

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to motor fuel and undyed special fuel

The Revenue Department hereby amends Chapter 68, “Motor Fuel and Undyed Special Fuel,” and Chapter 69, “Liquefied Petroleum Gas—Compressed Natural Gas—Liquefied Natural Gas,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 452A.59.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 452A as amended by 2020 Iowa Acts, Senate File 2403.

Purpose and Summary

Item 1 of this rule making amends Chapter 68 primarily to reflect the enactment of 2020 Iowa Acts, Senate File 2403. Notably, Senate File 2403 changed tax rates for gasoline and biodiesel-blended fuel rated B-11 or higher and created new classifications of ethanol blended gasolines. Senate File 2403 also modified the report the Department uses to calculate motor fuel distribution percentages used to determine these rates, switching from fuel tax monthly reports to an annual retailers’ report.

Items 2 through 13 reflect cleanup of outdated citations or terms throughout the chapter.

Item 14 strikes language relating to how taxpayers should round for purposes of reporting tax due for liquefied petroleum gas, liquefied natural gas, and compressed natural gas on returns being designed as a part of the Department’s modernization initiative. The prior rule required rounding to the nearest whole dollar. The rule as amended requires taxpayers to enter cents rather than round.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 16, 2021, as **ARC 5710C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on July 21, 2021.

Fiscal Impact

The fuel tax rates modified by 2020 Iowa Acts, Senate File 2403, are estimated by the Department to impact the Road Use Tax Fund positively by \$1.18 million in FY 2022. The Department can provide additional detail on this fiscal analysis upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 15, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—68.2(452A) as follows:

701—68.2(452A) Tax rates—time tax attaches—responsible party.

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through February 28, 2015) 31¢ per gallon (for March 1, 2015, through June 30, 2015) 30.8¢ per gallon (for July 1, 2015, through June 30, 2016) 30.7¢ per gallon (for July 1, 2016, through June 30, 2017) 30.5¢ per gallon (for July 1, 2017, through June 30, 2018) 30.7¢ per gallon (for July 1, 2018, through June 30, 2019) 30.5¢ per gallon (beginning for July 1, 2019, through June 30, 2020) <u>30¢ per gallon (beginning July 1, 2020)</u>
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning for July 1, 2016, through June 30, 2020)
<u>Ethanol blended gasoline E-10 to E-14</u>	<u>30¢ per gallon (beginning July 1, 2020)</u>
E-85 gasoline	17¢ per gallon (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning for July 1, 2016, through June 30, 2020)
<u>Ethanol blended gasoline E-15 or higher</u>	<u>24¢ per gallon (beginning July 1, 2020)</u>
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)

Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (for March 1, 2015, through June 30, 2015) 29.5¢ per gallon (beginning for July 1, 2015, through June 30, 2020) <u>30.1¢ per gallon (for July 1, 2020, through June 30, 2021)</u> <u>30.4¢ per gallon (beginning July 1, 2021)</u>
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015) 5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015) 30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014) 21¢ per gallon (for July 1, 2014, through February 28, 2015) 31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)

68.2(2) Fuel distribution percentages.

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this paragraph, ~~for March 1, 2015, through June 30, 2020,~~ this paragraph shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The An excise tax of 30 cents is imposed on each gallon of motor fuel other than ethanol blended gasoline classified as E-15 or higher.

<u>Ethanol Distribution %</u>	<u>Ethanol Tax</u>	<u>Gasoline Tax</u>
00+/50	29.0	30.0
50+/55	29.0	30.1
55+/60	29.0	30.3
60+/65	29.0	30.5
65+/70	29.0	30.7
70+/75	29.0	31.0
75+/80	29.3	30.8
80+/85	29.5	30.7
85+/90	29.7	30.4
90+/95	29.9	30.1
95+/100	30.0	30.0

(2) On and after July 1, 2026, an excise tax of 30 cents is imposed on each gallon of ethanol blended gasoline classified as E-15 or higher.

(3) Before July 1, 2026, the rate of the excise tax on ethanol blended gasoline classified as E-15 or higher shall be based on the ethanol distribution percentage as specified in Iowa Code section 452A.3. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline classified as E-15 or higher that is are distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31

based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. ~~The rate for the excise tax shall be as follows:~~

~~(2) Except as otherwise provided in this paragraph, after June 30, 2020, an excise tax of 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.~~

b. Biodiesel distribution percentage.

