

701—231.2 (423) Motor fuel, special fuel, aviation fuels and gasoline.

231.2(1) *In general.* The sales price from the sale of motor fuel, including ethanol, and special fuel is exempt from sales tax under 2005 Iowa Code section 423.3(55) if (a) the fuel is consumed for highway use, in watercraft, or in aircraft, (b) the Iowa fuel tax has been imposed and paid, and (c) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

231.2(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

231.2(3) *Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa.* Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase of the fuel to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to 2005 Iowa Code subsection 423.3(55). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption, thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

231.2(4) *Tax base.* The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. *W. M. Gurley v. Arny Rhoden supra*. Also reference rule 701—15.12(422,423).

This rule is intended to implement Iowa Code subsection 423.3(55).