

701—64.3(452A) Exemptions. The following deductions are allowed on the distributor's monthly report as motor fuel exempt from tax:

1. Motor fuel sold for export or exported from this state is exempt from the excise tax. Motor fuel shall be deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the motor fuel withdrawn from storage or motor fuel which would otherwise be received, as defined in Iowa Code section 452A.2, is outside the state of Iowa. The mode of transportation is not of consequence. In the event motor fuel is taxed, and then subsequently exported, an amount equal to the tax previously paid shall be allowed as a credit, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported motor 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 motor 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).

2. Motor fuel sold to the United States or any agency or instrumentality thereof is exempt from the excise tax. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (1) whether it was created by the federal government, (2) whether it is wholly owned by the federal government, (3) whether it is operated for profit, (4) whether it is "primarily" engaged in the performance of some "essential" government function, and (5) 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. 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).

In order for this exemption to be allowed, the seller of the fuel must retain a copy of the invoice or an exemption certificate, provided by either the federal government or the department, which is signed by the purchaser.

3. Motor fuel sold at any post exchange or other concessionaire on any federal reservation within this state is to be sold tax-free. To the extent permitted by federal law, it is the responsibility of the post exchange or concessionaire to collect, report, and pay the appropriate fuel tax to the department.

4. Motor fuel sold to a regional transit system, the state, any of its agencies, or to any political subdivision of the state, which is used for a purpose specified in Iowa Code section 452A.57(11) or for public purposes and delivered into any size of storage tank owned or used exclusively by a regional transit system, the state, any of its agencies, or a political subdivision of the state is exempt from the excise tax.

When purchasing motor fuel tax-free, a regional transit system, the state, its agencies, and political subdivisions of the state shall furnish the distributor or dealer with an exemption certificate, issued by the department, stating that all of the motor fuel will be used for a purpose specified in Iowa Code section 452A.57(11) or for public purposes. A regional transit system, the state, its agencies and political subdivisions or a licensed motor fuel distributor may provide its own certificate of exemption, in a form prescribed by the director, to substantiate tax-exempt sales under this rule. See rule 701—65.13(452A) for information to be included on the certificate of exemption.

A regional transit system is defined in Iowa Code subsection 452A.57(11) to mean a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system must be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing

services that are open and public on a shared-ride basis will not be construed to be a regional transit system.

5. Motor fuel sold to an Iowa urban transit system is to be sold tax-free. An Iowa urban transit system is a system whereby motor buses are (1) operated primarily upon the streets of the cities, (2) for the transportation of passengers, (3) without discrimination, (4) up to the capacity of each motor bus. The following are not considered activities which are functions of an Iowa urban transit system:

(a) Privately chartered bus services subject to the jurisdiction of the Iowa department of transportation.

(b) Privately chartered motor carriers subject to the jurisdiction of the Iowa department of transportation.

(c) Privately chartered interurban carriers subject to the jurisdiction of the Iowa department of transportation (the term “interurban” shall include contiguous urban areas).

(d) School bus services. Iowa urban transit systems which have a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school may receive a refund for the fuel used to transport students. See rule 64.22(452A) and 701—subrule 65.15(2).

(e) Taxicabs.

If an entity qualifies as an Iowa urban transit system (“1,” “2,” “3,” and “4” above) or a regional transit system, but performs activities which are specifically excluded from the functions of an Iowa urban transit system, (a), (b), (c), (d), and (e) above, or a regional transit system, only that portion of the fuel used during the excluded functions is subject to the fuel tax. In order to purchase motor fuel tax-free, the transit system must first obtain a license from the department, which license shall be without cost, and fix licensed meters to all fuel storage as per Iowa Code section 452A.34 and rule 701—65.8(452A). The transit system must provide the supplying distributor with a signed affidavit or invoice showing the total tax-free purchases for a given month, which affidavit or invoice is then attached to the distributor’s monthly tax report as proof of the tax-free sales.

In order to determine their tax liability, if any, transit systems must file quarterly reports with the department. The reports must include, but not be limited to, the following information: (1) the name, address, and license number of the transit system; (2) the total use of motor fuel and special fuel by meter readings; (3) the taxable use of motor fuel and special fuel; (4) a calculation of the motor fuel and special fuel tax due; (5) a calculation of sales tax due; and (6) the signature of the person responsible for filing the report. (See rule 64.13(452A) and Iowa Code sections 422.42 and 422.45 for sales tax applicability.) A remittance in the amount of taxes due must accompany the report.

If a transit system is wholly owned and operated by a political subdivision of the state or is organized and operated pursuant to Iowa Code section 28E.17, the system must still be operated in accordance with the Iowa urban transit system or regional transit system provisions in order for the exemption to apply. However, since the transit system is part of the political subdivision, the fuel taxes paid on fuel not covered by the transit system exemption, but used for “public purposes” would be subject to refund pursuant to Iowa Code sections 28E.17(2), 452A.3 and 452A.35. (See rule 64.15(452A).) These refunds will not be reduced by sales tax. (Iowa Code section 422.45(5).) 1968 O.A.G. 28, *Wicomico County Commissioners et al v. Bancroft*, 135 F. 977 (4th Cir. 1905). However, sales tax would be due from private carriers which contract bus services with political subdivisions.

All other motor fuel not exempted by categories “1,” “2,” “3,” “4,” or “5” above or subrule 64.4(1) below is subject to the tax in the first instance by the person who receives it. If the motor fuel is later used for some other exempt purpose or otherwise not to be subject to the tax, the tax previously paid will be subject to credit or refund. (See rules 701—63.25(452A), 64.4(452A), 64.7(452A), 64.8(452A) and 64.15(452A).)

This rule is intended to implement Iowa Code sections 452A.3, 452A.35, and 452A.57.