(1) Except as otherwise provided in this paragraph, the rate of the excise tax on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state, other than biodiesel blended fuel classified as B-11 or higher, is 32.5 cents.

~~1. Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles biodiesel blended fuel classified as B-11 or higher used for any purpose for the privilege of operating motor vehicles in this state. The~~

2. On and after July 1, 2026, the rate of the excise tax on each gallon of biodiesel blended fuel classified as B-11 or higher is 32.5 cents.

3. Before July 1, 2026, the rate of the excise tax shall be based on the biodiesel distribution percentage as specified in Iowa Code section 452A.3. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31 based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
00/50	29.5	32.5
50+/55	29.8	32.5
55+/60	30.1	32.5
60+/65	30.4	32.5
65+/70	30.7	32.5
70+/75	31.0	32.5
75+/80	31.3	32.5
80+/85	31.6	32.5
85+/90	31.9	32.5
90+/95	32.2	32.5
95+/100	32.5	32.5

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2) "b"(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the

period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

~~(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.~~

c. Legislative review. The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every ~~six~~ five years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding ~~six-year~~ five-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding ~~six-year~~ five-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every ~~sixth~~ fifth year thereafter.

68.2(3) No change.

~~**68.2(4)** The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 2. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 2.~~

~~Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.~~

~~**68.2(5)**~~ **68.2(4)** Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

a. Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

b. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.85.

ITEM 2. Amend rule 701—68.3(452A) as follows:

701—68.3(452A) Exemption.

68.3(1) Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

68.3(2) Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph “a.” 452A.17(1) “a.” However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

ITEM 3. Amend rule 701—68.4(452A) as follows:

701—68.4(452A) Blended fuel taxation—nonterminal location.

68.4(1) *Responsibilities of all blenders at nonterminal locations.* A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the ~~alcohol~~ ethanol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

68.4(2) *Blenders of ethanol blended gasoline.*

a. A blender who owns the ~~alcohol~~ ethanol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be ~~29¢~~ 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 <u>7,000</u> gallons tax-paid gasoline (7,200 <u>7,000</u> × .30) =	\$2,160.00 <u>\$2,100.00</u>
Blender adds 800 <u>3,000</u> gallons untaxed alcohol <u>ethanol</u>	\$0.00
Total tax paid on products	\$2,160.00 <u>\$2,100.00</u>
Total tax due on 8,000 <u>10,000</u> gallons ethanol blended gasoline <u>E-15</u> or <u>higher</u> (8,000 <u>10,000</u> × .29 .24) =	\$2,320.00 <u>\$2,400.00</u>
Additional Amount Due	\$160.00 <u>\$300.00</u>

b. A blender who purchases ~~alcohol~~ ethanol and gasoline from a supplier must pay tax on both the ~~alcohol~~ ethanol purchased and the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be ~~29¢~~ 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 <u>7,000</u> gallons tax-paid gasoline (7,200 <u>7,000</u> × .30) =	\$2,160.00 <u>\$2,100.00</u>
Blender purchases 800 <u>3,000</u> gallons tax-paid alcohol <u>ethanol</u> (800 <u>3,000</u> × .29 .24) =	\$232.00 <u>\$720.00</u>
Total tax paid on products	\$2,392.00 <u>\$2,820.00</u>
Total tax due on 8,000 <u>10,000</u> gallons ethanol blended gasoline <u>E-15</u> or <u>higher</u> (8,000 <u>10,000</u> × .29 .24) =	\$2,320.00 <u>\$2,400.00</u>
Amount of Refund Allowable	\$72.00 <u>\$420.00</u>

c. A blender who purchases ethanol and gasoline from any source must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon, the tax rate for ethanol is presumed to be 24¢ per gallon, and the tax rate for ethanol blended gasoline E-10 is presumed to be 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline (7,200 × .30) =	<u>\$2,160.00</u>
Blender purchases 800 gallons tax-paid ethanol (800 × .24) =	<u>\$192.00</u>
Total tax paid on products	<u>\$2,352.00</u>
Total tax due on 8,000 gallons ethanol blended gasoline E-10 (8,000 × .30) =	<u>\$2,400.00</u>
Additional Amount Due	<u>\$48.00</u>

