectfully submitted,
/s/ Michael Coveny
Michael Coveny
/s/Seth Schriftman
Seth Schriftman

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CERTIFICATE OF SERVICE

We, Michael Coveny and Seth Schriftman, attorneys for the Illinois Department of Revenue, state that we served a copy of the attached **ILLINOIS DEPARTMENT OF REVENUE'S CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO TAXPAYER'S MOTION FOR SUMMARY JUDGMENT and SUPPORTING MEMORANDUM** upon:

Michael J. Wynne
Adam P. Beckerink
Douglas A. Wick
Jennifer C. Waryjas
Reed Smith LLP
10 South Wacker Drive
Chicago, Illinois 60606
(312) 207-3894
(312) 207-6500 (facsimile)
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By email to MWynne@ReedSmith.com, ABeckerink@ReedSmith.com, Jwaryjas@reedsmith.com, and DWick@ReedSmith.com and on June 22, 2016.

/s/ Michael Coveny
/s/ Seth Schriftman

MOTOR FUEL LICENSE TAX—DISPOSITION.

(HOUSE BILL NO. 610. APPROVED JUNE 10, 1929.)

AN ACT *to amend section 3 of "An Act to provide for the disposition of the monies collected under the provisions of 'An Act to impose a license tax on the sale and use of motor fuel,' approved June 29, 1927," approved June 18, 1928.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Section 3 of "An Act to provide for the disposition of the monies collected under the provisions of 'An Act to impose a license tax on the sale and use of motor fuel,' approved June 29, 1927," approved June 18, 1928, is amended to read as follows:

§ 3. After reimbursement has been made, as provided in section 2, one-half of the balance of the money collected as a license tax on the sale and use of motor fuel, shall be apportioned and paid by the Department of Finance, to the several counties of the State in proportion to the amount of motor vehicle license fees received from the residents of each county during the calendar year 1927.

APPROVED June 10, 1929.

MOTOR FUEL TAX LAW.

(SENATE BILL NO. 85. APPROVED MARCH 25, 1929.)

AN ACT *in relation to a tax upon the privilege of operating motor vehicles upon the public highways, based upon the consumption of motor fuel therein, and making certain appropriations in connection therewith.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. For the purposes of this Act:

"Motor Fuel" means all volatile and inflammable liquids produced or compounded for the purpose of, or which are suitable and practicable for operating motor vehicles. It does not, however, include kerosene oil; unless such kerosene oil has been mixed, compounded or blended with other volatile and inflammable liquids for use in motor vehicles.

"Distributor" means a person who, for sale or use in this State, either produces, refines, compounds or manufactures motor fuel in this State, or transports motor fuel into this State or receives motor fuel transported to him from without the State. It does not, however, include a person who receives or transports into this State and sells or uses motor fuel under such circumstances as precludes the collection of the tax herein imposed, by reason of the provisions of the constitution and statutes of the United States. *However,* a person operating a motor vehicle into the State, may transport, in the ordinary fuel tank attached to the motor vehicle, not more than twenty gallons of motor fuel, for the operation of the motor vehicle, without being considered a distributor.

"Motor Vehicles" means motor vehicles as defined by the "Motor Vehicle Law."

§ 2. A tax is hereby imposed on the privilege of operating motor vehicles upon the public highways of this State after July 31, 1929, at the rate of three cents per gallon of all motor fuel used in such motor vehicles upon such public highways.

§ 3. After July 31, 1929, no person shall act as a distributor of motor fuels within this State, without first securing a license to act as a distributor of motor fuels, from the Department of Finance. Application for such license shall be made to the Department of Finance upon blanks furnished by it. The application shall be under oath, and shall contain such information as the department deems necessary. Upon receipt of the application in proper form, the department shall issue to the applicant, a license to act as a distributor.

§ 4. Every person acting as a distributor of motor fuel, on the first day of August, 1929, shall make an inventory as of that date, of all motor fuel possessed by such person in the State of Illinois, and within twenty days thereafter, shall make return thereof, under oath, to the Department of Finance, upon forms prescribed and furnished by the department.

§ 5. Every person acting as a distributor of motor fuel at any time after July 31, 1929, shall, between the first and twentieth days of each calendar month, (after the month of August, 1929) make return, under oath, to the Department of Finance, showing the amount of motor fuel purchased, produced, refined, compounded, manufactured, received, sold, distributed, and/or used by him during the preceding calendar month, the amount lost or destroyed, and the amount on hand at the close of business for such month. The monthly returns shall be made on forms prepared and furnished by the department, and shall contain such other information as the department may reasonably require.

§ 6. Each distributor who sells any motor fuel for any purpose after July 31, 1929, shall collect from the purchaser at the time of such sale, three cents per gallon on all motor fuel sold, and at the time of making the monthly return, the distributor shall pay to the Department of Finance, the amount so collected, "(less the deduction hereinafter provided)" and shall also pay to the department three cents per gallon on all motor fuel used by him during the period covered by the return.

Each distributor shall determine the actual cost of making the collection and payment above provided on sales of motor fuel, subject to the approval of the Department of Finance, and such actual cost not to exceed 2 per cent of the amount so collected, shall be deducted from the amount to be paid by the distributor to the department. In each subsequent sale of motor fuel on which the three cents per gallon has been collected as herein provided, the amount so collected shall be added to the selling price, so that said amount is paid ultimately by the user of said motor fuel. *However,* no collection or payment shall be made in the case of the sale or use of any motor fuel which may not, under the constitution and statutes of the United States, be made the subject of taxation by this State.

§ 7. Any person not a distributor who, on August 1, 1929, has in his possession any motor fuel other than that contained in the ordinary fuel tank attached to a motor vehicle, on account of which no collection or payment has been made, shall within ten days thereafter make a return to the Department of Finance showing the amount of motor fuel so held, and shall thereafter make returns, collections and payments on such motor fuel in the same manner as is provided for distributors.

§ 8. All money received by the department under this Act, shall be deposited in a special fund in the State treasury, to be known as the "Motor Fuel Tax Fund" and shall be used as follows:

As moneys are deposited in the Motor Fuel Tax Fund, a sufficient amount shall be reserved to pay the cost of administering this Act and to pay the refunds provided for in section 13, and of the balance two-thirds shall be apportioned to the Department of Public Works and Buildings and one-third to the several counties of the State.

The department's apportionment shall be used in accordance with the provisions of section 11 and may be expended from time to time as moneys are received and apportioned.

As soon as may be after the close of the calendar year 1929 and each succeeding year, the Department of Finance shall allot to each county its share of the amount apportioned to the several counties of the State as herein provided. The allotment to the several counties in each year shall be in proportion to the amount of motor vehicle license fees received from the residents of such counties, respectively, during the preceding calendar year.

§ 9. Money allotted to the several counties shall be used only for one or more of the following purposes as the several counties may desire:

1. In case a county now or hereafter has outstanding county bonds issued or obligations incurred for the purpose of constructing State aid roads, such construction having been or to be in accordance with section 15d of Article IV of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, as amended, such money or any part thereof may, by resolution of the county board, be used for the purpose of retiring such bonds and paying such obligations.

2. Any county may also use any money apportioned to it, in the construction of roads within the county theretofore designated as State-

aid roads, in the manner following: The county board shall, by resolution, specify the particular section of road to be constructed, the type of construction, and the amount to be used for such construction. This resolution shall be submitted to the Department of Public Works and Buildings for its approval. When the resolution has been approved by the department, the county shall cause surveys, plans, specifications and estimates of such construction to be made and submitted to the department for approval.

The county may advertise for bids and let contracts for such construction, to the lowest responsible bidder; or with the approval of the department, do the work itself through its officers, agents and employes. No contract shall be let without the approval of the department, nor shall bids be advertised until the surveys, plans, specifications and estimates have been approved by the department. The department shall have general supervision of such construction whether done by the county or by contract.

So far as practicable, priority in the matter of construction with these funds in any county shall be given State-aid roads which will join municipalities and communities not upon any of the State bond issue routes, Nos. 1 to 185 inclusive, with said routes.

Upon completion of the construction, if it is found by the Department of Public Works and Buildings, that such construction has been in accordance with the specifications, plans, surveys, and contracts (if the construction was by contract) the department shall so certify, and thereafter such improvement shall be maintained as follows:

If the construction is of concrete, or brick, or asphalt on a concrete base, such improvement shall be maintained by the State; all improvements of other types shall be maintained by the county, *provided* that nothing in this section shall conflict with any statute now in force pertaining to State aid roads.

If any county fails to maintain roads or bridges so constructed in a manner satisfactory to the department, no further allotments shall be paid to such county until it so maintains such roads and bridges or provides for such maintenance.

3. Any county may also by resolution of the county board and with the approval of the Department of Public Works and Buildings use money allotted to it for the purpose of maintaining roads and bridges constructed in accordance with the provisions of subdivision 2 of this section.

§ 10. Payment of money to any county for the purpose stated in sub-section 1, section 9, shall be made by the Department of Finance as soon as may be after the allotment is made. For the purpose stated in sub-section 2, section 9, payment shall be made from time to time as contracts are entered into by the county. If the construction is not by contract, or if for the purpose stated in sub-section 3 of section 9, payments shall be made in accordance with the needs of the county in defraying the cost of such construction or maintenance.

§ 11. The amounts apportioned to the Department of Public Works and Buildings shall be used for:

The construction of those State bond-issue routes or parts of routes designated as Routes Nos. 1 to 185 inclusive, in an Act entitled, "An Act in relation to the construction by the State of Illinois of a State-wide system of durable hard-surfaced roads upon public highways of the State and the provision of means for the payment of the cost thereof by an issue of bonds of the State of Illinois," approved June 22, 1917, and an Act entitled, "An Act in relation to the construction by the State of Illinois, of durable hard-surfaced roads upon public highways of the State along designated routes, and the provision of means for the payment of the cost thereof by an issue of bonds of the State of Illinois," approved June 29, 1923, and/or

The building of grade separations at highway intersections and at intersections with railroads on said State bond-issue routes Nos. 1 to 185 inclusive, and, where necessary in the judgment of the Department of Public Works and Buildings to provide adequately for traffic needs, the widening, improving and reconstruction of said routes near large centers of population.

§ 12. It is the duty of every licensee under this Act to keep records and books showing all purchases, receipts, losses through any cause, sales, distribution and use of motor fuel, which records and books shall, at all times during business hours of the day, be subject to inspection by the Department of Finance, or its duly authorized agents and employes. The department may, in its discretion, prescribe reasonable and uniform methods for keeping of records and books by licensees.

§ 13. Any person who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under this Act) for any purpose other than operating a motor vehicle upon the public highways of this State, shall be reimbursed and repaid the amount so paid.

Claims for such reimbursement shall be made to the Department of Finance, duly verified by the affidavit of the claimant, or one of the principal officers if the claimant is a corporation, upon forms prescribed by the department. The claims shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the department may deem necessary, and the time when, and the circumstances of its loss or the specific purpose for which it was used (as the case may be). Claims for reimbursement must be filed not later than six months after the date on which the motor fuel was lost or used by the claimant.

The department may make such investigation of the correctness of the facts stated in such claims as it deems necessary. When the department has approved such claims, it shall pay to the claimant the reimbursement herein provided, out of any moneys appropriated to it for that purpose.

§ 14. The Department of Finance is authorized to make such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act, as may be deemed expedient.

§ 15. Whoever

1. Acts as a distributor of motor fuel after July 31, 1929, without having a license so to do; or

2. Being a distributor on the first day of August, 1929, wilfully fails or refuses to make the inventory and return in accordance with section 4; or

3. Wilfully fails or refuses to make the monthly return, as provided in section 5; or

4. Wilfully fails or refuses to make payment to the Department of Finance as provided either in section 6 or section 7; or

5. Refuses, upon demand, to submit for inspection, books and records, in violation of section 12 of this Act; or

6. Violates any reasonable rule or regulation adopted by the Department of Finance for the enforcement of the provisions of this Act;

Is guilty of a misdemeanor, and shall be fined not less than twenty-five ($25.00) dollars, nor more than five hundred ($500.00) dollars, or be imprisoned in the county jail not longer than six months, or be both fined and imprisoned.

In addition, if the violation consists in the failure to make payment as required in either sections 6 or 7, he shall be liable civilly for the amount so due, together with all costs.

Whoever wilfully and knowingly makes any false return or report, under oath, to the Department of Finance, as to any material fact required by section 4, 5, 7 or 13, or by the regulations of the Department of Finance, is guilty of perjury and shall be punished accordingly.

§ 16. The Department of Finance may, after five days notice, revoke the license of any distributor, for any one or more of the offenses specified in section 15, and upon application to any court of equity, may, by injunction, restrain any person who wilfully fails or refuses to comply with the provisions of this Act, from acting as a distributor of motor fuels in this State.

§ 17. It is the purpose of this Act to impose a tax upon the privilege of operating each motor vehicle upon the public highways of this State, such tax to be based upon the consumption of motor fuel in such motor vehicle, so far as the same may be done, under the constitution and statutes of the United States, and the constitution of the State of Illinois. If any of the provisions of this Act include transactions which are not taxable, or are in any other respect unconstitutional, it is the intent of the General Assembly that so far as possible, the remaining provisions of the Act be given effect.

§ 18. The following sums or so much thereof as may be necessary are appropriated from the motor fuel tax fund in the State treasury for the purposes stated:

To the Department of Finance,

For the expenses of administering this Act.....$ 150,000

For the reimbursing and repaying persons, in accordance with section 13 of this Act.....$ 380,000

For apportioning, alloting and paying to the several counties in accordance with sections 8, 9 and 10 of this Act...$16,585,000

To the Department of Public Works and Buildings,

For constructing State bond issue routes Nos. 1 to 185 inclusive, as provided in section 11, sub-section 1, of this Act $23,670,000

For building grade separations at highway intersections and at intersections with railroads on State bond issue routes Nos. 1 to 185 inclusive, as provided in section 11, sub-section 2, of this Act.....$ 2,000,000

For widening, improving, and reconstructing State bond issue routes Nos. 1 to 185 inclusive, near large centers of population as provided in section 11, sub-section 2 of this Act .....$ 7,500,000

§ 19. The appropriations herein made are subject to the provisions of "An Act in relation to State finance," approved June 10, 1919, as amended.

§ 20. This Act may be cited as the "Motor Fuel Tax Law."

APPROVED March 25, 1929.

RE-ASSESSMENTS—EQUALIZATION.

§ 1. Amends sections 12, 14 and 18, Act of 1919.
§ 12. Re-assessments.
§ 14. Manner of procedure.
§ 18. Commission to act as equalizing authority.
§ 2. How Act applies.
§ 3. Emergency.

(HOUSE BILL NO. 58. APPROVED MARCH 25, 1929.)

AN ACT *to amend sections 12, 14 and 18 of "An Act in relation to the assessment of property for taxation," approved June 19, 1919, as amended.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. That sections 12, 14 and 18 of "An Act in relation to the assessment of property for taxation," approved June 19, 1919, as amended, are hereby amended to read as follows:

§ 12. Wherever it shall appear to the tax commission that the real or personal property in any county, or in any assessment district thereof, has not been assessed in substantial compliance with law, or has been unequally or improperly assessed, the tax commission may, in its discretion, in any year, whether after or before the original assessment is completed by the local assessment officers, order a reassessment for such year of all or any class of the taxable property in such county, or assessment district thereof; and such reassessment shall be substituted for the original assessment. The tax commission may order such reassessment made by the local assessment officers. The order directing such reassessment shall be filed in the office of the county treasurer of the county in which such reassessment has been ordered, except in counties having an elective board of review in which case such order shall be filed with the board of review. If any general or quadrennial assessment of real property shall not be published in any year for which such assessment was made, or if such publication was not made in time to permit the examination thereof by the tax commission in such year, then the tax commission may in any of the three years intervening between the years for which general quadrennial assessments

SUBPART B: MOTOR FUEL TAX

Section 500.200 Basis and Rate of the Motor Fuel Tax

a) *The Motor Fuel Tax is imposed "on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State".*

1) *Motor fuel used in such motor vehicles upon public highways and in such recreational watercraft on such waters is taxed according to the following rate schedule:*

Tax Period	*Rate*
Until August 1, 1983	*7 1/2¢ per gallon*
From August 1, 1983 through June 30, 1984	*11¢ per gallon*
From July 1, 1984 through June 30, 1985	*12¢ per gallon*
From July 1, 1985 through July 31, 1989	*13¢ per gallon*
From August 1, 1989 through December 31, 1989	*16¢ per gallon*
From January 1, 1990, and thereafter	*19¢ per gallon*

2) *The tax on the privilege of operating motor vehicles which use diesel fuel shall be the rate according to subsection (a) plus an additional 2-1/2 cents per gallon. This rate is as follows:*

Tax Period	*Rate*
Until August 1, 1983	*7 1/2¢ per gallon*
From August 1, 1983 through June 30, 1984	*13 1/2¢ per gallon*
From July 1, 1984 through June 30, 1985	*14 1/2¢ per gallon*
From July 1, 1985 through July 31, 1989	*15 1/2¢ per gallon*
From August 1, 1989 through December 31, 1989	*18 1/2¢ per gallon*
From January 1, 1990 and thereafter	*21 1/2¢ per gallon*

b) *The Motor Fuel Use Tax is imposed "upon the use of motor fuel upon highways (including toll ways of this State) by commercial motor vehicles". The tax on such motor fuel shall be comprised of two parts:*

1) *A tax at the rate established in subsections (a)(1) and (a)(2) above; and*

2) *A rate "established by the Department".* (Motor Fuel Tax Law [35 ILCS 505]).

(Source: Amended at 19 Ill. Reg. 3008, effective February 28, 1995)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

Section 500.335 Quarterly Payment and Reporting

a) Every person holding a valid unrevoked motor fuel use tax license issued by the Department under the provisions of the IFTA shall file a quarterly motor fuel use tax return, along with full payment of taxes, with the Department. Returns are due, even if no operations were conducted during the reporting period. The due date for the return and full payment of taxes is the last day of the month immediately following the close of the quarter for which the return is being filed. Returns and full payment of taxes are due on or before the following dates:

Reporting Quarter	Due Date
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

If the due date is a Saturday, Sunday, or legal holiday, the next business day is considered the due date. Each motor fuel use tax return should be mailed in a separate envelope. On and after January 1, 2013, returns and payment of tax, including amended returns, must be made electronically. Electronic returns shall be made in accordance with 86 Ill. Adm. Code 760. Electronic payments shall be made by ACH debit in accordance with 86 Ill. Adm. Code 750.

b) The taxable event is the consumption of motor fuel, as defined in Section 500.100 of this Part, used to operate commercial motor vehicles. For tax payment and reporting purposes, all motor fuels placed in supply tanks of commercial motor vehicles, and all miles travelled, are taxable. Carriers must utilize the procedures in Section 500.235 for refunds for off-road or non-highway use.

c) For IFTA licensees: The IFTA provides that member jurisdictions may determine what type of motor fuels and miles travelled are exempt from tax, and are therefore not reportable. Carriers should contact member jurisdictions to determine what types of fuel and miles travelled are exempt from taxation. For IFTA carriers, claims for refunds for fuel used for any purpose other than propelling a commercial motor vehicle upon public highways must be made directly to the respective jurisdiction.

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d) The quarterly return shall include a statement of the total number of miles travelled, as well as total miles travelled in each jurisdiction and in Illinois during the previous calendar quarter; the total number of gallons and type of reportable motor fuel consumed on the highways of all jurisdictions, as well as in each jurisdiction and in Illinois, and the total number of gallons and types of tax paid fuel purchased within each jurisdiction during the previous calendar quarter; and the total (net) of tax due the base jurisdiction on behalf of all jurisdictions. Licensees shall report all required information, and may not include miles operated and gallons of fuel purchased that were unavailable during any prior quarters. If a licensee does not include all required information, and that information is subsequently available, he or she must file an amended return, which will include penalty and interest.

e) Fuel and distance must be reported in gallons and miles. The conversion rates are:

One liter	=	0.2642 gallons
One gallon	=	3.785 liters
One mile	=	1.6093 kilometers
One kilometer	=	0.62137 mile

f) For carriers registered under the IFTA that consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons using the conversion factor used by the jurisdiction in which the fuel was consumed. See Section 500.200(c) for the conversion factor used for compressed natural gas. ~~The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon.~~

g) In order for a licensee to obtain credit for tax-paid retail purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the licensee showing evidence of the purchases and tax having been paid by the licensee directly to the applicable jurisdiction or at the pump. The receipt must contain the following information:

1) date of purchase;

2) seller's name and address;

3) number of gallons purchased;

4) fuel type;

5) price per gallon or total amount of sale;

6) unit numbers; and

7) purchaser's name (in the case of a lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party).

h) In the case of withdrawals from licensee-owned, tax-paid bulk storage, credit may be obtained only if the following records are maintained:

1) date of withdrawal;

2) number of gallons;

3) fuel type;

4) unit number (upon application by a licensee, the Department may waive the requirement of unit numbers for fuel withdrawn from the licensee's own bulk storage and placed in its commercial motor vehicles. The licensee must show that adequate records are maintained to distinguish fuel placed in commercial vs. non-commercial motor vehicles for all member jurisdictions); and

5) purchase and inventory records to substantiate that tax was paid on all bulk purchases.

i) Carriers registered under the IFTA must pay all taxes due to all member jurisdictions with one check, to be made payable to the Department. Payment by certified check is required of licensees who are required to post a bond. On and after January 1, 2013, payment shall be made electronically by ACH debit in accordance with 86 Ill. Adm. Code 750.

j) Through December 31, 2012, returns shall be filed on forms provided by the Department. However, with written approval from the Department, a licensee may submit a computer-generated tax return instead of the Department-supplied return. Computer-generated tax returns will be approved only if they contain all

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the same information, are in the same format and are on the same size paper, as the Department's return. On and after January 1, 2013, returns shall be filed electronically in accordance with 86 Ill. Adm. Code 760.

k) If a licensee uses a reporting service for his or her motor fuel use taxes, the licensee must maintain a power of attorney in its books and records. Use of a power of attorney does not relieve the licensee of the legal obligations associated with the license. The licensee is responsible for the payment of taxes as well as all acts and omissions of the reporting service. Decal and renewal applications will always be mailed directly to the licensee.

l) Reports not filed or full payment of taxes not made by the due date shall be considered late and any taxes due considered delinquent. The licensee shall be assessed a penalty of $50 or 10 percent of the delinquent taxes, whichever is greater, for failure to file a report, for filing a late report, or for underpayment of taxes due. Tax shall bear interest at the rate of 1 percent per month or fraction of month until paid. For reasonable cause shown, the Department may waive a penalty. For IFTA licensees, the Department may waive interest for another jurisdiction only with that jurisdiction's approval.