d. A blender who purchases ethanol blended gasoline E-10 to E-14 and ethanol blended gasoline E-15 or higher from a supplier must pay tax on both the ethanol blended gasoline E-10 to E-14 purchased and the ethanol blended gasoline E-15 purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for E-10 to E-14 purchased is presumed to be 30¢ per gallon and the tax rate for ethanol blended

gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

<u>Blender purchases 7,000 gallons tax-paid ethanol blended gasoline E-10 to E-14 (7,000 × .30) =</u>	<u>\$2,100.00</u>
<u>Blender purchases 3,000 gallons tax-paid ethanol blended gasoline E-15 or higher (3,000 × .24) =</u>	<u>\$720.00</u>
<u>Total tax paid on products</u>	<u>\$2,820.00</u>
<u>Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 × .24) =</u>	<u>\$2,400.00</u>
<u>Amount of Refund Allowable</u>	<u>\$420.00</u>

e. e. Ethanol blended gasoline E-15 or higher—blending errors.

Where a blending error occurs and an insufficient amount of ~~alcohol~~ ethanol has been blended with gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section ~~452A.2~~ E-15 or higher, a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the ~~alcohol~~ ethanol erroneously blended with gasoline is at least ~~9~~ 14 percent of the total blended product by volume, the ~~alcohol~~ ethanol and gasoline blended product is considered ethanol blended gasoline E-15 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of ~~alcohol~~ ethanol erroneously blended with gasoline is less than ~~9~~ 14 percent of the total blended product by volume, the total blend of gasoline and ~~alcohol~~ ethanol is subject to tax as ethanol blended gasoline E-10 to E-14 at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline E-15 or higher. If a blender does not intend to produce ethanol blended gasoline when blending ~~alcohol~~ ethanol and gasoline, and the mixture contains less than ~~10~~ 14 percent ~~alcohol~~ ethanol by volume, no error has occurred and the mixture is subject to tax as ethanol blended gasoline E-10 to E-14.

(4) The following formulas are used to compute blending errors:

$$\text{Actual gasoline} + \text{actual } \del{alcohol} \text{ ethanol} = \text{total gallons of blended product}$$

$$\text{Total gallons of blended product} \times \del{.09} \text{ .14} = \text{required } \del{alcohol} \text{ ethanol}$$

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline E-15 or higher. Figures are rounded to the nearest whole gallon; ethanol blended gasoline E-15 or higher is taxed at ~~\$.29~~ 24¢ per gallon; gasoline is taxed at ~~\$.30~~ 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual gasoline	=	<u>8,000</u> gal.
		<u>8,500</u>
Actual alcohol ethanol	=	<u>800</u> gal.
		<u>1,500</u>
Total blended product	=	<u>8,800</u> gal.
		<u>10,000</u>
<u>8,800</u> <u>10,000</u> × .09 <u>.14</u>	=	<u>792</u> gal. required alcohol ethanol
		<u>1,400</u>

The actual ~~alcohol~~ ethanol (800 1,500 gallons) is more than the required ~~alcohol~~ ethanol (792 1,400 gallons), which means that the tax is applied according to subparagraph ~~68.4(2) “e”(1)~~ 68.4(2) “e”(1) as follows:

$$8,800 \text{ gal. of blended product} \times \frac{10,000}{29} \times .24 = \$2,552 \text{ tax on ethanol blended gasoline E-15 or } \$2,400 \text{ higher}$$

EXAMPLE 2:

$$\begin{aligned} \text{Actual gasoline} &= \frac{8,010}{9,200} \text{ gal.} \\ \text{Actual alcohol ethanol} &= \frac{790}{800} \text{ gal.} \\ \text{Total blended product} &= \frac{8,800}{10,000} \text{ gal.} \\ 8,800 \text{ gal.} \times \frac{10,000}{800} \times .14 &= \frac{792}{1,400} \text{ gal. required alcohol ethanol} \end{aligned}$$

The actual alcohol ethanol (790 800 gallons) is less than the required alcohol ethanol (792 1,400 gallons), which means that the entire blend is considered gasoline and the tax is applied according to subparagraph 68.4(2) "e"(2) 68.4(2) "e"(2) as follows:

$$8,800 \text{ gal. of blended product} \times \$3.00 = \$2,640 \text{ tax on gasoline}$$

68.4(3) Blenders of biodiesel blended fuel.

a. A blender who owns the biodiesel (supplier) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ 30.1¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

$$\begin{aligned} \text{Blender purchases 7,120 gallons tax-paid petrodiesel (7,120} \times .325) &= \$2,314.00 \\ \text{Blender adds 880 gallons untaxed biodiesel} &= \$0.00 \\ \text{Total tax paid on products} &= \underline{\$2,314.00} \end{aligned}$$

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

$$\begin{aligned} \text{Total tax due on 8,000 gallons blended B-11 or higher (8,000} \times .29 &= \$2,320.00 \\ \text{.301)} &= \underline{\$2,408.00} \\ \text{Additional Amount Due} &= \underline{\$6.00} \quad \underline{\$94.00} \end{aligned}$$

EXAMPLE 2.

$$\begin{aligned} \text{Blender purchases 7,600 gallons tax-paid petrodiesel (7,600} \times .325) &= \$2,470.00 \\ \text{Blender adds 400 gallons untaxed biodiesel} &= \$0.00 \\ \text{Total tax paid on products} &= \underline{\$2,470.00} \end{aligned}$$

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$130.00</u>

EXAMPLE 3.

Blender purchases 7,750 gallons tax-paid B-2 ($7,750 \times .325$) =	\$2,518.75
Blender adds 250 gallons untaxed biodiesel =	\$0
Total tax paid on products =	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$81.25</u>

b. A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be ~~29¢~~ 30.1¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ($7,120 \times .325$) =	\$2,314.00
Blender purchases 880 gallons tax-paid biodiesel ($880 \times \del{.29} \underline{.301}$) =	\$255.20 <u>\$264.88</u>
Total tax paid on products =	\$2,569.20 <u>\$2,578.88</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ($8,000 \times \del{.29} \underline{.301}$) =	\$2,320.00 <u>\$2,408.00</u>
Amount of Refund Allowable =	<u>\$249.20 \$170.88</u>

EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ($7,600 \times .325$) =	\$2,470.00
Blender purchases 400 gallons tax-paid biodiesel ($400 \times \del{.29} \underline{.301}$) =	\$116.00 <u>\$120.40</u>
Total tax paid on products =	\$2,586.00 <u>\$2,590.40</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons blended B-5 ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$14.00 \$9.60</u>

EXAMPLE 3.

Blender purchases 4,000 gallons tax-paid B-2 ($4,000 \times .325$) =	\$1,300.00
Blender purchases 4,000 gallons tax-paid B-20 ($4,000 \times \underline{.29 .301}$) =	\$1,160.00 <u>\$1,204.00</u>
Total tax paid on products =	\$2,460.00 <u>\$2,504.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons B-11 or higher ($8,000 \times \underline{.29 .301}$) =	\$2,320.00 <u>\$2,408.00</u>
Amount of Refund Allowable =	\$140.00 <u>\$96.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product $\times .1$ = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at ~~\$.29 .301¢~~ per gallon; diesel other than B-11 or higher is taxed at ~~\$.325 .325¢~~ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Actual petrodiesel	=	8,095 gal.
Actual biodiesel	=	905 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

9,000 gal. of blended product	=	\$2,610 <u>\$2,709</u> tax on B-11 or higher
$\times \underline{.29 .301}$		

EXAMPLE 2.

Actual petrodiesel	=	8,105 gal.
Actual biodiesel	=	895 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$\begin{aligned} 9,000 \text{ gal. of blended product} &= \$2,925 \text{ tax on diesel other than B-11 or higher} \\ &\times \$.325 \end{aligned}$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

Actual petrodiesel	=	8,500 gal.
Actual biodiesel	=	1,000 gal.
Total blended product	=	9,500 gal.
$9,500 \times .1$	=	950 gal. required biodiesel

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$\begin{aligned} 9,500 \text{ gal. of blended product} &= \underline{\$2,755} \text{ tax on B-11 or higher} \\ &\times \underline{\$.29301} \qquad \qquad \qquad \underline{\$2,859.50} \end{aligned}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by 2015 Iowa Acts, Senate File 257.