(Source: Amended at 38 Ill. Reg. 18586, effective August 21, 2014)

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 500 MOTOR FUEL TAX
SECTION 500.200 BASIS AND RATE OF THE MOTOR FUEL TAX

Section 500.200 Basis and Rate of the Motor Fuel Tax

a) *The Motor Fuel Tax is imposed "on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State".*

1) *Motor fuel used in such motor vehicles upon public highways and in such recreational watercraft on such waters is taxed according to the following rate schedule:*

Tax Period	*Rate*
Until August 1, 1983	*7½¢ per gallon*
From August 1, 1983 through June 30, 1984	*11¢ per gallon*
From July 1, 1984 through June 30, 1985	*12¢ per gallon*
From July 1, 1985 through June 30, 1989	*13¢ per gallon*
From August 1, 1989 through December 31, 1989	*16¢ per gallon*
From January 1, 1990 and thereafter	*19¢ per gallon*

2) *The tax on the privilege of operating motor vehicles which use diesel fuel shall be the rate according to subsection (a) plus an additional 2½ cents per gallon. This rate is as follows:*

Tax Period	*Rate*
Until August 1, 1983	*7½¢ per gallon*
From August 1, 1983 through June 30, 1984	*13½¢ per gallon*
From July 1, 1984 through June 30, 1985	*14½¢ per gallon*
From July 1, 1985 through July 31, 1989	*15½¢ per gallon*
From August 1, 1989 through December 31,1989	*18½¢ per gallon*
From January 1, 1990 and thereafter	*21½¢ per gallon*

b) *The Motor Fuel Use Tax is imposed "upon the use of motor fuel upon highways (including toll ways of this State) by commercial motor vehicles". The tax on such motor fuel shall be comprised of two parts:*

1) *A tax at the rate established in subsections (a)(1) and (a)(2); and*

2) *A rate established by the Department as of January 1 of each year using the average "selling price", as defined in the Retailers' Occupation Tax Act, per gallon of motor fuel sold in this State during the previous 12 months and multiplying it by 6.25% to determine the cents per gallon rate.* (Section 13a (2) of the Law). The Department may use data derived from independent surveys conducted or accumulated by third parties to determine the average selling price per gallon of motor fuel. Third parties include, but are not limited to, commercial entities that collect data (available by contract or at no cost) regarding the selling price of motor fuel sold in this State on a per gallon basis.

c) Compressed natural gas is subject to tax at the rate established in subsection (a)(1). However, because compressed natural gas cannot be measured in gallons, it must be converted to gallons using a conversion factor. For purposes of calculating tax under the Motor Fuel Tax Law, a gallon of compressed natural gas means a quantity of compressed natural gas equal to 126.67 cubic feet of natural gas at 60 degrees Fahrenheit and one atmosphere of pressure. In the alternative, it means a quantity of compressed natural gas that weighs 5.66 pounds.

(Source: Amended at 38 Ill. Reg. 18586, effective August 21, 2014)

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 130 RETAILERS' OCCUPATION TAX
SECTION 130.101 CHARACTER AND RATE OF TAX

Section 130.101 Character and Rate of Tax

The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed* (Section 2 of the Act). *"Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act* [35 ILCS 630]. *"Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.* (Section 2-27 of the Act) The tax is measured by the seller's gross receipts from such sales made in the course of such business. (For further information concerning "Gross Receipts", see Subpart D of this Part.)

a) How to Determine Effective Rate

1) For the purposes of the Retailers' Occupation Tax Act, any tax liability incurred in respect to a sale of tangible personal property made in the regular course of business shall be computed by applying, to the gross receipts from such sale, the tax rate in effect as of the date of delivery of such property, provided that if delivery occurs after the tax rate changes, in a transaction in which receipts were received before the date of the rate change and tax was paid on such receipts when received by the seller in accordance with Section 130.430 of this Part at the rate which was in effect when the seller received such receipts, no additional tax will be due or credit allowed because of the delivery of the property occurring after the rate changes.

2) Furthermore, in the case of sales of building materials to real estate

improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, identifying the construction contract in question by its date and by naming the contractor's construction work involved, and by giving the location on the job site where the construction contract is being performed or is to be performed.

b) Tax Rate in Effect

1) The effective rate from January 1, 1985, through December 31, 1989, is 5%. On and after January 1, 1990, the effective rate is 6.25%. *Beginning on July 1, 2000 through December 31, 2000, with respect to motor fuel and gasohol, the tax is imposed at the rate of 1.25%.* (Section 2-10 of the Act)

2) Definitions

A) *"Diesel Fuel" is defined as any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.* [35 ILCS 505/2]

B) *"Gasohol" means motor fuel that is a blend of denatured ethanol and gasoline that contains no more than 1.25% water by weight. The blend must contain 90% gasoline and 10% denatured ethanol. A maximum of one percent error factor in the amount of denatured ethanol used in the blend is allowable to compensate for blending equipment variations.* [35 ILCS 105/3-40]

C) *"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel".* [35 ILCS 505/1.1]

i) By way of illustration and not limitation, the following are considered motor fuel:

- Gasoline
- Diesel fuel

- Combustible gases (e.g., liquified petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
- Gasohol.

ii) By way of illustration and not limitation, the following are not considered motor fuel:

- Avgas
- Jet fuel
- 1-K kerosene
- Combustible gases unless delivered directly into the fuel supply tanks of motor vehicles
- Heating oil (e.g., kerosene and fuel oil) unless delivered directly into the fuel supply tanks of motor vehicles, in which case it is considered diesel fuel.

D) *"Special Fuel" means all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A) of the Motor Fuel Tax Law or combustible gases as defined in Section 5, example (B) of the Motor Fuel Tax Law. "Special Fuel" includes diesel fuel.* [35 ILCS 505/1.13]

c) Effective Date of New Taxes
When something that has been exempted becomes taxable as to sales that are made on and after some particular date, the date of sale for this purpose shall be deemed to be the date of the delivery of the property. This is true even if such delivery is made under a contract that was entered into before the effective date of the new tax.

d) Relation of Retailers' Occupation Tax to Use Tax
The Retailers' Occupation Tax is an occupation tax whose legal incidence is on the seller, rather than on the purchaser. However, with the enactment of the Use Tax Act in 1955 [35 ILCS 105], the retailer became a tax collector under that Act and is required to comply with the bracket systems or tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users.

(Source: Amended at 29 Ill. Reg. 7004, effective April 26, 2005)

ST 83-0718 08/31/1983 MOTOR FUEL TAX

Compressed natural gas used to propel vehicles is subject to tax.

August 31, 1983

Dear Xxxxx:

You have requested an opinion with respect to the use of compressed natural gas by ABC and the tax implications under the Motor Fuel Tax Law, The Gas Revenue Tax Act, Retailers' Occupation Tax Act and the Use Tax Act.

You state that ABC has equipped certain of its motor vehicles for the use of both gasoline and compressed natural gas (CNG) as a fuel. ABC has been advised by the Department that it should file its return for motor fuel tax as a non-distributor.

ABC furnishes natural gas to several entities which are using CNG as a motor fuel in certain of their motor vehicles. Such entities include two school districts, four municipalities and six private businesses. ABC compresses the CNG which it uses in its own vehicles. However, ABC does not furnish CNG to any person, including those entities described above, which use CNG in their motor vehicles. Such entities undertake compression of the natural gas in the loading of such CNG into their motor homes.

ABC has no distribution facilities specifically for natural gas which will be used for CNG and which are separate from its facilities for furnishing natural gas to the public in general. ABC has not installed any additional equipment for distribution of natural gas which may be used as CNG. ABC has no vendor station at which it offers to sell CNG to the public. ABC does not presently supply natural gas to any person engaged in the trade or business of selling CNG to the public for use as motor fuel. It is ABC's contention that, in the future, all natural gas sold to be used as CNG will be metered separately. A separate rate has been established by the Illinois Commerce Commission applicable to any customer for the conversion of natural gas to compressed natural gas for use in vehicles on the public roads. ABC is currently putting customers who purchase natural gas for CNG purposes on this rate.

ABC requests the following rulings with respect to its us of CNG in its motor vehicles and with respect to its sales of natural gas who compress such gas for use in motor vehicles under the Motor Fuel Tax Law, The Gas Revenue Tax Act, the Use Tax Act and the Retailers' Occupation Tax Act:

(1) ABC, as a result of its preparation and use of CNG in its motor vehicles, is subject to the return requirements of a nondistributor and must pay Motor Fuel Tax on such use.

Yes, this is correct.

(2) ABC must include gross receipts from the sale of natural gas which may be used by the customer as CNG in its gross receipts for purposes of the Gas Revenue Tax.

Yes, this is correct.

(3) ABC is not required to pay or collect Motor Fuel Tax with respect to the furnishing of natural gas to customers who subsequently use such natural gas as CNG in motor vehicles.

Since ABC is not a distributor of motor fuel, ABC would not be required to pay or collect Motor Fuel Tax with respect to the furnishing of natural gas to its customers.

(4) The entities who compress the natural gas into a motor fuel would be required to pay the motor fuel tax. If the sale by ABC to such customers for the purposes of compressing natural gas for motor fuel is separately metered by ABC, then at the election of ABC and such customer, ABC may collect and remit such motor fuel taxes to the Illinois Department of Revenue. Such collection and remittance by ABC would be solely for the convenience of ABC customers, and since ABC is not required to make such collections (see (3) above), such utility would not expose ABC to any liability to the State of Illinois.

While we agree that the entities who compress natural gas into motor fuel and use it to propel vehicles would be required to pay Motor Fuel Tax and while the Department will not object to collection of Motor Fuel Tax by ABC from such customers, in order that it may be remitted to the Department of Revenue, any such collection would expose ABC to liability for the amount of tax so collected. Thus, while the collection of the tax is not required of ABC and while it may be permitted by the Department if ABC elects to so collect tax from its customers, it will be liable for the amount collected from its customers as a tax.

(5) The use tax and retailers' occupation tax are not applicable to sales of natural gas for use as CNG and the use of CNG by customers, nor to the use of CNG by ABC.

Yes, we agree that these taxes are not applicable to the sale and use of CNG by customers of ABC since ABC would be remitting Gas Revenue Tax on the sale of the service of providing such gas.

Very truly yours,

J. THOMAS JOHNSON
Director of Revenue
By:
Stanley T. Cichowski
Staff Attorney
Legal Services Bureau
Springfield Office
Phone: (217) 782-7054

STC:msk

Illinois Department of Revenue
1500 South Ninth Street
Springfield, Illinois 62708

INFORMATIONAL BULLETIN FY84-26

TO: Distributors, Suppliers and Resellers of Motor Fuel

SUBJECT: Prepaid Sales Tax on Motor Fuel
Public Act 83-1080 (HB 1133)

IN GENERAL:

Effective March 1, 1984, Public Act 83-1080 (HB 1133) requires motor fuel retailers to prepay three cents per gallon to their distributor, supplier, or other reseller of motor fuel, except gasohol/dieselhol. This amount is a portion of the sales tax due on the eventual retail sale of fuels, except gasohol/dieselhol. These retailers are then entitled to take credit on their monthly sales tax returns (Form RR-1-A) for the amount of the prepaid sales tax. Motor fuel resellers are not required to collect and remit prepaid sales tax on motor fuel delivered to their company-owned retail outlets. Such resellers will continue to remit sales tax due on receipts from retail outlets on their RR-1-A sales tax return. However, these sales must be accounted for on Line 1 of the prepaid sales tax return (PST-1) even though they are not taxable.

All registered distributors, suppliers and other resellers of motor fuel must each month remit to the Department of Revenue the prepaid sales tax collected from motor fuel retailers and provide each prepaying retailer with a statement confirming the amount of sales tax prepaid.

Motor Fuel purchases by distributors, suppliers and other resellers of motor fuel registered with the Department as collectors of prepaid sales tax are exempt from payment of prepaid sales tax imposed by P.A. 83-1080 (HB 1133). If the purchasing distributor, supplier, or other reseller is NOT registered as a collector of prepaid sales tax, prepaid sales tax is due on such purchases if the purchaser is a retailer; or, if the purchaser is not a retailer, the full amount of sales tax is due.

DEFINITIONS:

Under this Public Act, a RESELLER OF MOTOR FUEL is defined as any person engaged in the business of selling or delivering or transferring title of motor fuel to another person other than for use or consumption.

MOTOR FUEL is defined as all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for operating motor vehicles. Motor fuel includes fuel such as, but not limited to gasoline, diesel fuel*, kerosene, liquified

petroleum gas (LPG), liquified natural gas (LNG), or compressed natural gas (CNG). Aviation gasoline is exempt from the definition of motor fuel (see Chapter 120, paragraph 418). Accordingly, you are not required to provide the Department with an accounting of aviation gasoline sales on the PST-1 tax return. Retailers must continue to remit sales tax on their aviation gasoline receipts on their RR-1-A tax return.

REGISTRATION REQUIREMENTS:

All taxpayers that come under the provisions of this amendment must be registered with the Department.

If you are already registered under the Retailers' Occupation Tax Act, it will not be necessary for you to obtain a separate registration for the reporting and payment of prepaid sales tax on motor fuel. However, in order that the Department may properly identify you with respect to prepaid sales tax liability, it will be necessary that you complete the enclosed supplemental application (Form NUC-1 B) and return it on or before March 5, 1984.

*Diesel fuel is defined as any petroleum product intended for use or offered for sale as fuel for engines in which fuel is injected into the combustion chamber and ignited by pressure without electric spark.

The supplemental registration (Form NUC-1 B) must also be completed and returned by March 5, 1984, by those taxpayers who are not currently registered as a retailer or a reseller. The Department will then subsequently contact you regarding further registration requirements.

REPORTING REQUIREMENTS:

STATEMENT OF TAX PAID
You must deliver monthly to each purchaser from whom you collected prepaid sales tax, a statement of tax paid to you by the purchaser. The statement is due to the purchaser no later than the 20th day of the month following the month during which the transaction occurred. (You must also attach to your monthly prepaid sales tax return a copy of all statements of tax paid which you issued for that month. See Prepaid Sales Tax Return below.)

Any Statement of Tax Paid that is illegible or has been altered will not be accepted by the Department of Revenue. If a Statement of Tax Paid (PST-2) is lost or destroyed prior to reporting to the Department of Revenue, you must initiate a substitute copy clearly marked "RE-ISSUED BY PREPAID SALES TAX COLLECTOR". If you have already submitted the original issue with your PST-1, send the duplicate of the re-issue to the Department with an explanatory note under separate cover. DO NOT SEND IT WITH A RETURN. If, after the original PST-2 has been given to a retailer, an error is discovered, you must issued a corrected statement clearly marked "CORRECTED BY PREPAID SALES TAX COLLECTOR". Distribute the appropriate copies to the retailer and send the duplicate to the

Department of Revenue with an explanatory note.

You may use our Form PST-2, Statement of Tax Paid (sample enclosed) or you may create your own form. Please remember that any form you create

must include the same information and use the same format as ours. Requests for Department forms should be made to the Illinois Department of Revenue, P.O. Box 3545, Springfield, Illinois 62708.

PREPAID SALES TAX RETURN

You must file your Prepaid Sales Tax Return (Form PST-1) and remit all tax you collected no later than the end of the month following the month during which your transactions occurred. Prepaid Sales Tax Returns are to be mailed to P.O. Box 4059, Springfield, Illinois 62708.

For your review, we have enclosed a copy of the return. We will regularly (monthly or quarterly) send you returns preprinted with your name, address, and registration number. When you file your monthly return, please remember to attach your remittance and copies of all Statements of Tax Paid which you sent to your purchasers for that month.

Please note that the vendor's discount, (found in Section 3 of the Retailers' Occupation Tax Act) available to filers of "regular" sales tax returns (Form RR-1-A) does not apply to prepaid sales tax reported on PST-1 tax returns. Other provisions of the sales tax act, such as those regarding penalty, interest, and taxpayer rights of appeal (found in Sections 4 through 13« of the Retailers' Occupation Tax Act), do apply.

Should you have any further questions, you may call us at (217) 782-7897 or, in Cook County, at (312) 641-2150.

J. Thomas Johnson
Director of Revenue

Issued: February, 1984

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Illinois Department of Revenue
1500 South Ninth Street
Springfield, Illinois 62708

Informational Bulletin FY 84-27

TO: All Illinois Sales Tax Return Filers
SUBJECT: Prepaid Sales Tax on Motor Fuel
Public Act 83-1080 (HB-1133)

The purpose of this bulletin is:

1. to advise all retailers of motor fuel of the provisions of Public Act 83-1080 (HB-1133): and

2. to advise all retailers of the required changes to the sales tax return (Form RR-1-A) resulting from this legislation.

Retailers will use the revised returns beginning with their March, 1984 liability, payable April 30, 1984.

Prepayment of Sales Tax

Effective March 1, 1984. Public Act 83-1080 (HB-1133) requires motor fuel retailers to prepay to their distributor, supplier, or other reseller of motor fuel, three cents per gallon of the state sales tax due on the eventual retail sale of the fuel, except gasohol/dieselhol. Retailers are then entitled to take credit on their monthly sales tax returns (Form RR-1-A) for the prepaid state sales tax.

Distributors, suppliers, or other resellers of motor fuel are required to remit to the Department of Revenue the prepaid state sales tax collected from such retailers.

A statement (Form PST-2) of tax paid on purchases of motor fuel will be provided to you by every distributor, supplier, or other reseller not later than the 20th day of the month following the month during which a transaction occurred.

Motor fuel is defined as all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for operating motor vehicles. Motor fuel includes fuel such as, but not limited to gasoline, diesel fuel*, kerosene, liquified petroleum gas (LPG), liquified natural gas (LNG), or compressed natural gas (CNG). Aviation gasoline is exempt from the definition of motor fuel (see Chapter 120, paragraph 418). Retailers must continue to remit sales tax on their aviation gasoline receipts on their RR-1-A tax return.

Retailers of Motor Fuel

On your monthly sales tax form (RR-1-A) you may deduct, on line B-2, prepaid state sales tax on motor fuel from only your retailers' occupation tax, use tax, service occupation tax, and service use tax liabilities, which is the total of all state taxes due on the return (line B-1).

You must support any deduction on line B-2 with a statement (Form PST-2) of tax paid, as provided to you by your distributor, supplier, or other reseller. Be sure to attach to your return the copy of Form PST-2 which has been designated for the Department of Revenue. We will not accept the copy designated for your records, nor will we accept any photocopies. Further, we will not accept copies of invoices, bills of sale, or any document other than Form PST-2. Any Statement of Tax Paid that is illegible or has been altered or modified will not be accepted as valid by the Department of Revenue. If a Statement of Tax Paid (PST-2) is lost or destroyed prior to reporting to the Department of Revenue, you must obtain a substitute from the reseller. This substitute should be clearly marked "REISSUE BY PREPAID SALES TAX COLLECTOR".

Failure to attach the appropriate copies of Form PST-2 will result in the disallowance of your "line B-2" credit. You will be assessed for the amount of any credit disallowed on line B-2 plus appropriate penalty and interest.

If your credit on line B-2 is larger than your entire state sales tax liability (on line B-1), enter -0- on line B-3, Net State Taxes Due. You may **not** use the remaining credit to offset any local or mass transit taxes reported on lines C, D, E, F, or G (i.e., municipal retailers' occupation tax, municipal service occupation tax, county retailers' occupation tax, county service occupation tax, and mass transit tax) on the RR-1-A tax return. Although your prepaid sales tax credit (PST-2) may exceed the total state taxes (line B-1) due, separate remittance for the amount of local and mass transit taxes must be submitted.

We will automatically issue you a credit memorandum for the amount of overpaid state tax if:

1. the amount you claim on line B-2 exceeds the total state taxes due (line B-1);
2. the Statements of Tax Paid (PST-2) support the amount claimed on Line B-2;
3. the RR-1-A tax return is signed at the time of filing;
4. the Statements of Tax Paid (PST-2) attached to your RR-1-A tax return are the appropriate ones designated for the Department of Revenue.

You may use your credit memorandum to pay any state sales tax due on a subsequent return.

NOTE: If the above conditions are not met, the issuance of your credit memorandum may be delayed.

We have enclosed a facsimile of the revised sales tax return.

All Other Retailers

If you are not a retailer of motor fuel (and the prepayment of state sales tax on motor fuel does not apply to you), please complete lines A through H on your RR-1-A, placing a -0- on line B-2.

For More Information

Should you have any further questions, you may call us at (217) 782-7897 or, in Cook County, at (312) 641-2150.

J. Thomas Johnson
Director

* Diesel fuel is defined as any petroleum product intended for use or offered for sale as fuel for engines in which fuel is injected into the combustion chamber and ignited by pressure without electric spark.