ITEM 4. Amend paragraph **68.5(1)“a”** as follows:

a. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of ~~alcohol~~ ethanol occurs within a terminal from an ~~alcohol~~ ethanol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the ~~alcohol~~ ethanol or the ~~alcohol~~ ethanol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the ~~alcohol~~ ethanol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

ITEM 5. Amend subrule 68.5(4) as follows:

68.5(4) The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

All gallon entries on the return for determining the tax liability must be rounded to the nearest whole number.

ITEM 6. Amend subrule 68.7(1) as follows:

68.7(1) To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, ~~Examination Section~~, Compliance ~~Division~~ Section - Business, P. O. Box ~~40456~~ 10465, Des Moines, Iowa ~~50306-0456~~ 50306-0465.

ITEM 7. Amend subrule 68.8(1), introductory paragraph, as follows:

68.8(1) Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used.

a. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is “primarily” engaged in the performance of some “essential” government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company*, 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827.

b. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley*, 232 Iowa 902, 6 N.W.2d 397 (1942).

ITEM 8. Amend subrule 68.8(3) as follows:

68.8(3) The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

a. The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823)

b. The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

ITEM 9. Amend subrule 68.8(4) as follows:

68.8(4) Contract carriers.

a. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

b. A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

ITEM 10. Amend subrule 68.8(6) as follows:

68.8(6) Fuel used for producing denatured ~~alcohol~~ ethanol.

ITEM 11. Amend subrule 68.9(1) as follows:

68.9(1) Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and ~~alcohol~~ ethanol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

ITEM 12. Amend subrule 68.9(4) as follows:

68.9(4) A claim for refund will not be allowed unless the claimant has accumulated \$60 in credits for one calendar year. A claim for refund may be filed anytime the \$60 minimum has been met within the calendar year. If the \$60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the \$60 minimum has been met, the claim for refund must be filed within one year if met prior to July 1, 2002, and within three years if met on or after July 1, 2002.

~~EXAMPLE: A claim for refund in the amount of \$200 is filed in March of 1996. During the remainder of 1996 an additional \$50 in credits is accumulated. The claimant cannot claim this \$50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the \$50 even though it is below the \$60 minimum.~~

~~EXAMPLE: The claimant does not have a refund permit. The claimant accumulates \$40 in credits during January of 2002 and \$50 in credits during June of 2002. The claimant may claim a \$90 credit on the claimant's 2002 income tax return or apply for a refund permit and claim a refund within one year of June 2002 which is the date the \$60 minimum was met. If the \$60 minimum is met on or after July 1, 2002, the claim for refund must be filed within three years of the date the \$60 minimum was met.~~

ITEM 13. Amend rule 701—68.13(452A) as follows:

701—68.13(452A) Reduction of refund—sales and use tax. Under Iowa Code section 423.3(56), the sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa fuel tax. *Gurley v. Rhoden*, 421 U.S. 200 (1975).

This rule is intended to implement Iowa Code section 452A.17.

ITEM 14. Amend rule 701—69.2(452A) as follows:

701—69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax. See 701—subrule 68.2(1) for tax rates. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle. The excise tax on C.N.G. and L.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

69.2(1) The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. The person responsible for the tax is:

4. a. The licensed L.P.G., L.N.G., or C.N.G. dealer, or

~~2. b.~~ The licensed L.P.G., L.N.G., or C.N.G. user.

69.2(2) The person responsible for placing L.P.G. into the fuel supply tank of a vehicle and the person responsible for placing C.N.G. or L.N.G. into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

69.2(3) The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. or L.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee ~~and must be rounded to the nearest whole number.~~ The return must be remitted by means of electronic transmission.

This rule is intended to implement Iowa Code section 452A.8 ~~as amended by 2014 Iowa Acts, Senate File 2338.~~

[Filed 7/21/21, effective 9/15/21]

[Published 8/11/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/21.