Issued: February, 1984

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Motor Fuel Tax Law

2) Code Citation: 86 Ill. Adm. Code 500

3) Section Numbers: Adopted Action:

500.100	New Section
500.101	Repealed
500.102	Repealed
500.200	Amended
500.201	New Section
500.202	Amended
500.203	Amended
500.204	Amended
500.205	Amended
500.210	New Section
500.215	New Section
500.220	Repealed
500.225	Repealed
500.230	Amended
500.235	Amended
500.250	Repealed
500.260	Amended
500.265	Amended
500.270	Amended
500.275	Amended
500.280	Amended
500.285	Amended
500.290	Repealed
500.295	Repealed
500.300	New Section
500.301	Repealed
500.302	Repealed
500.305	New Section
500.310	New Section
500.315	New Section
500.320	New Section
500.325	New Section
500.330	New Section
500.335	New Section
500.340	New Section
500.345	New Section
500.350	New Section
500.355	New Section
500.360	New Section
500.400	Amended
500.405	New Section
500.500	Amended

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

500.501	Repealed
500.505	Amended
500.600	Amended

4) Statutory Authority: Motor Fuel Tax Law, 35 ILCS 505/1 et seq.

5) Effective Date of Rulemaking: February 28, 1995

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: February 28, 1995

9) Notice of Proposal Published in Illinois Register:

9/30/94, 18 Ill. Reg. 14634

10) Has JCAR issued a Statement of Objections to these rules? No

11) Difference(s) between proposal and final version:

1. In Line 20, changed the word "by" to lower case.

2. Corrected the ILCS citations throughout text.

3. In Line 167, changed "adventure" to "venture".

4. In Line 188, the word "vehicle" was changed to lower case for consistency.

5. In Line 308, changed the colon to a semicolon.

6. In Line 329, "state" is lower case.

7. In Line 427, hypen removed for consistency within subsection.

8. In Line 525, added comma, omitted "and".

9. In Line 533, the word "invoice" was changed to "invoiced".

10. In Line 555, the word "invoice" was changed to "invoiced".

11. In Line 696, changed comma to semicolon for consistency.

12. In Lines 750 and 751, fixed punctuation.

13. In Line 778, fixed punctuation.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

14. In Line 913, capped the word "Section".

15. In Lines 916 and 952, capped the word "Section".

16. In Line 1125, changed the word "interstate" to lower case for consistency.

17. In Line 1572, first semicolon omitted.

18. In Line 1694, subsection punctuation was changed.

19. In Line 1785, added "(g)".

20. In Line 1848, changed the word "interstate" to lower case for consistency.

21. In Line 2053, the comma was changed to a semicolon.

22. In Line 2101, underlined the parens.

23. In Line 103, added "(Section 1.15 of the Act)" at the end.

24. In Line 110, added "(Section 1.6 of the Act)" at the end.

25. In Line 118, added "(Section 1.5 of the Act)" at the end.

26. In Line 129, added "(Section 1.16 of the Ac)" at the end.

27. In Line 133, added "(Section 2(b) of the Act)" at the end.

28. In Line 141, added "(Section 1.2 of the Act)" at the end.

29. In Line 143, added "(Section 1.19 of the Act)" at the end.

30. In Line 153, deleted the comma.

31. In Line 164, added "(Section 1.1 of the Act)" at the end.

32. In Line 177, added "(Section 1.11 of the Act)" at the end.

33. In Line 184, added "(Section 1.20 of the Act)" at the end.

34. In Lines 185-187, removed italics.

35. In Line 200, added "(Section 1.13 of the Act)" at the end.

36. In Line 205, added "(Section 1.14 of the Act)" at the end.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

37. In Line 308, struck the comma.

38. At the end of Line 329, added "(Sections 3, 3a, 3b and 3c of the Act)".

39. In Line 334, changed "~~Act~~" to "Act"; added "[20 ILCS 2505/39b47]" at the end of line.

40. In Line 471, deleted the second comma.

41. In Line 585, added a comma after "of".

42. In Line 751, changed "505" to "505/15.1".

43. In Line 777, changed "5 ILCS 100" to "735 ILCS 5/Art. III".

44. In Line 916, deleted "[35 ILCS 505]".

45. In Line 918, deleted the comma.

46. In Line 924, added a period after the word "~~Act~~".

47. In Line 925, deleted the period and replaced "505" with "505/15.1".

48. In Line 951, deleted the period.

49. In Line 1141, changed "intra-state" to "intrastate".

50. In Line 1144, added a comma after "Illinois".

51. In Line 1335, added a comma after "that".

52. In Line 1344, changed "~~Act~~" to "Act".

53. In Lines 1437, 1451 and 1459, changed "Agreement" to "Part".

54. In Line 1687, deleted "4)" and moved one indent level to the left.

55. In Lines 1868 and 1947, changed "of" to "after".

56. In Lines 1887 and 1894, replaced the parentheses with brackets.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Rulemaking:

This rulemaking is entered into for the primary purpose of implementing the provisions of the International Fuel Tax Agreement (IFTA). Illinois became a member of this Agreement in January, 1994. Membership in this Agreement is mandated by the Federal government under the provisions of the Surface Transportation Reauthorization Bill, signed into law December 18, 1991. IFTA affects the payment and reporting of motor fuel use taxes. It is designed to simplify fuel use tax reporting and payment by consolidating all reporting and payment obligations in a base state. Carriers subject to regulation in the base state make all reporting and payment to that state, which then distributes the taxes to other states. These changes implement the current provisions of the International Fuel Tax Agreement. New provisions include regulations pertaining to licensure, quarterly payment and reporting, credits and refunds, records requirements, revocation, protest procedures and audits under the Motor Fuel Use Tax programs administered by the Department. Changes have also been made in the rulemaking to reflect recent legislative changes to the Motor Fuel Tax Law (for example, several definitions in Subpart A were amended in response to Public Act 87-879 and 87-149; the provisions of the Uniform Penalty and Interest Act have affected several provisions of the Motor Fuel Tax Law; Public Act 87-879 changed the circumstances under which tax-free sales can be made by distributors and suppliers; the tax upon receivers imposed under Section 2a of the Motor Fuel Tax Law was extended until 1998 by Public Act 87-251; and Public Act 88-194 requires that certain licensees make returns accompanied by magnetic media suppport schedule data).

16) Information and questions regarding these adopted amendments shall be directed to:

Jerilynn Gorden
Associate Counsel
Illinois Department of Revenue
Office of General Counsel
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-7054

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 500
MOTOR FUEL TAX

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AUTHORITY: Implementing the Motor Fuel Tax Law [35 ILCS 505] and authorized by Section 39b2 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b2].

SOURCE: Adopted July 3, 1931; amended at 2 Ill. Reg. 1, p. 97, effective

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December 31, 1978; amended at 3 Ill. Reg. 13, p. 98, effective March 25, 1979; amended at 4 Ill. Reg. 28, p. 568, effective June 1, 1980; codified at 8 Ill. Reg. 8612; amended at 10 Ill. Reg. 4540, effective February 28, 1986; amended at 11 Ill. Reg. 10295, effective May 18, 1987; emergency amendments at 13 Ill. Reg. 13271, effective August 7, 1989, for a maximum of 150 days; emergency expired January 4, 1990; amended at 14 Ill. Reg. 6826, effective April 19, 1990; amended at 15 Ill. Reg. 6305, effective April 16, 1991; amended at 15 Ill. Reg. 13538, effective August 30, 1991; recodified at 18 Ill. Reg. 4451; amended at 19 Ill. Reg. 3003, effective FEB 28 1995.

SUBPART A: DEFINITIONS

Section 500.100 Definitions

For purposes of this Part, the following definitions apply:

"Base Jurisdiction" means the jurisdiction where commercial motor vehicles are based for vehicle registration purposes and

Where the operational control and operational records of the licensee's commercial motor vehicles are maintained or can be made available; and

Where some travel is accrued by commercial motor vehicles within the fleet.

"Bulk User" *means any person, other than a licensed distributor or licensed supplier, who owns, operates, or controls special fuel bulk storage facilities into which any special fuel is delivered by the seller without the motor fuel tax being paid, and owns, operates or controls licensed highway vehicles which are powered by special fuel.* (Section 1.15 of the Act)

"Blender" *means any person who engages in the practice of blending.* (Section 1.6 of the Act)

"Blending" *means the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or practicable for use as a motor fuel, except such blending as may occur in the process known as refining by the original refiner of crude petroleum, and except, also, the blending of products known as lubricating oil in the production of lubricating oils and greases.* (Section 1.5 of the Act)

"Commercial Motor Vehicle" means *a motor vehicle used, designed, or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle*

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weight exceeding 26,000 pounds or 11,793 kilograms, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds or 11,793 kilograms gross vehicle weight. This term does not include motor vehicles operated by the State of Illinois or the United States, recreational vehicles, school buses and commercial motor vehicles operated solely within Illinois for which all motor fuel is purchased within this State. (Section 1.16 of the Act)

"Diesel fuel" means *any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.* (Section 2(b) of the Act)

"Distributor" *means a person who either produces, refines, blends, compounds or manufactures motor fuel in this State, or transports motor fuel into this State or receives motor fuel transported to him from without the State, or who is engaged in this State in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active bulk storage capacity of not less than 30,000 gallons for gasoline as defined in Section 5(A) of the Law.* (Section 1.2 of the Act)

"Fuel" means *all liquids defined as "Motor Fuel" and aviation fuels and kerosene, but excluding liquified petroleum gases.* (Section 1.19 of the Act)

"International Fuel Tax Agreement" ("IFTA") means the multijurisdictional International Fuel Tax Agreement ratified by Congress, the provisions of which were imposed upon States pursuant to Public Law 102-240, which mandates that no State shall establish, maintain or enforce any law or regulation which has fuel use tax reporting requirements not in conformity with the International Fuel Tax Agreement.

"Jurisdiction" is a state of the United States, the District of Columbia, or a province or Territory of Canada.

"Law" means the Motor Fuel Tax Law [35 ILCS 505].

"Leasing" means the giving of possession and control of a vehicle for valuable consideration for a specified period of time.

"Loss" means, for purposes related to claims for refund, the reduction of motor fuel resulting from spillage, spoilage, leakage, theft, destruction by fire or any other provable cause, but does not include loss resulting from evaporation and temperature changes.

"Motor fuel" *means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, the propulsion of motor vehicles. Among other things, "motor fuel" includes "special fuel."* (Section 1.1 of the Act)

"Person" *means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, or any city, town, county or other political subdivision in this State. When used in these rules to prescribe or impose a fine or imprisonment or both, the term as applied to partnerships and associations shall mean the partners or members thereof; as applied to limited liability companies, the term means managers, members, agents or employees of the limited liability company; and as applied to corporations, the term shall mean the officers, agents, or employees thereof who are responsible for any violation of the Act.* (Section 1.11 of the Act)

"Receiver" *means a person who either produces, refines, blends, compounds or manufactures fuel in this State, or transports fuel into this State or receives fuel transported to him from without the State or exports fuel out of this State, or who is engaged in the distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active fuel bulk storage capacity of not less than 30,000 gallons.* (Section 1.20 of the Act)

"Records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.

"Recreational vehicle" means vehicles, such as motor homes, pickup trucks with attached campers, camping or travel trailers, van or truck campers, mini motor homes, or buses, used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

"Revocation" means the withdrawal of license and privileges.

"Special fuel" means *all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5(A) of the Law, or combustible gases as defined in Section 5(B) of the Law. "Special fuel" includes "diesel fuel."* (Section 1.13 of the Act)

"Supplier" *means any person other than a licensed distributor who*

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transports special fuel into this State or receives special fuel transported to him from outside the State, and a person engaged in Illinois in the distribution of special fuel primarily by tank car or tank truck, or both. (Section 1.14 of the Act)

"Total distance" for purposes of the motor fuel use tax means all miles traveled during the reporting period by every commercial motor vehicle in the licensee's fleet, regardless of whether the miles are considered taxable or nontaxable by a jurisdiction.

"Weight" for purposes of the motor fuel use tax means the maximum weight of the loaded vehicle or combination of vehicles during the registration period.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.101 Definition of Receiver (Repealed)

~~As used in this part, "receiver" means a person who either produces, refines, blends, compounds or manufactures fuel in this State, or transports fuel into this State or receives fuel transported to him from without the State or exports fuel out of this State, or who is engaged in distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active fuel bulk storage capacity of not less than 30,000 gallons. (Section 1.20 of the Motor Fuel Tax Law (Law), Ill. Rev. Stat. 1989, ch. 120, par. 417 et seq.)~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.102 Definition of Loss (Repealed)

~~a) Section 13 of the Motor Fuel Tax Law provides that Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid.~~

~~b) The Department defines loss of motor fuel in relation to claims for refund to mean loss resulting from spillage, spoilage, leakage, theft, destruction by fire or any other provable cause, but shall not be construed to include loss resulting from evaporation and temperature changes.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

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SUBPART B: MOTOR FUEL TAX

Section 500.200 Basis and Rate of the Motor Fuel Tax

a) *The Motor Fuel Tax is imposed "on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State".*

1) *Motor fuel used in such motor vehicles upon public highways and in such recreational watercraft on such waters is taxed according to the following rate schedule:*

Tax Period	*Rate*
Until August 1, 1983	*7 1/2¢ per gallon*
From August 1, 1983 through June 30, 1984	*11¢ per gallon*
From July 1, 1984 through June 30, 1985	*12¢ per gallon*
From July 1, 1985 through July 31, 1989	*13¢ per gallon*
From August 1, 1989 through December 31, 1989	*16¢ per gallon*
From January 1, 1990, and thereafter	*19¢ per gallon*

2) *The tax on the privilege of operating motor vehicles which use diesel fuel shall be the rate according to subsection (a) plus an additional 2-1/2 cents per gallon. This rate is as follows: Diesel fuel used in such motor vehicles upon public highways and in such recreational watercraft on such waters is taxed according to the following rate schedule:*

Tax Period	*Rate*
Until August 1, 1983	*7 1/2¢ per gallon*
From August 1, 1983 through June 30, 1984	*13 1/2¢ per gallon*
From July 1, 1984 through June 30, 1985	*14 1/2¢ per gallon*
From July 1, 1985 through July 31, 1989	*15 1/2¢ per gallon*
From August 1, 1989 through December 31, 1989	*18 1/2¢ per gallon*
From January 1, 1990 and thereafter	*21 1/2¢ per gallon*

~~b) In addition, a tax is imposed upon the privilege of engaging in the business of selling motor fuel as a retailer or reseller on all motor fuel used in motor vehicles operating on the public highways and recreational type watercraft operating upon the waters of this State:~~

~~1) At the rate of 3 cents per gallon on motor fuel owned or possessed by such retailer or reseller at 12:01 A.M. on August 1, 1989, and~~

~~2) At the rate of 3 cents per gallon on motor fuel owned or possessed by such retailer or reseller at 12:01 A.M. on January 1, 1990.~~

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~~3) Every retailer and reseller subject to this additional tax shall inventory the motor fuel which he/she/it owns or possessed at 12:01 A.M. on August 1, 1989. Based on that inventory, every retailer and reseller subject to this additional tax shall file a return on a form prescribed by the Department on or before August 20, 1989 and pay the tax due.~~

~~4) Every retailer and reseller subject to this additional tax shall inventory the motor fuel which he/she/it owns or possessed at 12:01 A.M. on January 1, 1990. Based on that inventory, every retailer and reseller subject to this additional tax shall file a return on a form prescribed by the Department on or before January 20, 1990 and pay the tax due.~~

bc) *The ~~Special~~ Motor Fuel Use Tax is imposed "upon the use of special motor fuel upon highways (including toll ways of this State) by commercial motor vehicles". The tax on such special motor fuel shall be comprised of two parts:*

1) *A tax at the rate established in subsections (a)(1) and (a)(2) above; and*

2) *A rate "established by the Department".* (Motor Fuel Tax Law, ~~Ill. Rev. Stat. 1989, ch. 120, pars. 418 and 429a~~ [35 ILCS 505]).

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.201 Licensure

a) *No person shall act as a distributor, supplier, receiver or bulk user in Illinois without first applying for and obtaining a license from the Department. The application shall be signed and verified by the applicant, and shall contain information required by the Department.* In the case of corporate applicants, the application shall be signed by a corporate officer or officers. *An applicant shall also file with the Department a bond on a form to be approved by and with a surety or sureties satisfactory to the Department.*

b) *A license shall not be granted, nor shall any license be maintained, for any supplier or distributor whose principal place of business is in a state other than Illinois, unless such person is licensed for motor fuel distribution in the state in which the principal place of business is located and such person is not in default to that state for any monies due for the sale, distribution, or use of motor fuel.* (Sections 3, 3a, 3b and 3c of the Act)

c) *A license shall not be issued to any person who fails to file a return, or to pay the tax, penalty or interest for a filed return, or to pay any final assessment of tax, penalty or interest, as required by the Law, or as required by any other tax Act administered by the Department.* [20 ILCS 2505/39b47]

(Source: Added at 19 Ill. Reg. 3008, effective

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Section 500.202 Basis and Rate of Tax Payable by Receivers

a) *Except as hereinafter provided, on and after January 1, 1990 and prior to January 1, ~~1993~~ 1998, a tax of three-tenths of a cent per gallon is imposed upon the privilege of being a receiver in this State of fuel for sale or use.*

b) *The tax shall be paid by the receiver in this State who first sells or uses fuel. In the case of a sale, the tax shall be stated as a separate item on the invoice.*

c) *For the purpose of the tax imposed by this Section, being a receiver of "motor fuel" as defined by Section 1.1 of the Act, and aviation fuels, home heating oil and kerosene, but excluding liquified petroleum gases, is subject to tax without regard to whether the fuel is intended to be used for operation of motor vehicles on the public highways and waters. However, no such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of Certificates of Public Convenience and Necessity, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate holders and used in their activities at an airport described above. In addition, no such tax shall be imposed upon the importation or receipt of diesel fuel by a rail carrier, registered pursuant to Section 18c-7201 of the Illinois Vehicle Code and used directly in railroad operations. In addition, no such tax shall be imposed when the sale is made with delivery to a purchaser outside the State or when the sale is made to a person holding a valid license as a receiver. A specific notation thereof shall be made on the invoices or sales slips covering each sale.* (Section 2a of the Law)

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.203 Monthly Returns

a) Distributor, supplier and receiver monthly returns. Monthly Motor Fuel Tax returns of licensed distributors and suppliers must be compiled correctly on forms furnished by the Department and must be filed, accompanied by a remittance for the correct amount of tax due, by the 20th day of the month following the month for which the return is made. ~~Schedule "A" Receipt~~ schedules showing monthly receipts of motor fuel must always accompany the monthly return, as well as all other applicable schedules. Receivers subject to the tax imposed by Section 2a of the Law must file returns by the 20th of each calendar

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month for fuel purchased, acquired or received and sold, distributed or used during the preceding calendar month. ~~Invoiced gallons must be reported on Schedule "A". If a distributor's only activities with respect to motor fuel are either:~~

~~1) production of alcohol in quantities of less than 10,000 proof gallons per year or~~

~~2) blending alcohol in quantities of less than 10,000 proof gallons per year which such distributor has produced;~~

~~He shall file returns on an annual basis with the return for a given year being due by January 20 of the following year. Where the distributor has not established one calendar year's record of production, annual production will be projected on the basis of actual production and estimates submitted by the distributor. (Section 5 of the Law)~~

b) If a distributor's only activities with respect to motor fuel are either:

1) production of alcohol in quantities of less than 10,000 proof gallons per year or

2) blending alcohol in quantities of less than 10,000 proof gallons per year which such distributor has produced;

He shall file returns on an annual basis with the return for a given year being due by January 20 of the following year. Where the distributor has not established one calendar year's record of production, annual production will be projected on the basis of actual production and estimates submitted by the distributor. (Section 5 of the Law)

c) Bulk User Annual Return. Persons holding a valid license to act as a bulk user of special fuel shall make an annual return to the Department on forms prescribed by the Department. The return shall itemize the number of invoiced gallons of special fuel purchased, acquired or received during the preceding calendar year. The return shall be due on the 15th day of the fourth month following the end of the calendar year.

d) Magnetic Schedule Support Data. Beginning October 1, 1994, data required by all support schedules for licensed distributors, suppliers, and receivers who are required to file a return must be filed using magnetic media. Schedule support data must be submitted on either 3-1/2" diskette, 5-1/4" floppy disk, or 9" magnetic tape which is IBM or IBM compatible. Schedules that must be filed on magnetic media include Schedules A, SA, LA, E, SE, LE, GA1, B, SB, LB, C, SC, LC, D, SD, SD1 and LD. Schedules not required to be filed in this manner are Schedules F, M and J. Amended schedules must still be filed on Department forms or approved computer-generated forms. The only exceptions to this requirement are persons who do not possess a computer, who have computers which are not IBM or IBM compatible, or who have ten business transactions or less per month, per schedule type. Persons seeking an exemption from these requirements must petition the Department's Motor Fuel Division in writing, explaining

the basis for their exemption. All exceptions expire one year from the date they are granted.

e) When returns are timely filed and paid in full, a supplier, distributor or receiver may take a discount of 2% of the tax collected to reimburse himself for the expenses incurred in keeping records, preparing and filing returns, collecting and remitting the tax and supplying data to the Department on request. This discount is not permitted for motor fuels which are used or consumed by a supplier or distributor in his own vehicles or for any other purpose.

f) A person whose license to act as a supplier, distributor, receiver or bulk user of motor fuel has been revoked or cancelled shall make a return and payment to the Department covering the period from the date of the last return to the date of the revocation of the license, which return shall be delivered to the Department not later than 10 days from the date of the revocation or termination of the license. Any tax-free inventory remaining at the close of the reporting period must be paid in full. ~~b) Licensees, in filling out monthly distributors' returns (Form R-M-F-T-5), are required to show, as separate items, the actual number of taxable gallons sold to consumers and resellers and the actual number of taxable gallons used in their own motor vehicles and for any other purpose whatsoever. On a schedule provided for that purpose, taxable gallons sold to other licensed distributors must be listed in detail.~~

~~c) Licensed suppliers of special fuel must also file monthly returns with the Department, on the form prescribed by the Department, by the 20th day of the month following the month for which the return is filed, and any such return must be accompanied by a remittance for the proper amount of tax shown by the return to be due. In addition, licensed bulk users of special fuel must file an annual return with the Department, on the form prescribed by the Department, by the 15th day of the fourth month following the end of the calendar year. (Section 5b of the Law)~~

~~d) In addition to the tax collection and reporting responsibilities imposed elsewhere, a person who is required to pay the tax imposed by Section 2a of the Act shall pay the tax to the Department by return showing all fuel purchased, acquired or received and sold, distributed or used during the preceding calendar month. The return shall be prescribed by the Department and shall be filed between the 1st and 20th days of each calendar month. The Department may in its discretion, combine the returns filed under this Section. (Section 2b of the Law)~~

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.204 Report of Loss of Motor Fuel

a) All licensed suppliers and distributors are required to report

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immediately all losses of motor fuel sustained by them on account of fire, theft, spillage, spoilage, leakage or any other provable cause in order that the Department may make such investigation as it may deem necessary. ~~The same requirement applies to special fuel bulk users who have elected to be licensed as suppliers of special fuel.~~

b) The mere making of such a report does not assure the allowance of such loss as a credit on account of tax liability with respect to such loss, but failure to report such losses promptly may result in the refusal of the Department to allow credit on account of tax liability with respect to such a loss.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.205 Daily Gallonage Record

Distributors, ~~of motor fuel,~~ receivers, bulk users ~~of fuel, bulk users of special fuel licensed as bulk users, and special fuel bulk users who have elected to be licensed as suppliers of special fuel~~ and suppliers are expected to maintain an accurate, actual, daily record of gallonage in storage facilities ~~bulk and supply tanks~~. Carelessness in not keeping such records is frequently the means of building false inventories. The burden is also upon the distributor, ~~bulk user of special fuel licensed as a bulk user, or special fuel bulk user who has elected to be licensed as a supplier of special fuel~~ supplier, bulk user or receiver to see to it that the valves on bulk plants function properly. This will have a tendency to eliminate substantial losses under various climatic conditions.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.210 Documentation of Tax-free Sales of Motor Fuel Made by Licensed Distributors and Suppliers

a) Sales of motor fuel made to licensed distributors, suppliers or bulk users holding a valid tax-free permit. A specific notation of the nature of the exemption must be made on the invoice for these sales. Also, the seller must retain the invoice number and date, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination, purchaser's license number, and invoiced gallons sold. In addition, when special fuel is sold under this exemption, the seller must obtain from the purchaser a completed IDR-648 form.

b) Sales of motor fuel delivered to points outside Illinois. The seller must retain the invoice date and number, name of carrier, bill of lading/manifest number, purchaser's name and address, Illinois origin, destination location, and invoiced gallons.

c) Sales of motor fuel to the Federal government or its

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instrumentalities. The seller shall retain the invoice number and date, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, invoiced gallons, and official forms of exemption certificates furnished by the Federal government.

d) Sales of motor fuel to a municipal corporation owning and operating a local transportation system for public service in Illinois. The seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination and invoiced gallons. In addition, the seller shall include with his return a Certificate of Exemption, in the form required by Section 500.280 of this Part, for each such sale.

e) Sales of motor fuel to a privately owned public utility owning and operating 2-axle vehicles designed and used for transporting more than 7 passengers, for the operation of vehicles which are used as common carriers in general transportation of passengers, are not devoted to any specialized purpose and are operated entirely within the territorial limits of a single municipality or any group of municipalities or in a close radius thereof, and the operations of which are subject to the regulations of the Illinois Commerce Commission. The seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination and invoiced gallons. In addition, the seller shall include with his return a Certificate of Exemption, in the form required by Section 500.285 of this Part, for each such sale.

f) Sales of gasoline for aviation purposes. A Seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, and invoiced gallons. He must also include a "Certificate of Gas Sold For Propulsion of Aircraft" with his return to document this type of exemption.

g) Sales to qualified users. Documentation for sales to qualified users falls into two categories, which are described below:

1) Sales of special fuel to persons using the fuel exclusively for non-highway purposes, who do not own, lease or control any tax-free bulk storage facilities or who do not own, operate or control any diesel-powered licensed highway equipment. Sellers making these types of exempt sales must make a notation on the invoice or sales slip regarding the exempt nature of the sale, and must retain the purchaser's name and address, the use for which the fuel is sold, and the total monthly gallons. In addition, the seller must retain a valid IDR-648 for each customer.

2) Sales of special fuel to persons who have no licensed diesel highway equipment but who do have self-propelled highway construction or maintenance equipment which will be used in a

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dual capacity for both improving, maintaining or repairing highways and propelling the equipment on road to job sites. Sellers may accept a percentage certificate from the purchaser specifying the amount of special fuel that may be purchased tax-free. Sellers must retain the purchaser's name and address, the percentage exemption and reason for partial exemption, and total monthly gallons. In addition, the seller must retain a valid IDR-648 for each customer.

h) Sales of 1-K kerosene delivered into a storage tank located at a facility that has withdrawal facilities which are readily accessible to, and are capable of dispensing 1-K kerosene into the fuel supply tanks of, motor vehicles are normally taxable. However, such sales may be made tax-free when the seller obtains supporting documentation affirming that the 1-K kerosene will not be sold or used in highway vehicles. The seller must obtain a valid IDR-648 for each customer for these exempt sales.

i) The IDR-648, which is used to document exempt sales of special fuel and which is required to be retained by the seller, must be renewed at least every three years. An IDR-648 shall remain valid for 3 years or until the purchaser's license is revoked or cancelled. A customer may also revoke the IDR-648 by advising both the seller and the Department in writing.

(Source: Added at 19 Ill. Reg. ~~9008~~, effective FEB 2 8 1995)

Section 500.215 Documentation of Tax-free Sales of Fuel Made by Licensed Receivers

a) Exemption for importation of aviation fuels and kerosene at qualified airports or by facilities owned or leased by qualified holders of Certificates of Public Convenience and Necessity (see Section 500.202 for a description of such persons). The seller shall make a specific notation on the invoice regarding the nature of the exemption. In addition, he shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination and invoiced gallons.

b) Exemption for importation of diesel fuel by qualified rail carriers (see Section 500.202 for a description of such persons). The seller shall make a specific notation on the invoice regarding the nature of the exemption. In addition, he shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination and invoiced gallons. A specific notation regarding the nature of the exemption shall be made on the invoice.

c) Receivers making sales of fuel which are delivered to points outside of Illinois. A specific notation regarding the nature of

the exemption shall be made on the invoice. In addition, the seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, destination and invoiced gallons.

d) Sales of fuel made to other licensed receivers in Illinois. A specific notation shall be made on the invoice regarding the nature of the exemption. In addition, the seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, purchaser's license number and invoiced gallons.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 2 8 1995)

Section 500.220 Vehicles of Distributors Transporting Petroleum Products (Repealed)

~~Licensed distributors of motor fuel transporting petroleum products in vehicles upon the public highways of this State must have painted upon such transporting vehicle, in colors of distinct contrast to those of the vehicle, with letters and figures not less than four inches in height, the following information:~~

~~a) Licensed name of distributor;~~

~~b) address of distributor; and~~

~~c) Motor Fuel Distributor's license Number identified as "Ill. R. M. F. F. No. ....".~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 2 8 1995)

Section 500.225 Other Vehicles (Repealed)

~~All persons other than licensed distributors, transporting petroleum products in vehicles upon the public highways of this State, must have painted upon such transporting vehicles, in colors of distinct contrast to those of the vehicle, with letters and figures not less than four inches in height, the name and address of the owner of such vehicle.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 2 8 1995)

Section 500.230 Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers

a) Distributors are required to pay the tax on all motor fuel (of the type they are required by the second paragraph of Section 5 of the Motor Fuel Tax Law to report to the Department when filing a return) used or consumed by them, whether for taxable or nontaxable purposes. If the motor fuel is consumed for statutory nontaxable purposes, a

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claim for ~~refund~~ credit may thereafter be filed as provided by the Motor Fuel Tax Law and on the form prescribed by the Department for that purpose.

b) Suppliers are required to pay the tax on all special fuel used or consumed by them, whether for taxable or nontaxable purposes. If the special fuel is consumed for statutory nontaxable purposes, a claim for credit may thereafter be filed as provided by the Motor Fuel Tax Law and on the form prescribed by the Department for that purpose. ~~in motor vehicles on the public highways of this State.~~

c) Receivers are required to pay tax on all fuel, as defined by Section 1.19 of the Motor Fuel Tax law, used or consumed by them.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.235 Claims for Refund - ~~Original~~ Invoices

a) Claims for the refund of Motor Fuel Tax imposed by Section 2 of the Law, by persons other than a distributor or supplier, shall be made to the Department of Revenue, duly verified by the affidavit of the claimant, upon forms prescribed by the Department. Except as provided in par. (c) of this Section, the Department of Revenue will not approve claims for refund of Motor Fuel Tax unless such claims are supported by ~~original~~ invoices or sales slips (commonly referred to as the top copy). Reproductions may be submitted in lieu of originals, provided they are legible. However, the Department may require original invoices to verify purchases. Manifests or monthly statements will not be treated as invoices.

b) ~~In no case will any carbon copy of an invoice be considered an original.~~ All ~~Original~~ sales slips or invoices must contain the following information:
   1) Date of delivery;
   2) name and address of purchaser (which must be the name of the claimant);
   3) name and address of seller ~~(printed or rubber stamped)~~;
   4) number of gallons purchased and price per gallon;
   5) Illinois Motor Fuel Tax as separate item; and
   6) receipt of payment. (Only paid invoices are acceptable in connection with claims for refund~~, and the fact of payment must appear on the face of the invoice or sales slip.~~) Refunds will only be issued when payment of tax is exactly correlated to the invoice for which the claim is being filed.

c) Claimants must file invoices or sales slips in conjunction with claims based upon motor fuel used for a nontaxable purpose. In making a claim, claimants must show total purchases, deducting the gallonage used upon public highways or waters, the difference being the net amount upon which the claim is based. Only invoices directly supporting the nontaxable use are required to be submitted. However,

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claimants must retain among their books and records documentation of all purchases, payments, bulk storage withdrawals and proof of usage for a period equivalent to that during which an assessment can be issued under the Law, from the date of issuance of the claim or refund. This information must be made available to Department employees upon request. Failure to keep such records may result in recovery of any claims paid.

dc) Where the claimant has lost ~~his original invoice~~ invoice(s) through inadvertence or an act of God, the Department will permit the claimant to submit his affidavit in lieu of such invoice in support of the claim, if the affidavit contains the same information which the invoice was required to contain, plus a statement of facts explaining the loss of the invoice and justifying the substitution of an affidavit for the invoice.

ed) Claims for full reimbursement of tax paid on motor fuel must be filed not later than one year after the date on which the tax was paid by the claimant. If, however, a claim for such reimbursement otherwise meeting the requirements of the Act is filed more than one year but less than 2 years after that date, the claimant shall be reimbursed at the rate of 80% of the amount to which he would have been entitled if his claim had been timely filed.

fe) Claims accompanied by sales slips or invoices upon the face of which there is evidence of change of name, date or gallonage, ~~or~~ other evidence of fraud, or which are illegible, will be disallowed in their entirety.

gf) Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state. Evidence supporting the claim must include both a copy of the tax return filed with such other state and a copy of the cancelled check or a receipt acknowledging payment of the tax due on said tax return.

hg) *Claims for refunds for the motor fuel tax imposed by Section 2 of the Law approved by the Department shall be paid within 90 days after receipt of a complete and correct application for such a refund. If refunds are paid after the expiration of the 90 day period, the Department shall also pay from the Motor Fuel Tax Fund to the taxpayer ~~a penalty of 1% of the amount of the refund for each month after the 90 day period~~ interest at the rate and in the manner set by the Uniform Penalty and Interest Act* ~~(Ill. Rev. Stat. 1983, ch. 120, par. 431.1~~ [35 ILCS 505/15.1]~~)~~.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

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Section 500.250 Claimants Owning Motor Vehicles (Repealed)

~~Claimants owning motor vehicles must secure original invoices or sales slips covering purchases of motor fuel for such motor vehicles and file same in conjunction with invoices covering motor fuel used for a nontaxable purpose and, in making their claim, show total purchases, deducting the gallonage used upon public highways or waters, the difference being the net amount upon which the claim is based.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.260 Revocation of License, Etc. - Notice - Hearing

a) In all cases where the Department shall have given ~~10~~ 5 days' written notice by certified mail under Section 16 of the ~~Act~~ Law that it proposes to revoke a license or cancel a permit, then, unless within ~~10~~ 20 days after mailing of such notice to the licensee or permittee, such licensee or permittee shall protest and demand a hearing, the Department may proceed to revoke such license or cancel such permit.

b) If such protest and demand for a hearing are made, the Department shall conduct a hearing and pursuant thereto shall make its decision and notify the licensee or permittee thereof. If, within 35 days from the date the licensee or permittee receives notice of such decision, proceedings for review thereof are not instituted in the manner provided by the Administrative Review Law ~~[Ill. Rev. Stat. 1989, ch. 110, para. 3-101 et seq.~~ [735 ILCS 5/Art. III]~~]~~, such decisions shall thereupon become final.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.265 Distributors' and Suppliers' Claims for Credit

a) Filing of Claims. Any distributor or supplier who shall have paid Motor Fuel Tax upon motor fuel used by such distributor or supplier for any purpose other than operating a motor vehicle upon the public highways or waters, may file a claim for credit to recover the amount so paid. Such claims shall be filed on forms prescribed by the Department. Such claims shall be made to the Department, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant shall have died or become a person under legal disability). The claim shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary and shall state when the nontaxable use occurred and shall specify the purpose for which such motor fuel was used by the claimant, together with such other information as the Department may reasonably require. Claims

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for credit for tax paid on motor fuel purchased on or after July 1, 1965, must be filed not later than one year after the date on which tax was paid by the claimant.

b) Issuance of Credit Memoranda - Use Thereof to Satisfy Prior Rights of Department. The Department may make such investigation of the correctness of the facts stated in such claims for credit as it deems necessary. When the Department approves a claim for credit, the Department shall issue a credit memorandum to the distributor or supplier who made the payment for which credit is being given or, in the event that such distributors or suppliers shall have died or become incompetent, to such distributor's or supplier's legal representative, as such. The amount of such credit memorandum shall first be credited against any tax due or to become due under the Act from the distributor or supplier who made the payment for which credit has been given. This means that if there is an established or admitted unpaid Motor Fuel Tax liability on the part of the claimant, the amount of the credit will be credited against the tax that is due. If the credit is in an amount less than that of the unpaid liability, the credit shall be applied against such liability. If the amount of the credit exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out such unpaid liability, the Department will issue a new credit memorandum representing the difference between that of the original credit found to be due and that of the liability liquidated or paid as aforesaid, and such new credit memorandum will be delivered to the person entitled to receive delivery thereof, provided that no proceeding is pending against the claimant to establish an unpaid liability under the Act. If a proceeding to establish such an unpaid liability is pending, the credit memorandum will be held by the Department until such proceeding is concluded; and if such proceeding results in a determination that Motor Fuel Tax is due from the claimant, the credit will be applied by the Department, to the extent which may be necessary, in liquidation of such liability, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of said liability), will be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery thereof.

c) Disposition of Credit Memoranda by Holder Thereof

1) Assignment of Credit Memoranda. Credit memoranda may be assigned or transferred only after a request for that purpose is filed with the Department upon forms prescribed and furnished by it, and subject to the following conditions:

A) That the assignment is made to a person who is licensed as a distributor of motor fuel or a supplier of special fuel under the ~~Act~~ Law;

B) that there is no proceeding pending to establish an unpaid Motor Fuel Tax liability against the assignor; and

C) that there is no established or admitted unpaid Motor Fuel Tax liability against the assignor; provided, that if the

amount of the credit memorandum must first be applied, in whole or in part, against an unpaid liability of the claimant-assignor, notice to this effect will be given the claimant-assignor by the Department. If any balance is due such claimant-assignor, after application of the credit memorandum in the manner and to the purposes aforesaid, such balance may be assigned upon receipt by the Department of instructions to that effect. If there is no unpaid liability and no proceedings pending to determine a liability as aforesaid, and if the assignee is a licensed distributor of motor fuel, the request for leave to assign will be approved. The original credit memorandum will be cancelled, and a new credit memorandum will be issued to the assignee in the amount shown on the cancelled memorandum. However, before a credit memorandum is issued to the assignee, the amount of such credit will be applied, to the extent that may be necessary, in liquidation of any unpaid Motor Fuel Tax liability of the assignee, and a credit memorandum for the balance, if any, will be issued to the assignee, provided that there is no proceeding pending against the assignee to establish an unpaid Motor Fuel Tax liability against him. If a proceeding to establish such an unpaid liability is pending, the credit memorandum will be held by the Department until such proceeding is concluded; and if such proceeding results in a determination that Motor Fuel Tax is due from the assignee, the credit will be applied by the Department, to the extent which may be necessary in liquidation of such liability, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of said liability), will be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery thereof.

2) Submission of Credit Memoranda With Monthly Returns. Credit memoranda, in the hands either of the original claimant or of his assignee, may be submitted to the Department, along with monthly tax returns, in payment of Motor Fuel Tax due from the holder of such credit memoranda. If, after applying any such credit memorandum against the amount of tax shown to be due by the tax return with which the credit memorandum is submitted, the Department finds that there is a balance of the credit memorandum in favor of the distributor or supplier submitting the credit memorandum, the Department will cancel the credit memorandum that has been submitted and will issue and deliver to such distributor or supplier a new credit memorandum for such balance. This process will be followed until the credit, to which such distributor or supplier is entitled, is exhausted. However, any new credit memorandum, which is issued as provided in this

paragraph for a balance of credit due the distributor or supplier after applying the amount of a credit memorandum to the payment of current taxes, is subject to the prior rights of the Department to the same extent that such prior rights take precedence when a credit memorandum is first issued (see paragraph (b) of this Section) or when leave to assign a credit memorandum is requested (see paragraph (c)(1) of this Section).

d) Refunds to Distributors and Suppliers. If any distributor or supplier ceases to be licensed as a distributor or supplier while still holding an unused credit memorandum, such distributor or supplier may, at his election (instead of assigning the credit memorandum to another licensed distributor or supplier under the Act), surrender such unused credit memorandum to the Department and receive a refund in lieu thereof.

e) Claims filed under this Section for overpayment of the Motor Fuel Tax imposed by Section 2 of the Law shall bear interest at the rate and in the manner specified in the Uniform Penalty and Interest Act. *Claims made under this Section that are based upon motor fuel used for any purpose other than operating a motor vehicle upon the public highways or waters shall be paid within 90 days after receipt of a complete and correct application for credit. If credits based upon motor fuel used for any purpose other than operating a motor vehicle upon the public highways or waters are issued after expiration of the 90 day period, the Department shall include interest at the rate and in the manner set by the Uniform Penalty and Interest Act.* [35 ILCS 505/15.1]

(Source: Amended at 19 Ill. Reg. 8008, effective FEB 28 1995)

Section 500.270 Receivers' Claims for Credit

Any receiver who has paid the tax imposed by Section 2a of the Motor Fuel Tax Law (either directly to the Department or to another licensed receiver) upon fuel exported or sold under the exemptions provided in Section 2a may file a claim for credit to recover the amount so paid. Such claims shall be made to the Department, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim shall state such facts relating to the purchase, importation, manufacture, production, export, or sale of the fuel by the claimant as the Department may deem necessary together with such other information as the Department may reasonably require. Claims must be filed not later than one year after the date on which the tax was paid by the claimant. The Department may make such investigation of the correctness of the facts stated in such claims as it deems necessary. When the Department approves a claim, the Department shall issue a credit memorandum to the receiver who made the payment for which the credit is being given or, if the receiver has died or become incompetent, to such receiver's legal representative. The amount of such credit memorandum shall be

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credited against any tax due or to become due under this Act from the receiver who made the payment for which credit has been given. (Section 13 of the Law) Claims filed under this Section for overpayment of the tax imposed by Section 2a of the Law approved by the Department shall bear interest at the rate and in the manner set by the Uniform Penalty and Interest Act.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.275 Procedure when When Tax-Paid Motor Fuel is Returned to Licensee for Credit

a) In any case in which a customer returns the entire amount of tax-paid motor fuel covered by an invoice to the licensee, the licensee's agent or driver is to secure the original invoice which was issued to such customer at the time when such motor fuel was sold by the licensee to such customer. This invoice may ~~is to~~ be returned to the licensee upon request. The licensee, in compiling his monthly Motor Fuel Tax reports, is to detail all such returned motor fuel, reporting such transactions in the same manner as purchases of tax-paid motor fuel are reported, indicating the name and address of each person to whom credit was given, the number of gallons for which such credit was given, the invoice number and the date of the transaction. Credit can then be claimed on his return, subject to Department approval. The original invoice must be attached to the licensee's return.

b) If only a portion of the original purchase is returned, the licensee is to make a notation on the face of the invoice, plainly indicating the number of gallons returned, the date when such motor fuel is returned and other pertinent information. After such notations are made on the invoice, the licensee is to return the invoice to the customer, who may use it to support a claim for refund of tax paid on that portion of the motor fuel which was originally included in the invoice, but returned by the customer. The licensee, in compiling his monthly Motor Fuel Tax reports, is to detail all such returned motor fuel, reporting such transactions in the same manner as purchases of tax-paid motor fuel are reported, indicating the name and address of each person to whom credit was given, the number of gallons for which such credit was given, the copy of the invoice with all notations and the date of the transaction. Credit can then be claimed on his return, subject to Department approval.

c) ~~If the entire amount of motor fuel covered by the invoice is returned to the licensee, the original invoice is to be surrendered to and retained by the licensee for review by Department Auditors.~~

d) ~~The licensee, in compiling his monthly Motor Fuel Tax reports, is to detail all such returned motor fuel on Schedule "B", reporting such transactions in the same manner as purchases of tax-paid motor fuel are reported, indicating the name and address of each person to whom credit was given, the number of gallons for which such credit was given, the invoice number and the date of the transaction. Credit can then be taken in item "17" of Form R.M.F.T.5.~~

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(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.280 Sales of Motor Fuel to Municipal Corporations Owning and Operating Local Transportation Systems

a) A distributor of motor fuel or a supplier of special fuel may make tax-free sales thereof to a municipal corporation owning and operating a local transportation system for public service in the State, provided that the distributor or supplier obtains an official Certificate of Exemption in lieu of the tax. Such Certificate of Exemption shall accompany the distributor's or supplier's monthly Motor Fuel Tax return to the Department to support his claim to exemption from the tax. Such Certificate of Exemption shall be in substantially the following form:

"This is to certify that (Name of Municipal Corporation) of _____, Illinois, a municipal corporation which owns and operates a local transportation system for public service in Illinois, purchased _____ gallons of motor fuel, Illinois Motor Fuel Tax exempt, from (Name of Distributor or Supplier) _____ whose address is _____ on Invoice No _____ dated _____, and said motor fuel is for use in operating said local transportation system.

_____
Name of Municipal Corporation

_____
Name of Authorized Representative

_____
Title of Authorized Representative

Dated: _____, 19 __"

b) ~~Any municipal corporation which is permitted to issue said form in lieu of the Motor Fuel Tax shall notify the Department of the name and title of each officer or employee whom such municipal corporation may authorize to sign the form on its behalf, and a sample of such officer's or employee's signature shall be placed on file with the Department.~~

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(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.285 Sales of Motor Fuel to Certain Privately-Owned Public Utilities Owning and Operating Transportation Systems in Metropolitan Areas

a) A distributor of motor fuel or a supplier of special fuel may make tax-free sales thereof to a privately-owned public utility which owns and operates 2 axle vehicles designed and used for transporting more than 7 passengers, which vehicles are used as common carriers in general transportation of passengers, are not devoted to any specialized purpose and are operated entirely within the territorial limits of a single municipality or of any group of contiguous municipalities, or in a close radius thereof, and the operations of which are subject to the regulations of the Illinois Commerce Commission, provided that the distributor or supplier obtains an official Certificate of Exemption in lieu of the tax.

b) Such Certificate of Exemption shall accompany the distributor's or supplier's monthly Motor Fuel Tax return to the Department to support his claim to exemption from the tax.

c) Such Certificate of Exemption shall be in substantially the following form:

"This is to certify that (Purchasing Bus Company) of _____, Illinois, a privately owned public utility which owns and operates 2 axle vehicles designed and used for transporting more than 7 passengers, which vehicles are used as common carriers in general transportation of passengers, are not devoted to any specialized purpose and are operated entirely within the territorial limits of a single municipality or of any group of contiguous municipalities, or in a close radius thereof, and the operations of which are subject to the regulations of the Illinois Commerce Commission, purchased _____ gallons of motor fuel, Illinois Motor Fuel Tax exempt, from (Name of Distributor or Supplier) whose address is_____ on Invoice No_____ dated _____, and said motor fuel is for use in operating such local transportation system under the limitations specified hereinabove.

_____
Name of Purchasing Bus Company

_____
Name of Authorized Representative

_____
Title of Authorized Representative

Dated: _____, 19 __"

d) ~~Any--privately--owned--public-utility-which-is-permitted-to-issue-said form-in-lieu-of-the-Motor-Fuel-Tax-shall-notify-the-Department-of--the name--and--title-of-each-officer-or-employee-whom-such-privately-owned public-utility-may-authorize-to-sign-the-form-on--its--behalf,--and--a sample--of--such--officer's-or-employee's-signature-shall-be-placed-on file-with-the-Department.~~

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.290 When Purchaser's License Number With Department on Invoices Covering Sales of Special Fuel is Required (Repealed)

a) ~~When-special-fuel-is--sold--by--a--licensed--distributor--or--licensed supplier--to--a-licensed-bulk-user,-the-invoice-from-the-seller-to-the purchaser-shall-(among-other-things)-show-the--purchaser's--bulk--user license-number-with-this-Department.~~

b) ~~When--special--fuel--is--sold--tax-free-by-a-licensed-distributor-to-a licensed--supplier,--or--by--a--licensed--supplier---to---a---licensed distributor,--or--by-a-licensed-distributor-to-a-licensed-distributor, or-by-a-licensed-supplier-to-a-licensed-supplier,-the-invoice-from-the seller-to-the-purchaser-shall-(among-other-things)-show-the-purchasing distributor's--or--purchasing--supplier's--license--number--with--this Department.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.295 Cost of Collection - Determination (Repealed)

a) ~~Distributors--are-not-permitted-to-deduct-from-the-amount-of-tax-to-be paid-to-the-Department-a-discount-of-2%-(which-is-allowed-to-reimburse such-distributors-for-making-the-collection-and--payment--provided--by Section--6-of-the-Motor-Fuel-Tax-Law)-on-account-of-motor-fuel-used-or consumed-by-them-in-their-own-vehicles-or-for-any-other--purpose.---The same--is--true--of--suppliers-of-special-fuel-with-respect-to--special fuel-which-they-use-themselves.~~

b) ~~This-deduction-is-allowable-only--on--sales--and--does--not--apply--to gallonage-used-or-consumed-by-the-distributor-or-supplier.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

SUBPART C: MOTOR FUEL USE TAX

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Section 500.300 Licensure

a) Except as provided in Section 500.320, no motor carrier shall operate commercial motor vehicles, as defined in Section 500.100, in Illinois without first securing a motor fuel use tax license and decals issued by the Department (under either the IFTA or the Illinois interstate program) or an IFTA motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction.

b) Illinois IFTA credentials may be obtained from the Department by Illinois based carriers who operate one or more commercial motor vehicles in at least one other IFTA-member jurisdiction. Illinois based carriers are those carriers whose operational control and records for their vehicles are maintained or can be made available in Illinois and whose commercial motor vehicles accrue miles in Illinois. Carriers who are based in a non-IFTA state will not be issued IFTA credentials by the Department, unless issuance is granted for fleet consolidation purposes.
An Illinois carrier registered under the IFTA must consolidate all vehicles in its fleet. Fleet consolidation must include commercial motor vehicles based in other IFTA jurisdictions, non-IFTA jurisdictions, and motor vehicles which travel exclusively intrastate, regardless of jurisdiction.

c) Motor carriers operating commercial motor vehicles that are based in a state that has not joined IFTA, and who wish to operate in Illinois, may apply for an Illinois Interstate Motor Fuel Use Tax license and decals. If such carriers do not wish to obtain these credentials, they must obtain single trip permits before operating in Illinois.

d) Motor vehicles operated by the State of Illinois or the United States government, recreational vehicles and school buses are not required to register as provided in subsection (a). However, if these carriers will travel in other jurisdictions, they may wish to obtain a motor fuel use tax license and decals under the provisions of the International Fuel Tax Agreement. This will allow the carrier, when in an IFTA jurisdiction that does not consider it exempt, to avoid receiving citations or being required to obtain the proper credentials (e.g., single trip permits). If the carrier is travelling in a non-IFTA jurisdiction and is not considered to be exempt from fuel tax reporting requirements, it must purchase single trip permits or otherwise obtain the proper motor fuel use tax credentials required by the laws of that particular jurisdiction.

e) In order to establish and maintain the concept of one license and administrative base jurisdiction for each licensee, the Department shall issue only one license to each person.

(Source: Added at 19 Ill. Reg. 3003, effective

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Section 500.301 Special Motor Fuel Permits and Decals (Repealed)

~~a) Commercial Motor Vehicles~~
~~1) "Commercial motor vehicle" means any of the following vehicles which are propelled by special fuel:~~
~~A) Any truck with more than 2 axles;~~
~~B) Any road tractor; or~~
~~C) Any truck tractor; or~~
~~D) Any passenger motor vehicle that has seats for 20 or more passengers.~~
~~2) This definition does not include:~~
~~A) motor vehicles operated by this State or the United States;~~
~~B) school buses;~~
~~C) commercial motor vehicles owned by a manufacturer or dealer and held for sale, even though incidentally moved or operated on the highway or used for purposes of testing, demonstration or delivery;~~
~~D) commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State; or~~
~~E) recreational vehicles. (Section 1.16 of the Law)~~
~~b) Leased Commercial Motor Vehicles~~
~~1) "Leasing" means the giving of possession and control of a vehicle for valuable consideration for a specified period of time.~~
~~2) Allocation of responsibility to avoid duplicate reporting of mileage and payment of tax.~~
~~A) Where the term of a lease is 30 days or more, the lessee of a commercial motor vehicle shall be responsible for the reporting of mileage and the liability for tax arising under Section 13a.3 of the Motor Fuel Tax Law, and for registration, furnishing of bond, carrying of identification cards, and external motor fuel decals under Section 13a.4 of the Motor Fuel Tax Law and for all other duties imposed by Sections 13a, 13a.1, 13a.2, 13a.3, 13a.4 and 13a.5 of the Motor Fuel Tax Law.~~
~~B) Where the term of a lease is less than 30 days, the lessor of a commercial motor vehicle shall be responsible for the reporting of mileage and the liability for tax arising under Section 13a.3 of the Motor Fuel Tax Law, and for registration, furnishing of bond, carrying of identification cards, and external motor fuel decals under Section 13a.4 of the Motor Fuel Tax Law and for all other duties imposed by Sections 13a, 13a.1, 13a.2, 13a.3, 13a.4 and 13a.5 of the Motor Fuel Tax Law.~~
~~c) Identification Cards. In lieu of the Department issuing multiple original identification cards to permittees for each commercial motor vehicle to be operated in this State, permittees are authorized to~~

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~~make reproductions of their original identification cards.~~

~~d) Motor Fuel Decals. Each commercial motor vehicle propelled by special fuel operating upon the highways of this State shall conspicuously display an external Motor Fuel Tax identification device, i.e., a motor fuel decal, on the passenger side of the commercial motor vehicle. However, buses that qualify as commercial motor vehicles may display such devices on the driver's side of the vehicles. The transfer of a motor fuel decal from one vehicle to another or from one motor carrier to another motor carrier is prohibited. The fee for a motor fuel decal shall be $7.50 for each decal, and a maximum fee of $2.00 for a replacement. A motor fuel decal shall be valid for a period of 2 calendar years.~~

~~e) Revocation and Return of Permit. In the event that the Department revokes a permit for failure to pay the State monies due under this Act for the sale or use of special motor fuel, the motor carrier shall immediately return his permit to the Department.~~

~~f) Single Trip Permits. A commercial motor vehicle operating in Illinois without a permit as required in Section 13a.4 of the Motor Fuel Tax Law must obtain a single trip permit from the Department. A motor carrier may purchase only 3 single trip permits within a 12 month period. Motor carriers who have need for more than 3 single trip permits within a 12 month period must register and obtain a permanent permit as provided in Section 13a.4 of the Motor Fuel Tax Law. Single trip permits will be issued to one commercial motor vehicle and are nontransferable. Single trip permits expire at the end of 72 hours from the time of issuance.~~

~~g) Enforcement Procedure. A commercial motor vehicle operating in Illinois without a permit shall not be permitted to continue until a temporary permit has been obtained and any penalties have been satisfied. *If a commercial motor vehicle is found operating in Illinois without registering and securing a permit when such is required by Section 13a.4 and 13a.5 of this Act, the operator must pay a minimum of $1,000 as a penalty.* (Section 13a.6 of the Law)~~

~~1) A carrier operating a vehicle without having a permit to do so, is guilty of a Class 4 felony, and for each subsequent offense, such carrier is guilty of a Class 3 felony. If a carrier who has a single trip motor fuel permit fails to display such a permit, the carrier is guilty of a petty offense. If a carrier obtains a single trip permit in excess of the three permitted per 12 month period, the carrier is guilty of a petty offense for each permit that is obtained in excess of such limitation.~~

~~2) A carrier operating a vehicle without carrying an identification card or displaying an external Motor Fuel Tax identification device in accordance with Section 13a.4 of the Motor Fuel Tax Law is subject to the following penalties:~~

~~A) For failure to carry an identification card, the carrier is guilty of a petty offense.~~

~~B) For failure to display an external motor fuel identification device, the carrier is guilty of a petty offense.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.302 Motor Carrier's Quarterly Report (Repealed)

~~a) Except as provided in subsection (c), every motor carrier who operates a commercial motor vehicle on any highway within this State, shall file a report with the Department on or before the last day of the month next succeeding any calendar quarter (i.e., in the months of April, July, October and January, respectively), setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, and the number of gallons of special fuel consumed on the highways of every jurisdiction and of this State during such previous calendar quarter.~~

~~b) In addition, this report *may include both gallons of fuel purchased and miles operated that were unavailable for the two immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and other information which may include, but not be limited to, original tax paid receipts as evidence of the number of gallons purchased, which were omitted from the reports for the two immediately preceding calendar quarters and are now included in the current filed report.*~~

~~c) *Motor carriers that incur an annual Motor Fuel Use Tax liability of less than $625 for the prior 12 month period of January 1 through December 31, may file an annual return due January 31, rather than quarterly returns.* (Section 13a.3 of the Law, as amended by P.A. 86-1481)~~

~~device, the carrier is guilty of a petty offense.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.305 Licenses and Decals

a) Applications for motor fuel use tax licenses and decals shall be made under oath and on forms provided by the Department. Information provided to the Department shall include:

1) a carrier's Federal Employer Identification Number (in the case of a sole proprietorship, the Social Security number of the owner);
2) owner, partnership or corporate name;
3) name, title and social security number of all officers, partners or owners;
4) legal business name (if different from subsection (a)(2));
5) physical location of the business;
6) mailing address of the business;
7) signature of the applicant. All applications must be signed by

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an officer or officers of the entity seeking licensure, or a person who is a partner or owner. Reporting services or persons responsible for reporting a licensee's tax obligations under a power of attorney are not permitted to sign an application on behalf of any applicant;

8) type of fuel(s) used by applicant;

9) number of decals required by the licensee;

10) decal fee;

11) for IFTA applicants, a statement of the existence of bulk storage facilities in all member jurisdictions; and

12) a statement that the applicant agrees to comply with reporting, payment, recordkeeping, and license display requirements, and all applicable regulations. IFTA applicants must agree that the base jurisdiction may withhold any refunds due if the applicant is delinquent on payment of motor fuel use taxes due any member jurisdiction or taxes owed to the Department.

b) Bonds are not required for first-time applicants. However, bond may be required for just cause, as determined by the Department. Bonds may be required when a licensee fails to file timely reports, when he fails to remit the proper tax, when the Department has twice received a Non-Sufficient Funds check as payment, or when an audit indicates problems severe enough that, in the Director's discretion, a bond is required to protect the interests of the Department. If a bond is required, it shall be in the amount of $1000, or twice the estimated average tax liability for the reporting period, whichever is greater.

c) *Neither a license or decals shall be issued to any person who fails to file a return, or to pay the tax, penalty or interest for a filed return, or to pay any final assessment of tax, penalty or interest, as required by the Law, or as required by any other tax Act administered by the Department* [20 ILCS 2505/39b47].

d) Persons required to file bonds with the Department must make payments by certified check.

e) Upon receipt of a complete application for a license and decals, including payment for decals, any required reinstatement fees and provision of an approved bond, if applicable, the Department will issue each applicant one license. In addition to the license, a minimum of two decals per commercial motor vehicle will also be issued. A license and decals are valid for a period of one calendar year.

(Source: Added at FEB 28 1995 19 Ill. Reg. 3008, effective)

Section 500.310 Display of License and Decals

a) Motor fuel use tax licenses, or copies thereof, shall be carried in the cab of each commercial motor vehicle operating in Illinois. Failure to carry a copy of the license in the commercial motor vehicle may subject the operator to the purchase of a single trip permit and/or a citation.

b) The Department will not issue multiple licenses to an applicant. If the applicant requires multiple licenses, he may make legible copies of his license and carry them in his vehicles.

c) One decal must be placed on the exterior portion of each side of the cab of the commercial motor vehicle. In the case of transporters, manufacturers, dealers, or driveaway operations, the decals need not be permanently affixed, but may be temporarily displayed in a visible manner on both sides of the cab. Failure to display decals in the required manner may subject the vehicle operator to the purchase of a single trip permit and/or a citation.

d) Decals are not vehicle specific. Licensees may purchase additional decals at a cost of $3.75 per set throughout the license year. If decals are destroyed, lost or stolen, replacements may be obtained from the Department at a cost of $2 per set. Additional decals must be ordered on forms provided by the Department.

e) Decals are valid only for the vehicle of the person to whom they are issued. The transfer of decals between commercial motor vehicles or from one motor carrier to another is prohibited.

f) All IFTA carriers shall be allowed a two-month grace period to display the current year IFTA license and decals. They may display a decal and license from the previous year issued by any member jurisdiction until March 1.
Carriers from new member jurisdictions shall be allowed a two-month grace period from the date of the new member's IFTA program implementation to display the IFTA license and decals. However, to operate in Illinois, these carriers must either display a decal and license issued by Illinois for the previous year, a single trip permit, or the current year IFTA license issued by their base state.

(Source: Added at FEB 28 1995 19 Ill. Reg. 3008, effective)

Section 500.315 Renewal of Decals and Licenses

a) Motor fuel use tax licenses and decals must be renewed annually on forms provided by the Department. The Department shall mail renewal applications to all currently registered licensees in good standing. Failure to receive a license renewal application does not excuse a licensee's failure to renew his credentials.

b) The Department may deny a renewal application if the applicant has failed to file a return, pay any outstanding motor fuel use tax liabilities or other liabilities owed to the Department, or is currently revoked.

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(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.320 Single Trip Permits

a) If a commercial motor vehicle does not have motor fuel use tax credentials under either IFTA or the Illinois interstate motor fuel use tax program, a single trip permit to operate in Illinois must be obtained. A single trip permit may be obtained upon proper application from the Department or its agents.

b) A single trip permit authorizes operation of a commercial motor vehicle for a single trip through the State of Illinois, or from a point on the border of this State to a point within and return to the border.

c) The fee for each single trip permit shall be $20 and such single trip permit is valid for a period of seventy-two hours. This fee is in lieu of the tax and all reports required by Section 13a.3 of the Law, as well as the registration, decal display and furnishing of bond required by Section 13a.4 of the Law.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.325 Licensure of Lessors and Lessees

a) A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction.

b) In the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. If the lessee (carrier) assumes responsibility for reporting and paying motor fuel taxes, the base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor.

c) For motor vehicle leases of 30 days or less, the lessor of the motor vehicles under lease will be liable for all requirements of the motor fuel use tax program.

d) In the case of a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for motor fuel tax shall be:

1) The lessee (carrier) when the commercial motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee (carrier), regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor or lessee.

2) The lessor (independent contractor, agent, or service representative) when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes.

e) For licensees registered under the IFTA, leases shall be made available upon request of the Department or request of any member jurisdiction.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.330 Cancellation of License

a) A licensee may request that its license be cancelled. A license will only be cancelled if all reporting requirements and tax liabilities have been met and the account is clear of any unapplied payments or credits. A licensee must request cancellation either by checking the cancellation box on the quarterly tax return and noting the date of the end of operations, or by submitting a written request for cancellation to the Department.

b) Upon cancellation, the carrier must destroy its original license and all copies, and decals.

c) A final audit may be conducted by the Department, or for IFTA licensees, by any IFTA jurisdiction, upon cancellation of the license. A carrier cancelling a license must retain all records for a period of four years from the due date of the final quarterly tax return.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.335 Quarterly Payment and Reporting

a) Every person holding a valid unrevoked motor fuel use tax license issued by the Department under either the Illinois interstate motor fuel use tax program or under the provisions of the IFTA shall file a quarterly motor fuel use tax return, along with full payment of taxes, with the Department. Returns are due, even if no operations were conducted during the reporting period. The due date for the return and full payment of taxes is the last day of the month immediately following the close of the quarter for which the return is being filed. Returns and full payment of taxes are due on or before the following dates:

Reporting Quarter	Due Date
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

If the due date is a Saturday, Sunday, or legal holiday, the next business day is considered the due date. Each motor fuel use tax return should be mailed in a separate envelope.

b) The taxable event is the consumption of motor fuel, as defined in Section 500.100 of this Part, used to operate commercial motor vehicles. For tax payment and reporting purposes, all motor fuels placed in supply tanks of commercial motor vehicles, and all miles travelled, are taxable. Carriers must utilize the procedures in Section 500.235 for refunds for off-road or non-highway use.

c) For IFTA licensees: The IFTA provides that member jurisdictions may determine what type of motor fuels and miles travelled are exempt from tax, and are therefore not reportable. Carriers should contact member jurisdictions to determine what types of fuel and miles travelled are exempt from taxation. For IFTA carriers, claims for refunds for fuel used for any purpose other than propelling a commercial motor vehicle upon public highways must be made directly to the respective jurisdiction.

d) The quarterly return shall include a statement of the total number of miles travelled, as well as total miles travelled in each jurisdiction and in Illinois during the previous calendar quarter; the total number of gallons and type of reportable motor fuel consumed on the highways of all jurisdictions, as well as in each jurisdiction and in Illinois, and the total number of gallons and types of tax paid fuel purchased within each jurisdiction during the previous calendar quarter; and the total (net) of tax due the base jurisdiction on behalf of all jurisdictions. Licensees shall report all required information, and may not include miles operated and gallons of fuel purchased that were unavailable during any prior quarters. If a licensee does not include all required information, and that information is subsequently available, he must file an amended return, which will include penalty and interest.

e) Fuel and distance must be reported in gallons and miles. The conversion rates are:

One liter	= 0.2642 gallons
One gallon	= 3.785 liters
One mile	= 1.6093 kilometers
One kilometer	= 0.62137 mile

f) For carriers registered under the IFTA which consume compressed natural gas and other fuels that cannot be measured in gallons, the fuels must be converted to gallons using the conversion factor

used by the jurisdiction in which the fuel was consumed. The conversion rate for compressed natural gas is 14.7 pounds per square inch for 1 gallon or 1.24 therms of compressed natural gas for 1 gallon.

g) In order for a licensee to obtain credit for tax-paid retail purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the licensee showing evidence of such purchases and tax having been paid by the licensee directly to the applicable jurisdiction or at the pump. The receipt must contain the following information:

1) date of purchase;
2) seller's name and address;
3) number of gallons purchased;
4) fuel type;
5) price per gallon or total amount of sale;
6) unit numbers; and
7) purchaser's name (in the case of a lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party).

h) In the case of withdrawals from licensee-owned, tax-paid bulk storage, credit may be obtained only if the following records are maintained:

1) date of withdrawal;
2) number of gallons;
3) fuel type;
4) unit number (upon application by a licensee, the Department may waive the requirement of unit numbers for fuel withdrawn from the licensee's own bulk storage and placed in its commercial motor vehicles. The licensee must show that adequate records are maintained to distinguish fuel placed in commercial vs. non-commercial motor vehicles for all member jurisdictions); and
5) purchase and inventory records to substantiate that tax was paid on all bulk purchases.

i) Carriers registered under the IFTA must pay all taxes due to all member jurisdictions with one check, to be made payable to the Department. Payment by certified check is required of licensees who are required to post a bond.

j) Returns shall be filed on forms provided by the Department. However, with written approval from the Department, a licensee may submit a computer-generated tax return instead of the Department-supplied return. Computer-generated tax returns will be approved only if they contain all the same information, are in the same format and are on the same size paper, as the Department's return.

k) If a licensee uses a reporting service for his motor fuel use taxes, a power of attorney must be placed on file annually at the time of renewal. Filing a power of attorney does not relieve the

licensee of the legal obligations associated with the license. The licensee is responsible for the payment of taxes as well as all acts and omissions of the reporting service. If a power of attorney is on file, the Illinois Department of Revenue will mail the quarterly tax return to the reporting service. Decal and renewal applications, however, will always be mailed directly to the licensee.

l) Reports not filed or full payment of taxes not made by the due date shall be considered late and any taxes due considered delinquent. The licensee shall be assessed a penalty of $50 or 10 percent of the delinquent taxes, whichever is greater, for failure to file a report, for filing a late report, or for underpayment of taxes due. Tax shall bear interest at the rate of 1 percent per month or fraction of month until paid. For reasonable cause shown, the Department may waive a penalty. For IFTA licensees, the Department may waive interest for another jurisdiction only with that jurisdiction's approval.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.340 Credits and Refunds

a) A licensee shall receive full credit or refund for tax-paid fuel used outside the jurisdiction where the fuel was purchased. For Illinois interstate program licensees, as to each gallon of motor fuel purchased in Illinois by such motor carrier during the previous calendar quarter in excess of the number of gallons of motor fuel used by such motor carrier on the highways of Illinois during such previous calendar quarter, the licensee may take a credit for the current calendar quarter's tax liability. For IFTA licensees, a licensee may apply the overpayment generated in one jurisdiction to the taxes owed to another jurisdiction.

b) Credits shall be carried over to offset liabilities of the licensee in future reporting periods until the credit is fully offset or until eight calendar quarters shall have passed since the end of the calendar quarter in which the credit accrued, whichever occurs sooner. If the credit has not been used to offset liabilities in 8 calendar quarters, it shall be refunded to the licensee.

c) Credits and refunds will be made only when all tax liability, including audit assessments, has been paid to the Department or when all motor fuel use tax liabilities, including audit assessments, penalty and interest owed to other jurisdictions, has been satisfied.

d) Refunds will not be made for amounts under $1. Amounts less than $25 will be credited, and sums of $25 and over will be automatically refunded.

e) Refunds determined to be properly due shall be paid within 90

days after receipt of a request by the licensee. If not so paid, interest shall accrue at the rate of 1 percent per month or fraction thereof until the refund is paid.

f) No credit or refund shall be allowed or made based upon:
   1) a return filed more than one year after the due date of such return; or
   2) overpayments for which records are no longer required to be kept. A request for a refund shall extend the records requirement date until the refund is made or denied.

g) While not required to be attached to the return, proof of tax-paid purchases, as specified in Section 500.335(g) or (h), must be retained by the licensee.

h) For carriers registered under the IFTA, credits or refunds for tax paid on tax-exempt fuels must be made directly with the participating jurisdiction.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.345 Records Requirements

a) Each licensee shall maintain records to substantiate information reported on the quarterly tax report. Records shall be preserved for a period of four years from the due date of the return or the date filed, whichever is later. Records may be kept on microfilm, microfiche, or other computerized or condensed record storage system. Such records, for IFTA licensees, shall be made available upon request of any member jurisdiction.

b) Non-compliance with any recordkeeping requirement may be cause for revocation of the license.

c) Failure to provide records demanded for the purpose of audit extends the statute of limitations until the records are provided. Successive failures to adequately respond to a demand for records relate back to the first demand.

d) Bulk storage fuel purchases and withdrawals and over-the-road purchases are to be accounted for separately.

e) Fuel records shall contain the following items:
   1) the date of each receipt of fuel;
   2) the name and address of the person from whom purchased or received;
   3) the number of gallons received;
   4) the type of fuel; and
   5) the vehicle or equipment into which the fuel was placed.

f) All licensees shall, in addition, maintain detailed distance records which show operations on an individual-vehicle basis. Such records shall contain but not be limited to:
   1) both taxable and non-taxable usage of fuel;
   2) distance traveled for taxable and non-taxable use; and

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3) distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

The Individual Vehicle Mileage Record (IVMR) required by the International Registration Plan is an acceptable source document for recording vehicle distance information. Another acceptable source document is a trip report which includes the information in subsection (f)(1)-(3), as well as the date of trip (starting and ending), trip origin and destination (including city and state), routes of travel and/or beginning and ending odometer readings, vehicle unit number, vehicle fleet number and licensee's name.

g) On-Board Recording Devices. On-board recording devices may (at the option of the carrier) be used in lieu of or in addition to handwritten trip reports for fuel tax reporting. On-board recording devices may be used alone or in conjunction with an electronic computer system, or in conjunction with manual systems.

1) All recording devices used to generate trip reports or used in conjunction with manual systems must meet the requirements shown in subsections (g)(3) and (4) below. When the on-board recording device is used in conjunction with an electronic computer system and reports are prepared on the basis of data downloaded from the recording device, the overall system must meet the requirements of subsections (g)(4), (5) and (7).

2) Use of On-Board Recording Device Only. When the device is to be used alone, printed reports must be produced which replace the handwritten trip reports. The printed trip reports shall be retained for audit. Vehicle and fleet summaries which show miles and kilometers by jurisdiction must then be prepared manually.

3) Use of On-Board Recording Device in Conjunction with Electronic Computer System. When the computer system is designed to produce printed trip reports, vehicle and fleet summaries which show miles and kilometers by jurisdiction must also be prepared. When the printed trip reports will not be retained for audit, the system must have the capability of producing, upon request, the reports indicated in subsection (g)(7).

4) Minimum Device Requirements. Minimum device requirements include the following:

A) The carrier must obtain a certificate from the manufacturer certifying that the design of the on-board recording device has been sufficiently tested to meet the requirements of this provision.

B) The on-board recording device and associated support systems must be, to the maximum extent practicable, tamper proof and must not permit altering of the information collected. Editing of copies of the original information collected will be allowed, but all editing must be identified and both the edited and original data must be recorded and retained.

C) The on-board recording device shall warn the driver visually and/or audibly that the device has ceased to function.

D) The device must time and date stamp all data recorded.

E) The device must not allow data to be overwritten before the data has been extracted. The device shall warn the driver visually and/or audibly that the device's memory is full and can no longer record data.

F) The device must automatically update a life-to-date odometer when the vehicle is placed in motion or the operator must enter the current vehicle odometer reading when the on-board recording device is connected to the vehicle.

G) The device must provide a method for the driver to confirm that the entered data is correct (e.g., a visual display of the entered data that can be reviewed and edited by the driver before the data is finally stored).

5) Data collection. To obtain the information needed to verify fleet distance, to prepare the "Individual Vehicle Distance Record(s)" (IVDR), and for fuel tax purposes, the device must collect the following data on each trip:

A) date of trip (starting and ending);
B) trip origin and destination (location code is acceptable);
C) routes of travel;
D) beginning and ending odometer or hubodometer reading of the trip;
E) total trip distance;
F) distance by jurisdiction;
G) power unit number or vehicle identification number;
H) vehicle fleet number;
I) registrant's name;
J) driver ID or name;
K) intermediate trip stops;
L) date of purchase;
M) seller's name and address (vendor code acceptable);
N) number of gallons purchased;
O) fuel type (may be referenced from vehicle file);
P) price per gallon or total amount of sale (required only for purchases from vendors);
Q) unit numbers; and
R) purchaser's name (in the case of lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party).

6) For purposes of bulk fuel tax, the device must collect, in addition to the items in subsection (g)(5)(A)-(R), the following data:

A) date of withdrawal;

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B) number of gallons;
C) fuel type;
D) unit number; and
E) purchase and inventory records to substantiate that tax was paid on all bulk purchases.

7) Capability of System to Produce Reports. Generally speaking, the reports referred to in this subsection are not prepared by the on-board recording device. Instead, these reports are prepared using an electronic computer system which accepts data from the on-board recording device. The system must be able to produce the following reports:
A) For each trip, an Individual Vehicle Distance Record (IVDR) report that includes the information required in subsection (g)(5) (Note: this report may be more than one page);
B) A report that indicates when the on-board recording device was last calibrated and the calibration method used;
C) An exception report(s) that identifies all edited data, omissions of required data (see subsection (g)(5)), system failures, noncontinuous life-to-date odometer readings, travel to noncontiguous states, and trips where the location of the beginning trip is not the location of the previous trip;
D) A monthly, quarterly, and annual summary of vehicle trips by vehicle number showing miles or kilometers by jurisdiction;
E) Monthly, quarterly, and annual trip summaries by fleet showing the number of miles or kilometers by jurisdictions.

8) Carrier Responsibilities. All carriers must observe the following requirements:
A) It is the carrier's responsibility to recalibrate the on-board recording device when tire size changes, the vehicle drive-train is modified, or any modifications are made to the vehicle which affect the accuracy of the on-board recording device. The device must be maintained and recalibrated in accordance with the manufacturer's specifications. A record of recalibrations must be retained for the audit retention period.
B) It is the carrier's responsibility to assure its drivers are trained in the use of the computer system. Drivers shall be required to note any failure of the on-board recording device and to prepare manual trip reports of all subsequent trip information until the device is again operational.
C) It is the carrier's responsibility to maintain a second copy (back-up copy) of the electronic files either electronically or in paper form for the audit retention period.

D) It is the carrier's responsibility to assure the entire record-keeping system meets the requirements of the Department. It is suggested that the carrier contact the Department's audit division for verification of audit compliance prior to implementation.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.350 Revocation

a) The Department may revoke the motor fuel use tax license of a carrier registered under either the Illinois interstate or IFTA program, for violation of any provision of the Law or any rules promulgated thereunder. Causes for revocation include, but are not limited to, failure to file a quarterly tax return or to remit all taxes due, or improper use of decals.
b) The Department shall send the licensee a written notice of its decision to revoke a license. Unless the licensee timely protests the Department's determination as provided for in Section 500.355, the revocation is final.
c) A licensee whose license has been revoked may have that license reinstated if the condition which caused revocation is remedied. The carrier must pay a $100 reinstatement fee and file a new application for a license and decals. Carriers whose license has been revoked and then reinstated will be required to post a bond in accordance with the provisions of Section 500.305.

(Source: Added at 19 Ill. Reg. [illegible], effective FEB 28 1995)

Section 500.355 Protest Procedures

a) A licensee or applicant may protest an action or audit finding made by the Department by submitting a written request for a hearing within 30 days after notification of the notice of the original action or finding. If the hearing is not requested within 30 days, the Department's action becomes final.
b) In the case of an audit, if the licensee is in disagreement with the original audit finding of the Department, it may request any or every jurisdiction to audit the licensee's records. Each jurisdiction to which a request is made may elect to accept or deny the request. Each jurisdiction electing to audit the licensee's records will audit only for its own portion of the licensee's operations. The licensee shall make records available at the office of the jurisdiction or at a place designated by the jurisdiction or pay reasonable per diem and travel expenses associated with conducting an audit at the licensee's place of business.

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c) Hearings that have been timely requested will be scheduled by the Department. The Department will provide written notice of the date, time, and place of the hearing at least 20 days prior to the hearing date.

d) Hearings shall be conducted in accordance with the provisions of the Illinois Administrative Procedure Act [5 ILCS 100] and regulations promulgated thereunder found at 86 Ill. Adm. Code 200.101 through 200.175.

e) The Department shall notify the licensee of the findings of fact and ruling on the hearing. If, within 35 days from the date the licensee receives notice of such decision, proceedings for review thereof are not instituted in the manner provided by the Administrative Review Law [735 ILCS 5/Art. III], the decision shall become final.

f) For IFTA licensees only, the Department shall participate in the hearing on behalf of all member jurisdictions.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.360 Audits

a) The purpose of an audit is to verify fuel and mileage data reported on the quarterly tax return. Any licensee may be selected for audit.

b) Prior to conducting an audit, the auditor will contact the licensee to arrange a date to commence the audit. At that time, the auditor will outline the time period to be audited and the records to be reviewed. A confirmation letter will be sent to confirm date and time. For just cause (e.g., to ensure the validity of the audit), the notification requirement may be waived. At the beginning of the audit, the auditor will determine background information, reporting methods and records that will be reviewed. As the audit progresses, the auditor and licensee will discuss the sample periods, sampling techniques, and any problem areas. A final conference will be held with the licensee to explain audit adjustments and future reporting practices. Any audit adjustment will be reflected on an amended return covering the period of the audit. Payment of the liability, if any, will be requested. If the licensee does not agree, an audit assessment will be issued.

c) Audit guidelines. Audits will be completed using the best information available. In the absence of adequate records, a standard of four miles per gallon will be used. Tax-paid fuel entries will be disallowed if tax-paid fuel documentation is unavailable. All reasonable attempts will be made to verify reported miles.

d) If a licensee fails to make records available upon proper request or if any licensee fails to maintain records from which the licensee's true liability may be determined, the Department may, 30 days after requesting in writing that the records be made available or receiving notification of the insufficient records, determine the licensee's tax liability. The determination shall be made from information previously furnished by the licensee, if available, as well as any other pertinent information which is available to the Department.

e) In the event that an IFTA licensee's records are not located in Illinois and the Department must send auditors to the place the records are kept, the Department may require the licensee to reimburse it for reasonable per diem and travel expenses of its auditors, as authorized by law.

f) IFTA Licensees - Additional Audit Requirements. The Department will audit its IFTA licensees on behalf of all member jurisdictions and shall submit audit reports to all other member jurisdictions. In addition, the following additional requirements shall apply to IFTA licensee audits:

1) A member jurisdiction may re-examine a base jurisdiction's audit findings if the member jurisdiction reviews the audit work papers and, within 45 days after receipt of the audit findings by the member jurisdiction, notifies the Department of any errors found during such review and of its intention to conduct the re-examination. Such re-examination by a member jurisdiction must be based exclusively on the audit sample period utilized by the Department in conducting its audit.

2) A member jurisdiction may reaudit a licensee if said member jurisdiction notifies the base jurisdiction and the licensee of reasonable cause for the re-audit.

3) The re-audit or re-examination by a member jurisdiction must be performed in cooperation with the base jurisdiction. An adjustment to original audit findings as a result of such re-audit or re-examination must be reconciled with the original audit findings issued by the Department. New audit findings shall be issued by the Department. A member jurisdiction conducting a re-audit or re-examination shall pay its own expenses.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

SUBPART D: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section 500.400 ~~Timely Mailing Treated as Timely Filing and Paying--Meaning of Due Date Which Falls on Saturday, Sunday or a Holiday~~ General Information

a) Any report, claim, tax return, statement or other document required or authorized to be filed with or any payment made to the Department of Revenue, which document or payment is transmitted through the United States mail, will be deemed to have been filed with and received by

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the Department on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. If mailed but not received by the Department, or if received, but the cancellation mark is illegible, erroneous or omitted, the document or payment will be deemed to have been filed on the date it was mailed if the sender establishes by competent evidence that the document or payment was deposited, properly addressed, in the United States mail on or before the date ~~due for filing~~ on which it was required or authorized to be filed or was due. In the event of the Department's failure to receive a document or payment required or authorized by law to be filed, such document or payment will be deemed to have been received by the Department on time if the sender files with the Department a duplicate within 30 days after written notification is given to the sender by the Department of its failure to receive such document or payment, provided proof is furnished that the original of the document was deposited in the United States mail on or before the date due for filing.

b) If any report, claim, tax return, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed, and the date of registration, certification or certificate shall be deemed to be the postmarked date.

c) ~~If the due date for any return or other report or payment falls on Saturday, Sunday or a Holiday, such due date shall be considered to be the next business day either for the purpose of submitting such return or other report or payment by mail or for the purpose of submitting such return or other report or payment in person.~~ Reports, claims, tax returns, statements, remittances or other documents delivered by means other than the United States mail are considered to be filed on the date they are received by the Department.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.405 Due Date That Falls on Saturday, Sunday or a Holiday

If the due date for any return, report, payment, statement or other document required or authorized to be filed with the Department falls on Saturday, Sunday or a holiday as defined or fixed in any statute now or hereafter in force in this State, such due date shall be considered to be the next business day either for the purpose of submitting such return or other report or payment by United States mail or for the purpose of submitting such return or other report by any means other than the United States mail.

(Source: Added at 19 Ill. Reg. 3008, effective FEB 28 1995)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

FEB 28 1995)

SUBPART E: GENERAL REQUIREMENTS APPLICABLE TO ALL LICENSES AND PERMITS ISSUED UNDER THE MOTOR FUEL TAX LAW

Section 500.500 Licenses and Permits Are Not Transferable

For purposes of this Section, the terms "licensee" and "license" include "permittee" and "permit." If ~~the~~ any licensee, other than any licensee under the Motor Fuel Use Tax program, discontinues business, the license must be returned to the Department for cancellation. Licensees ~~are--expected--to~~ must apply for and secure a new license and to furnish a new bond under the following circumstances:

a) When there has been a change in the name of the company, even though the ownership remains the same;

b) when the business of an individual or a partnership is taken over and continued by a corporation;

c) when the licensee is a corporation and surrenders its charter, and the business is continued by an individual, a partnership or any other legal person;

d) when a licensee dies, and the business is continued by another person;

e) when a licensee becomes incompetent or bankrupt or otherwise subject to the jurisdiction of a court, and the business is continued by a conservator, trustee in bankruptcy or other person appointed by the court;

f) when an individually owned business is taken over and continued by a partnership;

g) when a business owned by a partnership is taken over and continued by an individual;

h) when a business which is owned by an individual or a partnership or a corporation is taken over and continued by a different individual, partnership or corporation; and

i) when any other situation arises in which a business that is owned by one type of legal person is taken over and continued by a different legal person.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.501 Blenders' Permits Are Not Transferable (Repealed)

~~If the permittee discontinues business, the permit must be returned to the Department for cancellation. Permittees are expected to apply for and secure a new permit under the following circumstances:~~

~~a) When there has been a change in the name of the company, even though the ownership remains the same;~~

~~b) when the business of an individual or a partnership is taken over and continued by a corporation;~~

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

~~c) when the permittee is a corporation and surrenders its charter and the business is continued by an individual, a partnership or any other legal person;~~
~~d) when the permittee dies, and the business is continued by another person;~~
~~e) when a permittee becomes incompetent or bankrupt or otherwise subject to the jurisdiction of a court, and the business is continued by a conservator, trustee in bankruptcy or other person appointed by the court;~~
~~f) when an individually owned business is taken over and continued by a partnership;~~
~~g) when a business owned by a partnership is taken over and continued by an individual;~~
~~h) when a business which is owned by an individual or a partnership or a corporation is taken over and continued by a different individual, partnership or corporation; and~~
~~i) when any other situation arises in which a business that is owned by one type of legal person is taken over and continued by a different legal person.~~

(Source: Repealed at 19 Ill. Reg. 3008, effective FEB 28 1995)

Section 500.505 Changes of Corporate Officers

All changes of corporate officers should be promptly reported to the Department.

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

SUBPART F: INCORPORATION BY REFERENCE OF RETAILERS' OCCUPATION TAX

Section 500.600 Incorporation of the Retailers' Occupation Tax Regulations by Reference

The following Sections of the Retailers' Occupation Tax Regulations are incorporated by reference and made a part hereof insofar as ~~such Sections~~ they can be applied without conflict to ~~comparable~~ the provisions of the Motor Fuel Tax Law ~~situations~~ or any regulations promulgated thereunder: 86 Ill. Adm. Code 130.815 (except as applied to motor fuel use tax licensees), 130.901 (except as applied to motor fuel use tax licensees) ~~except subsection (f)~~, 130.1601, and 130.1701. The references to "taxpayer" in 86 Ill. Adm. Code 130.1601 and 130.1701 shall apply to ~~"distributor" and "supplier"~~ "licensees".

(Source: Amended at 19 Ill. Reg. 3008, effective FEB 28 1995)

ILLINOIS POLLUTION CONTROL BOARD

NOTICE OF EMERGENCY AMENDMENTS

1) Heading of the Part:

Organic Material Emission Standards and Limitations for the Metro East Area

2) Code Citation: 35 Ill. Adm. Code 219

3) Section Numbers: Emergency Action:

219.585 Amend

4) Statutory Authority: Section 27(c) of the Environmental Protection Act [415 ILCS 5/27(c)] and Section 5-45 of the Administrative Procedure Act [5 ILCS 100/5-45].

5) Effective Date of Emergency Amendments: February 28, 1995

6) If this emergency rule amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: N/A

7) Date Filed in Agency's Principal Office: February 23, 1995

8) Reason for Emergency:

The compliance date for facilities, other than retail and wholesale-consumer facilities, to achieve a maximum gasoline RVP of 7.2 psi is one month earlier than the federal compliance date for these facilities. Federal regulations require such facilities to comply by June 1st of each year, while Section 219.585(a) requires compliance by May 1st. The May 1st date was agreed to by the Agency and industry in part in reliance on regulatory action by Missouri which did not occur. This emergency rule is necessary because a non-emergency rulemaking cannot be completed prior to May 1, 1995, and there is a threat to the public interest and welfare.

The environmental effect of the one month delay is expected to be minimal (0.27 tons per day of volatile organic emissions reductions per Agency estimates). The hardship of May (as opposed to June) compliance to the petroleum industry is: (1) for the refiners, acceleration of production schedules to supply lower volatility gasoline for only one small area of a larger market area; (2) for pipelines, the need to ship a separate, low RVP to the Illinois market during the month of May; and (3) for gasoline distributors, the shortening of time to blend down their tanks from higher volatility winter gasoline and the resulting rise of the risk of being out of compliance. Under these circumstances, the Board finds, as the Agency suggests, that "the proposed revision is reasonable and further achieves the regulatory consistency originally intended, with no detriment to the Metro-East air quality".

Department Exhibit 8

P.A. 88-480 Effective 1-1-95

See pg. 4135-4136

(35 ILCS 305/2) (from Ch. 120, par. 1002)

Sec. 2. "Recordation" includes the issuance of certificates of title by Registrars of Title under "An Act concerning land titles", approved May 1, 1897, as amended, pursuant to the filing of deeds or trust documents for that purpose, as well as the recording of deeds or trust documents by recorders.

"Department" means the Department of Revenue.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, ***limited liability company,*** or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

"Value" means the amount of the full actual consideration therefor, including the amount of any lien or liens assumed by the buyer.

"Trust document" means a document required to be recorded under the Land Trust Recordation Act.

(Source: P.A. 84-858.)

Section 50. The Motor Fuel Tax Law is amended by changing Sections 1.11, 1.16, 4c, 8, 12, 13, 13a, 13a.1, 13a.2, 13a.3, 13a.4, 13a.5, 13a.6, 14a, 15, 15.1, and 16 and adding Section 1.22 as follows:

(35 ILCS 505/1.11) (from Ch. 120, par. 417.11)

Sec. 1.11. "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, ***limited liability company,*** or a receiver, trustee, guardian, or other representative appointed by order of any court, or any city, town, county or other political subdivision in this State. Whenever used in any Section of this Act prescribing and imposing a fine or imprisonment or both, the term "person" as applied to partnerships and associations shall mean the partners or members thereof, ***as applied to limited liability companies the term "person" means managers, members, agents, or employees of the limited liability company,*** and as applied to corporations the term "person" shall mean the officers, agents, or employees thereof who are responsible for any violation of this Act.

(Source: P.A. 83-706.)

(35 ILCS 505/1.16) (from Ch. 120, par. 417.16)

Sec. 1.16. "Commercial motor vehicle" means ***a motor vehicle used, designed, or maintained for the transportation of persons or property and either having 2 axles and a gross weight or registered gross vehicle weight exceeding 26,000 pounds or 12,000 kilograms, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds or 12,000 kilograms gross vehicle weight*** ~~any truck with more than 2 axles, road tractor, or truck tractor, and any passenger motor vehicle that has seats for more than 20 passengers,~~ except for motor vehicles operated by this State or the United States, ***recreational vehicles,*** school buses, ~~and commercial motor vehicles owned by a manufacturer or dealer and held for sale, even though incidentally moved or operated on the highway or used for purposes of testing, demonstrating or delivery~~ and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***Vehicles that are exempted from registration, but are required to be registered for***

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operations in other jurisdictions may apply for a permit and decal under the provisions of the International Fuel Tax Agreement referenced in Section 14a of this Act.
(Source: P.A. 85-340.)

(35 ILCS 505/1.22 new)

Sec. 1.22. "Jurisdiction" means a state of the United States, the District of Columbia, or a province or Territory of Canada.

(35 ILCS 505/4c) (from Ch. 120, par. 419c)

Sec. 4c. Notwithstanding any other provision to the contrary, any person who is required to file a bond pursuant to any provision of this Act and who has continuously complied with all provisions of this Act for 24 or more consecutive months, shall no longer be required to comply with the bonding provisions of this Act so long as such person continues his compliance with the provisions of this Act. *This provision does not apply to motor carriers subject to the provisions of Sections 13a through 13a.5 of this Act.*
(Source: P.A. 84-1408.)

(35 ILCS 505/8) (from Ch. 120, par. 424)

Sec. 8. Except as provided in Section 8a, all money received by the Department under this Act, *including payments made to the Department by member jurisdictions participating in the International Fuel Tax Agreement,* shall be deposited in a special fund in the State treasury, to be known as the "Motor Fuel Tax Fund", and shall be used as follows:

(a) 2 1/2 cents per gallon of the tax collected on special fuel under paragraph (b) of Section 2 and Section 13a of this Act shall be transferred to the State Construction Account Fund in the State Treasury;

(b) $420,000 shall be transferred each month to the State Boating Act Fund to be used by the Department of Conservation for the purposes specified in Article X of the Boat Registration and Safety Act;

(c) $1,500,000 shall be transferred each month to the Grade Crossing Protection Fund to be used as follows: not less than $6,000,000 each fiscal year shall be used for the construction or reconstruction of rail highway grade separation structures; $750,000 each fiscal year shall be transferred to the Transportation Regulatory Fund and shall be accounted for as part of the rail carrier portion of such funds and shall be used to pay the cost of administration of the Illinois Commerce Commission's railroad safety program in connection with its duties under subsection (3) of Section 18c-7401 of The Illinois Vehicle Code, with the remainder to be used by the Department of Transportation upon order of the Illinois Commerce Commission, to pay that part of the cost apportioned by such Commission to the State to cover the interest of the State-wide public in the use of highways, roads or streets in the county highway system, township and district road system or municipal street system as defined in the Illinois Highway Code, as the same may from time to time be amended, for separation of grades, for installation, construction or reconstruction of crossing protection or reconstruction, alteration, relocation including construction or improvement of any existing highway necessary for access to property or improvement of any grade crossing including the necessary highway approaches thereto of any railroad across the highway or public road, as provided for in and in accordance with Section 18c-7401 of The Illinois Vehicle

Code;

(d) of the amount remaining after allocations provided for in subsections (a), (b) and (c), a sufficient amount shall be reserved to pay the costs of:

(1) the Department of Revenue in administering this Act,

(2) the Department of Transportation in performing its duties imposed by the Illinois Highway Code for supervising the use of motor fuel tax funds apportioned to municipalities, counties and road districts,

(3) refunds provided for in Section 13 of this Act *and under the terms of the International Fuel Tax Agreement referenced in Section 14a*,

(4) from October 1, 1985 until December 31, 1996, the administration of the Vehicle Emissions Inspection Law, which amount shall be certified monthly by the Environmental Protection Agency to the State Comptroller and shall promptly be transferred by the State Comptroller and Treasurer from the Motor Fuel Tax Fund to the Vehicle Inspection Fund, ~~and~~

(5) amounts ordered paid by the Court of Claims, *and*~~;~~

(6) payment of motor fuel use taxes due to member jurisdictions under the terms of the International Fuel Tax Agreement. The Department shall certify these amounts to the Comptroller by the 15th day of each month; the Comptroller shall cause orders to be drawn for such amounts, and the Treasurer shall administer those amounts on or before the last day of each month;

(e) after allocations for the purposes set forth in subsections (a), (b), (c) and (d), the remaining amount shall be apportioned as follows:

(1) 58.4% shall be deposited as follows:

(A) 37% into the State Construction Account Fund, and

(B) 63% into the Road Fund, $1,250,000 of which shall be reserved each month for the Department of Transportation to be used in accordance with the provisions of Sections 6-901 through 6-906 of the Illinois Highway Code;

(2) 41.6% shall be transferred to the Department of Transportation to be distributed as follows:

(A) 49.10% to the municipalities of the State,

(B) 16.74% to the counties of the State having 1,000,000 or more inhabitants,

(C) 18.27% to the counties of the State having less than 1,000,000 inhabitants,

(D) 15.89% to the road districts of the State.

As soon as may be after the first day of each month the Department of Transportation shall allot to each municipality its share of the amount apportioned to the several municipalities which shall be in proportion to the population of such municipalities as determined by the last preceding municipal census if conducted by the Federal Government or Federal census. If territory is annexed to any municipality subsequent to the time of the last preceding census the corporate authorities of such municipality may cause a census to be taken of such annexed territory and the population so ascertained for such territory shall be added to the population of the municipality as determined by the last

preceding census for the purpose of determining the allotment for that municipality. If the population of any municipality was not determined by the last Federal census preceding any apportionment, the apportionment to such municipality shall be in accordance with any census taken by such municipality. Any municipal census used in accordance with this Section shall be certified to the Department of Transportation by the clerk of such municipality, and the accuracy thereof shall be subject to approval of the Department which may make such corrections as it ascertains to be necessary.

As soon as may be after the first day of each month the Department of Transportation shall allot to each county its share of the amount apportioned to the several counties of the State as herein provided. Each allotment to the several counties having less than 1,000,000 inhabitants shall be in proportion to the amount of motor vehicle license fees received from the residents of such counties, respectively, during the preceding calendar year. The Secretary of State shall, on or before April 15 of each year, transmit to the Department of Transportation a full and complete report showing the amount of motor vehicle license fees received from the residents of each county, respectively, during the preceding calendar year. The Department of Transportation shall, each month, use for allotment purposes the last such report received from the Secretary of State.

As soon as may be after the first day of each month, the Department of Transportation shall allot to the several counties their share of the amount apportioned for the use of road districts. The allotment shall be apportioned among the several counties in the State in the proportion which the total mileage of township or district roads in the respective counties bears to the total mileage of all township and district roads in the State. Funds allotted to the respective counties for the use of road districts therein shall be allocated to the several road districts in the county in the proportion which the total mileage of such township or district roads in the respective road districts bears to the total mileage of all such township or district roads in the county. After July 1 of any year, no allocation shall be made for any road district unless it levied a tax for road and bridge purposes in an amount which will require the extension of such tax against the taxable property in any such road district at a rate of not less than .08% of the value thereof, based upon the assessment for the year immediately prior to the year in which such tax was levied and as equalized by the Department of Revenue. If any road district has levied a special tax for road purposes pursuant to Sections 6-601, 6-602 and 6-603 of the Illinois Highway Code, and such tax was levied in an amount which would require extension at a rate of not less than .08% of the value of the taxable property thereof, as equalized or assessed by the Department of Revenue, such levy shall, however, be deemed a proper compliance with this Section and shall qualify such road district for an allotment under this Section. If a township has transferred to the road and bridge fund money which, when added to the amount of any tax levy of the road district would be the equivalent of a tax levy requiring extension at a rate of at least .08%, such transfer, together with any such tax levy, shall be deemed a proper compliance with this Section and shall qualify the

road district for an allotment under this Section.

As used in this Section the term "road district" means any road district, including a county unit road district, provided for by the Illinois Highway Code; and the term "township or district road" means any road in the township and district road system as defined in the Illinois Highway Code. For the purposes of this Section, "road district" also includes park districts, forest preserve districts and conservation districts organized under Illinois law and "township or district road" also includes such roads as are maintained by park districts, forest preserve districts and conservation districts. The Department of Transportation shall determine the mileage of all township and district roads for the purposes of making allotments and allocations of motor fuel tax funds for use in road districts.

Payment of motor fuel tax moneys to municipalities and counties shall be made as soon as possible after the allotment is made. The treasurer of the municipality or county may invest these funds until their use is required and the interest earned by these investments shall be limited to the same uses as the principal funds.

(Source: P.A. 86-16; 86-125; 86-982; 86-1028; 86-1091; 86-1433; 86-1475.)

(35 ILCS 505/12) (from Ch. 120, par. 428)

Sec. 12. It is the duty of every distributor, receiver, or supplier under this Act to keep within this State and of every bulk user under this Act to keep within this State or at some office outside this State for any period for which the Department is authorized to issue a Notice of Tax Liability to the distributor, receiver, supplier or bulk user, records and books showing all purchases, receipts, losses through any cause, sales, distribution and use of motor fuel, aviation fuels, home heating oils, and kerosene, and products used for the purpose of blending to produce motor fuel, which records and books shall, at all times during business hours of the day, be subject to inspection by the Department, or its duly authorized agents and employees. If, however, the records and books of any bulk user are kept out of this State, such records and books shall be produced for inspection within 20 days from date of notice from the Department at Springfield or Chicago as designated in that notice. ***For purposes of this Section, "records" means all data maintained by the taxpayer including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.*** The Department may, in its discretion, prescribe reasonable and uniform methods for keeping of records and books by licensees ***and that set forth requirements for the form and format of records that must be maintained in order to comply with any recordkeeping requirement under this Act.***

(Source: P.A. 86-958.)

(35 ILCS 505/13) (from Ch. 120, par. 429)

(Text of Section effective until January 1, 1994.)

Sec. 13. Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid.

Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes

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a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid under Section 2 of this Act on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state.

Claims for such reimbursement must be made to the Department of Revenue, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim must state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary, and the time when, and the circumstances of its loss or the specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require. Claims for full reimbursement must be filed not later than one year after the date on which the tax was paid by the claimant.

If, however, a claim for such reimbursement otherwise meeting the requirements of this Section is filed more than one year but less than 2 years after that date, the claimant shall be reimbursed at the rate of 80% of the amount to which he would have been entitled if his claim had been timely filed.

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

Any receiver who has paid the tax imposed by Section 2a of this Act (either directly to the Department or to another licensed receiver) upon fuel exported or sold under the exemptions provided in Section 2a may file a claim for credit to recover the amount so paid. Such claims shall be made to the Department, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim shall state such facts relating to the purchase, importation, manufacture, production, export, or sale of the fuel by the claimant as the Department may deem necessary together with such other information as the Department may reasonably require. Claims must be filed not later than one year after the date on which the tax was paid by the claimant. The Department may make such investigation of the correctness of the facts stated in such claims as it deems necessary. When the Department approves a claim, the Department shall issue a credit memorandum to the receiver who made the payment for which the credit is being given or, if the receiver has died or become incompetent, to such receiver's legal representative. The amount of such credit memorandum shall be credited against any tax due or to become due under this Act from the receiver who made the payment for which credit has been given.

Any distributor or supplier who has paid the tax imposed

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

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

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

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

If the payment for which the distributor's, receiver's, or supplier's claim is filed is held in the protest fund of the State Treasury during the pendency of the claim for credit proceedings pursuant to the order of the court in accordance with Section 2a of "An Act in relation to the payment and disposition of moneys received by officers and employees of the State of Illinois by virtue of their office or employment", approved June 9, 1911, and if it is determined by the Department or by the final order of a reviewing court under the Administrative Review Law that the

claimant is entitled to all or a part of the credit claimed, the claimant, instead of receiving a credit memorandum from the Department, shall receive a cash refund from the protest fund as provided for in Section 2a of "An Act in relation to the payment and disposition of moneys received by officers and employees of the State of Illinois by virtue of their office or employment".

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

(Text of Section taking effect on January 1, 1994.)

Sec. 13. Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid.

Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid under Section 2 of this Act on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state.

Claims for such reimbursement must be made to the Department of Revenue, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim must state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary, and the time when, and the circumstances of its loss or the specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require. ***No claim based upon idle time shall be allowed.*** Claims for full reimbursement must be filed not later than one year after the date on which the tax was paid by the claimant.

If, however, a claim for such reimbursement otherwise meeting the requirements of this Section is filed more than one year but less than 2 years after that date, the claimant shall be reimbursed at the rate of 80% of the amount to which he would have been entitled if his claim had been timely filed.

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

Any receiver who has paid the tax imposed by Section 2a of this Act (either directly to the Department or to another

licensed receiver) upon fuel exported or sold under the exemptions provided in Section 2a may file a claim for credit to recover the amount so paid. Such claims shall be made to the Department, duly verified by the affidavit of the claimant (or by the claimant's legal representative if the claimant has died or become a person under legal disability), upon forms prescribed by the Department. The claim shall state such facts relating to the purchase, importation, manufacture, production, export, or sale of the fuel by the claimant as the Department may deem necessary together with such other information as the Department may reasonably require. Claims must be filed not later than one year after the date on which the tax was paid by the claimant. The Department may make such investigation of the correctness of the facts stated in such claims as it deems necessary. When the Department approves a claim, the Department shall issue a credit memorandum to the receiver who made the payment for which the credit is being given or, if the receiver has died or become incompetent, to such receiver's legal representative. The amount of such credit memorandum shall be credited against any tax due or to become due under this Act from the receiver who made the payment for which credit has been given.

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

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

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

In case the distributor, receiver, or supplier requests and the Department determines that the claimant is entitled

to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department, by rule or regulation, shall provide for the payment of refunds in hardship cases and shall define what types of cases qualify as hardship cases.

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

If the payment for which the distributor's, receiver's, or supplier's claim is filed is held in the protest fund of the State Treasury during the pendency of the claim for credit proceedings pursuant to the order of the court in accordance with Section 2a of "An Act in relation to the payment and disposition of moneys received by officers and employees of the State of Illinois by virtue of their office or employment", approved June 9, 1911, and if it is determined by the Department or by the final order of a reviewing court under the Administrative Review Law that the claimant is entitled to all or a part of the credit claimed, the claimant, instead of receiving a credit memorandum from the Department, shall receive a cash refund from the protest fund as provided for in Section 2a of "An Act in relation to the payment and disposition of moneys received by officers and employees of the State of Illinois by virtue of their office or employment".

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

(Source: P.A. 86-125; 86-958; 87-205.)

(35 ILCS 505/13a) (from Ch. 120, par. 429a)

Sec. 13a. (1) A tax is hereby imposed upon the use of ***motor*** ~~special~~ fuel upon highways of this State by commercial motor vehicles. The tax shall be comprised of 2 parts. Part (a) shall be at the rate established by Section 2 of this Act, as heretofore or hereafter amended. Part (b) shall be at the rate established by subsection (2) of this Section as now or hereafter amended.

(2) A rate shall be established by the Department as of January 1 of each year using the average "selling price", as defined in the Retailers' Occupation Tax Act, per gallon of ***motor*** ~~special~~ fuel sold in this State during the previous 12 months and multiplying it by 6 1/4% to determine the cents per gallon rate.

(Source: P.A. 86-1233.)

(35 ILCS 505/13a.1) (from Ch. 120, par. 429a1)

Sec. 13a.1. Every commercial motor carrier shall pay the

tax imposed by Section 13a hereof to the Department, calculated on the amount of ***motor*** ~~special~~ fuel consumed on any highway within this State.
(Source: P.A. 82-1035.)

(35 ILCS 505/13a.2) (from Ch. 120, par. 429a2)

Sec. 13a.2. Each motor carrier shall keep records which accurately reflect the type and number of gallons of motor fuel consumed, the number of miles traveled with each type of fuel on the highways of ***each jurisdiction*** ~~all jurisdictions~~ and the highways of Illinois, the type and number of gallons of ***tax paid*** fuel purchased in this State, ***and every jurisdiction, and*** the number of miles traveled and the amount of fuel consumed on the highways of this State ***and every jurisdiction*** ~~and the number of gallons of fuel purchased in this State~~. ***Licensees shall preserve the records for a period of 4 years from the due date of their returns or the date filed, whichever is later.*** In the absence of such records, the Department shall presume that one gallon of fuel is used for each ***4.0*** ~~4.5~~ miles traveled in this State. Every authorized agent of the Department shall have power to make any reasonable investigations to prevent avoidance of the tax imposed by Section 13a hereof.

Failure to provide records demanded for the purpose of audit extends the statute of limitations until the records are provided.
(Source: P.A. 85-340.)

(35 ILCS 505/13a.3) (from Ch. 120, par. 429a3)

(Text of Section effective until January 1, 1994.)

Sec. 13a.3. Every motor carrier who operates in Illinois shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report, in such form as the Department may by rule or regulation prescribe, setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, the number of gallons and type of fuel consumed on the highways of every jurisdiction and of this State, the number of gallons and type of fuel purchased within this State during said previous calendar quarter, and which may include both gallons of fuel purchased and miles operated that were unavailable for the 2 immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and such other information as the Department may reasonably require. Such other information shall include, but not be limited to, original tax paid receipts as evidence of the number of gallons purchased, which were omitted from the reports for the 2 immediately preceding calendar quarters and are now included in the current filed report. A motor carrier who purchases special fuel in this State who pays a tax thereon under any section of the Motor Fuel Tax Law other than Sections 13a, 13a.1, 13a.2 and 13a.3, and who does not apply for a refund under Section 13 of the Motor Fuel Tax Law, shall receive a gallon for gallon credit against his liability under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof. The rate under Section 2 of this Act shall apply to each gallon of special fuel used by such motor carrier on the highways of Illinois during the previous calendar quarter in excess of the special fuel purchased in Illinois during such previous calendar quarter.

Motor carriers that incur a motor fuel use tax liability of less than $500 for the period of July 1, 1989 through June

30, 1990, may file a return February 28, 1991 for the period of July 1, 1990 through December 31, 1990, rather than quarterly returns. On and after January 1, 1991, motor carriers who incur an annual Motor Fuel Use Tax liability of less than $625 for the prior 12 month period of January 1 through December 31 may file an annual return, due January 31, rather than quarterly returns.

The rate under subsection (2) of Section 13a of this Act shall apply to each gallon of special fuel used by such motor carrier on the highways of Illinois during the previous calendar quarter. For purposes of the preceding paragraphs "used" shall be determined as provided in Section 13a.2 of this Act.

For such special fuel consumed during the previous calendar quarter, said tax shall be payable on the last day of the month next succeeding such previous calendar quarter and shall bear interest at the rate of 1.5% per month or any portion of a month until paid.

As to each gallon of special fuel purchased in Illinois by such motor carrier during the previous calendar quarter in excess of the number of gallons of special fuel used by such motor carrier on the highways of Illinois during such previous calendar quarter, the taxpayer may take a credit for the current calendar quarter or the Department may issue a credit memorandum or refund to such motor carrier for any tax imposed by Part (a) of Section 13a of this Act paid on each such gallon.

A motor carrier who purchases special fuel in this State shall be entitled to a refund under this Section or a credit against all his liabilities under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof for taxes imposed by the Use Tax Act, the Retailers' Occupation Tax Act, the Municipal Retailers' Occupation Tax Act and the County Retailers' Occupation Tax Act on such special fuel at a rate equal to that established by subsection (2) of Section 13a of this Act, provided that such taxes have been paid by the taxpayer and such taxes have been charged to the motor carrier claiming the credit or refund.

(Text of Section in effect on January 1, 1994.)

Sec. 13a.3. Every ***person holding a valid unrevoked permit issued under Section 13a.4 of this Act*** ~~motor carrier who operates in Illinois~~ shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report, in such form as the Department may by rule or regulation prescribe, setting forth a statement of the number of miles traveled in every jurisdiction and in this State during the previous calendar quarter, the number of gallons and type of ***reportable motor*** fuel consumed on the highways of every jurisdiction and of this State, ***and the total number of gallons and types of tax paid fuel purchased within every jurisdiction*** ~~the number of gallons and type of fuel purchased within this State~~ during said previous calendar quarter. ~~, and which may include both gallons of fuel purchased and miles operated that were unavailable for the 2 immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and such other information as the Department may reasonably require. Such other information shall include, but not be limited to, original tax paid receipts as evidence of the number of gallons purchased, which were omitted from the reports for the 2 immediately~~

~~preceding-calendar-quarters-and-are-now-included-in-the current-filed-report.~~ A motor carrier who purchases *motor* ~~special~~ fuel in this State who pays a tax thereon under any section of the Motor Fuel Tax Law other than Sections 13a, 13a.1, 13a.2 and 13a.3, and who does not apply for a refund under Section 13 of the Motor Fuel Tax Law, shall receive a gallon for gallon credit against his liability under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof. The rate under Section 2 of this Act shall apply to each gallon of *motor* ~~special~~ fuel used by such motor carrier on the highways of Illinois during the previous calendar quarter in excess of the *motor* ~~special~~ fuel purchased in Illinois during such previous calendar quarter.

~~Motor-carriers-that-incur-a-motor-fuel-use-tax-liability of-less-than-$500-for-the-period-of-July-1,-1989-through-June 30,-1990,-may-file-a-return-February-28,-1991-for-the-period of-July-1,-1990-through-December-31,-1990,-rather-than quarterly-returns.--On-and-after-January-1,-1991,-motor carriers-who-incur-an-annual-Motor-Fuel-Use-Tax-liability-of less-than-$625-for-the-prior-12-month-period-of-January-1 through-December-31-may-file-an-annual-return,-due-January 31,-rather-than-quarterly-returns.~~

The rate under subsection (2) of Section 13a of this Act shall apply to each gallon of *motor* ~~special~~ fuel used by such motor carrier on the highways of Illinois during the previous calendar quarter. For purposes of the preceding paragraphs "used" shall be determined as provided in Section 13a.2 of this Act.

For such *motor* ~~special~~ fuel consumed during the previous calendar quarter, said tax shall be payable on the last day of the month next succeeding such previous calendar quarter and shall bear interest at the rate *of 1% per month or fraction of month until paid* ~~set-by-the-Uniform-Penalty-and Interest-Act.~~ *Motor carriers required to file bonds under Section 13a.4 of this Act shall make tax payments to the Department by certified check.*

Reports not filed by the due date shall be considered late and any taxes due considered delinquent. The licensee may be assessed a penalty of $50 or 10% of the delinquent taxes, whichever is greater, for failure to file a report, or for filing a late report, or for underpayment of taxes due.

As to each gallon of *motor* ~~special~~ fuel purchased in Illinois by such motor carrier during the previous calendar quarter in excess of the number of gallons of special fuel used by such motor carrier on the highways of Illinois during such previous calendar quarter, the taxpayer may take a credit for the current calendar quarter or the Department may issue a credit memorandum or refund to such motor carrier for any tax imposed by Part (a) of Section 13a of this Act paid on each such gallon. *If a credit is given, the credit memorandum shall be carried over to offset liabilities of the licensee until the credit is fully offset or until 8 calendar quarters pass after the end of the calendar quarter in which the credit accrued, whichever occurs sooner.*

A motor carrier who purchases *motor* ~~special~~ fuel in this State shall be entitled to a refund under this Section or a credit against all his liabilities under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof for taxes imposed by the Use Tax Act, the Retailers' Occupation Tax Act, the Municipal Retailers' Occupation Tax Act and the County Retailers' Occupation Tax

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Act on such *motor* ~~special~~ fuel at a rate equal to that established by subsection (2) of Section 13a of this Act, provided that such taxes have been paid by the taxpayer and such taxes have been charged to the motor carrier claiming the credit or refund.
(Source: P.A. 86-1481; 87-205.)

(35 ILCS 505/13a.4) (from Ch. 120, par. 429a4)

Sec. 13a.4. Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a permit *and decals* from the Department. Application for such permit *and decals* shall be made *annually* to the Department on forms prescribed by the Department. The application shall be under oath, and shall contain such information as the Department deems necessary. *The Department, for cause, may require an applicant to post a bond* ~~The applicant for a permit shall also file with the Department a bond in an amount not to exceed $40,000~~ on a form to be approved by and with a surety or sureties satisfactory to the Department conditioned upon such applicant paying to the State of Illinois all monies becoming due by reason of the sale or use of *motor* ~~special~~ fuel by the applicant, together with all penalties and interest thereon. *If a bond is required, it shall be equal to at least twice the estimated average tax liability of a quarterly return.* The Department shall fix the penalty of such bond in each case taking into consideration the amount of *motor* ~~special~~ fuel expected to be used by such applicant and the penalty fixed by the Department shall be such, as, in its opinion, will protect the State of Illinois against failure to pay the amount hereinafter provided on *motor* ~~special~~ fuel used, ~~but the amount of the penalty fixed by the Department shall not exceed twice the amount of tax liability of a quarterly return~~. No person who is in default to the State for monies due under this Act for the sale, distribution or use of motor fuel shall receive such a permit.

Upon receipt of the application for permit in proper form, *and upon payment of any required $100 reinstatement fee,* and upon approval by the Department of the bond furnished by the applicant, the Department *may* ~~shall~~ issue to such applicant a permit which allows the operation of commercial motor vehicles in Illinois, and identification ~~cards or~~ devices *or decals* for each commercial motor vehicle operating in Illinois. Prior to January 1, 1985, *permits* ~~identification cards~~ shall be conspicuously displayed in the cab of each commercial motor vehicle operating in Illinois. After January 1, 1986, *permits* ~~identification cards~~ shall be carried in the cab of each commercial motor vehicle operating in Illinois.

~~If such motor carrier states, on forms provided by the Department, that he operates commercial vehicles in this State other than those originally mentioned in the application for permit, the Department shall furnish him with additional identification cards for each commercial motor vehicle to be operated in this State.~~

The Department *shall* ~~may~~, by regulation, provide for the use of reproductions of original *permits* ~~identification cards~~ in lieu of issuing multiple original *permits* ~~identification cards~~ to *licensees* ~~permittees~~.

On and after January 1, 1985, ~~an~~ external motor fuel tax *decals* ~~identification device~~ shall be conspicuously displayed

New matter indicated by italics - deletions by strikeout.

on the passenger side of each commercial motor vehicle propelled by *motor* ~~special~~ fuel operating in Illinois, except buses, which may display such devices on the driver's side of the vehicle. *Beginning with the effective date of this amendatory Act of 1993 or the membership of the State of Illinois in the International Fuel Tax Agreement, whichever is later, the decals issued to the licensee shall be placed on both exterior sides of the cab. In the case of transporters, manufacturers, dealers, or driveway operations, the decals need not be permanently affixed but may be temporarily displayed in a visible manner on the exterior sides of the cab. Failure to display the decals in the required locations may subject the vehicle operator to the purchase of a trip permit and a citation.* Such motor fuel tax *decals* ~~identification devices~~ shall be issued by the Department and remain valid for a period of 2 calendar years, beginning January 1, 1985. The *decals* ~~devices~~ shall expire at the end of the regular 2 year issuance period, with new *decals* ~~devices~~ required to be displayed at that time. Beginning January 1, 1993, the motor fuel *decals* ~~identification devices~~ shall be issued by the Department and remain valid for a period of one calendar year. The *decals* ~~devices~~ shall expire at the end of the regular one year issuance period, with new *decals* ~~devices~~ required to be displayed at that time. *Decals* ~~Such identification device~~ shall be ~~in the form of a decal~~ no larger than 3 inches by *3* 5 inches. Prior to January 1, 1993, a fee of $7.50 shall be charged by the Department for each *decal* ~~device~~ issued prior to and during the 2 calendar years such *decal* ~~device~~ is valid. Beginning January 1, 1993, a fee of $3.75 shall be charged by the Department for each *decal* ~~device~~ issued prior to and during the calendar year such *decal* ~~device~~ is valid. *Beginning January 1, 1994, $3.75 shall be charged for a set of 2 decals.* The Department may also prescribe procedures for the issuance of replacement *decals* ~~devices~~, with a maximum fee of $2 for each *set of replacement decals* ~~such replacement device so~~ issued. The transfer of *decals* ~~an identifying device~~ from one vehicle to another vehicle or from one motor carrier to another motor carrier is prohibited. The fees paid for the *decals* ~~identifying devices~~ issued *under* ~~pursuant to~~ this Section shall be deposited in the Motor Fuel Tax Fund, and may be appropriated to the Department for administration of this Section and enforcement of the tax imposed by Section 13a of this Act.

To avoid duplicate reporting of mileage and payment of any tax arising therefrom under Section 13a.3 of this Act, the Department shall, by regulation, provide for the allocation between lessors and lessees of the same commercial motor vehicle or vehicles of the responsibility as a motor carrier for the reporting of mileage and the liability for tax arising under Section 13a.3 of this Act, and for registration, furnishing of bond, *carrying of permits,* and display of *decals* ~~identification cards~~ under this Section, and for all other duties imposed upon motor carriers by this Act.

(Source: P.A. 87-879.)

(35 ILCS 505/13a.5) (from Ch. 120, par. 429a5)

Sec. 13a.5. As to a commercial motor vehicle operated in Illinois in the course of interstate traffic by a motor carrier not holding a permit issued under this Act, a single

trip permit authorizing operation of such commercial motor vehicle for a single trip through the State of Illinois, or from a point on the border of this State to a point within and return to the border may be issued after proper application upon forms furnished by the Department. The fee for each single trip permit shall be $20 and such single trip permit shall be valid for a period of seventy-two hours. This fee shall be in lieu of the tax required by Section 13a of this Act, all reports required by Section 13a.3 of this Act, and the registration, identification card display and furnishing of bond required by Section 13a.4 of this Act. Rules or regulations promulgated by the Department under this Section shall provide for reasonable and proper limitations and restrictions governing application for and issuance and use of, single trip permits, ~~and shall provide for the number of single trip permits per vehicle or per applicant,~~ so as to preclude evasion of the permit requirement in Section 13a.4. (Source: P.A. 83-12.)

(35 ILCS 505/13a.6) (from Ch. 120, par. 429a6)

Sec. 13a.6. In addition to any other penalties imposed by this Act: (a) if a commercial motor vehicle is found operating in Illinois without displaying ***decals an*** ~~identification card~~ or ***carrying a*** permit as provided in Section 13a.4 of this Act, or a single trip permit, when applicable, as provided in Section 13a.5 of this Act, the operator is guilty of a petty offense; (b) ~~if a commercial motor vehicle is found operating in Illinois using a single trip permit obtained under Section 13a.5, but is ineligible for use of such permit, the operator is guilty of a petty offense; (c)~~ if a commercial motor vehicle is found operating in Illinois without ~~registering and securing~~ a ***valid*** permit ***and without property displaying decals*** ~~when such is~~ required by Section 13a.4 or 13a.5 of this Act, the operator must pay a minimum of $1,000 as a penalty.

Improper use of the permit or decal provided for in this Section may be cause for revocation of the license. (Source: P.A. 84-1076.)

(35 ILCS 505/14a) (from Ch. 120, par. 430.1)

Sec. 14a. The Department of Revenue may enter into reciprocal agreements with the appropriate officials of any other state under which the Department may waive all or any part of the requirements imposed by the laws of this State upon those who use or consume motor fuel in Illinois upon which a tax has been paid to such other state, provided that the officials of such other state grant equivalent privileges with respect to motor fuel used in such other state but upon which the tax has been paid to Illinois.

The Department may enter the International Fuel Tax Agreement or other cooperative compacts or agreements with other states or jurisdictions to permit base state or base jurisdiction licensing of persons using motor fuel in this State. Those agreements may provide for the cooperation and assistance among member states in the administration and collection of motor fuel tax, including, but not limited to, exchanges of information, auditing and assessing of interstate carriers and suppliers, and any other activities necessary to further uniformity.

Pursuant to federal mandate, upon membership in the International Fuel Tax Agreement ("Agreement"), the motor fuel use tax imposed upon Commercial Motor Vehicles required

to be registered under the terms of the Agreement shall be administered according to the terms of the Agreement, as now and hereafter amended. Illinois shall not establish, maintain, or enforce any law or regulation that has fuel use tax reporting requirements or that provides for the payment of a fuel use tax, unless that law or regulation is in conformity with the Agreement.

The Department shall adopt rules and regulations to implement the provisions of the Agreement.

(Source: P.A. 86-1481.)

(35 ILCS 505/15) (from Ch. 120, par. 431)

Sec. 15. 1. Any person who acts as a distributor of motor fuel or supplier or bulk user of special fuel, or receiver of fuel without having a license so to do, or who fails or refuses to file a return with the Department as provided in Section 2b, Section 5, Section 5a or Section 5b of this Act, or who fails or refuses to make payment to the Department as provided either in Section 2b, Section 6, Section 6a, or Section 7 of this Act, shall be guilty of a Class 3 felony. Each day any person acts as a distributor of motor fuel or supplier or bulk user of special fuel without having a license so to do or after such a license has been revoked, constitutes a separate offense.

2. Any person who acts as a motor carrier without having a permit to do so, or who fails or refuses to make payment to the Department as provided in Section 13a.1 of this Act, or any person who fails or refuses to make the monthly return as provided either in Section 2b, Section 5, Section 5a or Section 5b of this Act, or the quarterly return as provided in Section 13a.3~~, or who fails or refuses to keep records and books, as provided in Sections 12 and 13a.2 or who fails to carry a manifest as provided in Section 5 1/2 of this Act,~~ is guilty of a Class 4 felony; and for each subsequent offense, such person is guilty of a Class 3 felony.

3. In case such person acting as a distributor, receiver, supplier or bulk user or motor carrier is a corporation, then the officer or officers, agent or agents, employee or employees, of such corporation responsible for any act of such corporation, or failure of such corporation to act, which acts or failure to act constitutes a violation of any of the provisions of this Act as enumerated in paragraphs 1 and 2 of this Section, shall be punished by such fine or imprisonment, or by both such fine and imprisonment as provided in those paragraphs.

4. Any person who refuses, upon demand, to submit for inspection, books and records, in violation of Section 12 of this Act, or refuses upon demand by the Department to submit for inspection and examination the records required by Section 13a.2 of this Act, or who violates any reasonable rule or regulation adopted by the Department for the enforcement of this Act, or who acts as a blender in violation of Section 3 of this Act or who having transported reportable motor fuel within Section 7b of this Act fails to make the return required by that Section, is guilty of a Class 4 felony.

5. Any person who knowingly: (a) fails or refuses to keep records and books, as provided in Sections 12 and 13a.2 as required by the terms of the International Fuel Tax Agreement, (b) fails to carry a manifest as provided in Section 5.5 of this Act, (c) refuses upon demand by the

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Department to submit for inspection and examination the records required by Section 13a.2 of this Act or by the terms of the International Motor Fuel Tax Agreement, or (d) violates any reasonable rule or regulation adopted by the Department for the enforcement of this Act, is guilty of a Class A misdemeanor.

6. ~~5.~~ Any person who makes any false return or report to the Department as to any material fact required by Sections 2b, 5, 5a, 5b, 7, 13, or 13a.3 of this Act is guilty of a Class 2 felony.

7. ~~6.~~ A prosecution for any violation of this Section may be commenced anytime within 5 years of the commission of that violation.

8. ~~7.~~ Any person who provides false documentation required by any Section of this Act is guilty of a Class 4 felony.

(Source: P.A. 86-125; 86-958; 87-149.)

(35 ILCS 505/15.1) (from Ch. 120, par. 431.1)

(Text of Section effective until January 1, 1994.)

Sec. 15.1. The Department shall pay all refunds due under this Act within 90 days after receipt of application for a refund. If funds are paid after the expiration of the 90 day period, the Department shall also pay from the Motor Fuel Tax Fund to the taxpayer a penalty of 1% of the amount of the refund for each month after the 90 day period.

(Text of Section taking effect on January 1, 1994.)

Sec. 15.1. The Department shall pay all refunds due under this Act within 90 days after receipt of application for a refund. *For commercial motor vehicles, refunds* ~~If funds are~~ paid after the expiration of the 90 day period~~, the Department~~ shall *bear* ~~also pay from the Motor Fuel Tax Fund to the taxpayer~~ interest at the rate *of 1% per month or fraction of a month. Refunds paid to all other persons subject to this Act shall be paid at the rate and in the manner set by the Uniform Penalty and Interest Act.* ~~and in the manner set by the Uniform Penalty and Interest Act.~~

(Source: P.A. 87-205.)

(35 ILCS 505/16) (from Ch. 120, par. 432)

Sec. 16. The Department may, after 5 days' notice, revoke the distributor's, receiver's, supplier's or bulk user's license or permit of any person (1) who does not operate as a distributor, receiver, supplier or bulk user (a) under Sections 1.2, 1.14, 1.15, or 1.20 (other than those persons who hold licenses under Paragraph A of Section 3), (b) under Paragraph B of Section 3, or (c) under Section 3a-1 or (2) who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act.

Any person whose returns for 2 or more consecutive months do not show sufficient taxable sales to indicate an active business as a distributor, receiver, or supplier shall be deemed to not be operating as a distributor, receiver, or supplier as defined in Sections 1.2, 1.14 or 1.20.

The Department may, after 5 days notice, revoke any distributor's, receiver's, or supplier's license of a person who is registered as a reseller of motor fuel pursuant to Section 2a or 2c of the Retailers' Occupation Tax Act and who fails to collect such prepaid tax on invoiced gallons of motor fuel sold or who fails to deliver a statement of tax paid to the purchaser or to the Department as required by

Sections 2d and 2e of the Retailers' Occupation Tax Act.

The Department may, on notice given by registered mail, cancel a Blender's Permit for any violation of any provisions of this Act or for noncompliance with any rule or regulation made by the Department under Section 14 of this Act.

The Department, upon complaint filed in the circuit court, may, by injunction, restrain any person who fails or refuses to comply with the provisions of this Act from acting as a blender or distributor of motor fuel, supplier of special fuel, bulk user of special fuel, or receiver of fuel in this State.

The Department may revoke the license of a motor carrier registered under Section 13a.4, or that is required to be registered under the terms of the International Fuel Tax Agreement, that violates any provision of this Act or any rule promulgated by the Department under Sections 14 or 14a of this Act. Licenses that have been revoked are subject to a $100 reinstatement fee.

Licensees registered under Section 13a.4 may protest any action or audit finding made by the Department by making a written request for a hearing within 30 days after service of the notice of the original action or finding. If the hearing is not requested within 30 days in writing, the original finding or action is final. Once a hearing has been properly requested, the Department shall give at least 20 days written notice of the time and place of the hearing.

(Source: P.A. 86-958; 87-149.)

(35 ILCS 505/21) (from Ch. 120, par. 434a)

(Text of Section effective until January 1, 1994.)

Sec. 21. The provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i and 5j, 6, 6a, 6b, 6c, 8, 9, 10, 12 (except to the extent to which the minimum notice requirement for hearings conflicts with that provided for in Section 16 of this Act), and 13-1/2 of the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended, which are not inconsistent with this Act, shall apply as far as practicable, to the subject matter of this Act to the same extent as if those provisions were included in this Act.

(Text of Section taking effect on January 1, 1994.)

Sec. 21. The provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i and 5j, 6, 6a, 6b, 6c *(except to the extent that the time limitations for requesting an administrative hearing, the minimum notice requirement for hearings, and the provisions regarding penalties and interest are inconsistent with this Act)*, 8, 9, 10 and 12 ~~(except to the extent to which the minimum notice requirement for hearings conflicts with that provided for in Section 16 of this Act)~~, of the Retailers' Occupation Tax Act which are not inconsistent with this Act, and Section 3-7 of the Uniform Penalty and Interest Act, shall apply as far as practicable, to the subject matter of this Act to the same extent as if those provisions were included in this Act.

(Source: P.A. 87-205.)

Section 52. The Coin-Operated Amusement Device and Redemption Machine Tax Act is amended by changing Section 2 as follows:

(35 ILCS 510/2) (from Ch. 120, par. 481b.2)

Sec. 2. Any person, firm, *limited liability company,* or corporation which displays any device described in Section 1, to be played or operated by the public at any place owned or