

701—64.7(452A) Credit to licensee—adjustments—limitations.

64.7(1) *Credit to licensee—nonhighway—casualty loss.* Any distributor, dealer or user licensed under Iowa Code chapter 452A who, after having received or paid the tax on motor fuel or special fuel, uses the fuel for purposes other than to propel motor vehicles, aircraft or watercraft, or loses the fuel, while owned, through accountable leakage or casualty, will be entitled to a credit. In order to obtain a credit, the distributor must hold an uncanceled distributor's license. A credit will not be allowed with respect to any motor fuel or special fuel purchased more than three calendar months prior to the date the claim is filed with the department or three calendar months from the time tax accrues, whichever is longer. No credit will be allowed if less than \$10 in amount. If the fuel was in storage where several fuel purchases were commingled, it is a rebuttable presumption that the fuel lost through casualty or used for nonhighway purposes was a part of the last delivery into the storage just prior to the withdrawal from storage or the loss. If a motor fuel distributor has not yet paid the tax, the distributor must pay the tax as if the loss or nonhighway use had not occurred and then request a credit. (See 701—subrules 63.17(1) and 64.7(4).)

64.7(2) *Pumping credits.* A credit will be allowed for taxes paid on fuel, once that fuel has been placed in the fuel supply tank of a motor vehicle, when the motor of that vehicle is used as a power source for off-loading procedures. Meter readings from the pump used in the off-loading procedure or the invoice, manifest or bill of lading number covering the product off-loaded must accompany the application for credit and the cost of the fuel must be indicated. The application for credit must be in writing, and the credit will be allowed as follows, unless a different amount of credit can be proven:

a. When using motor fuel (gasoline) or special fuel (diesel) to power the motor: (1) one-half gallon credit for each 1,000 gallons of liquid products pumped, and (2) three-tenths of a gallon credit for each ton of dry products pumped.

b. When using special fuel (LPG) to power the motor: (1) one gallon credit for each 1,000 gallons of liquid products pumped, and (2) three-tenths of a gallon credit for each ton of dry products pumped.

64.7(3) *Adjustments to credit—shrinkage allowance—sales tax.* The following adjustments will be made to a claim for credit of taxes paid on motor fuel or special fuel filed by a licensed distributor, dealer or user:

a. For periods prior to September 1, 1981. To compensate for the deduction allowed for shrinkage and administration in Iowa Code section 452A.8 the gallonage of motor fuel upon which a credit is requested by a motor fuel distributor shall be reduced by either 3 or 1¼ percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1¼ percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 3 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, and the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1¼ percent, and the remainder of the gallonage upon which the credit is based will be reduced by 3 percent.

b. For periods after August 31, 1981. To compensate for the deduction allowed for shrinkage and administration in Iowa Code section 452A.8 the gallonage of motor fuel upon which a credit is requested by a motor fuel distributor shall be reduced by either 2 or 1 percent or a combination of the two, whichever is applicable. If the gross gallonage total for the month for which the credit is claimed remains above 300,000 gallons after being reduced by the gallonage upon which the credit is claimed, the credit will be reduced by 1 percent. If the gross gallonage total for the month for which the credit is claimed was below 300,000 gallons, the credit will be reduced by 2 percent. If the gross gallonage total for the month for which the credit is claimed exceeded 300,000 gallons when the tax was originally paid, and the credit request will reduce the gallonage below 300,000 gallons, the gallonage which was originally in excess of 300,000 gallons will be reduced by 1 percent, and the remainder of the gallonage upon which the credit is based will be reduced by 2 percent.

c. The claim for a credit of taxes on motor fuel or special fuel shall be reduced by the applicable Iowa sales tax, unless the motor fuel or special fuel has not been subject to “sale” as defined in section

422.42(2) or is used or purchased for a purpose exempt from Iowa sales tax under Iowa Code section 422.42(3) or 422.45 (e.g., farming, processing, governmental units, nonprofit educational institution). The sales tax shall be computed on the net cost of the motor fuel including any federal excise tax and excluding the state excise tax. *W. M. Gurley v. Army Rhoden*, 421 U.S. 200, 44 L.Ed 110, 95 S.Ct. 1605.

The following will demonstrate the applicability of this rule using figures for shrinkage applicable for the period prior to September 1, 1981. The following facts are enumerated for each of the examples: (1) net per gallon cost \$0.46; (2) nonrefundable federal excise tax \$0.04* per gallon; (3) state excise tax, \$0.10* per gallon; (4) the distributor "received" less than 300,000 gallons of motor fuel.

(*These rates are for illustrative purposes only and may not indicate the current statutory rate.)

1. The taxpayer requests the credit for a casualty loss of 1,000 gallons of motor fuel.

Credit requested on	1,000	gallons	
LESS: 3% (64.7(3) "a")	30	gallons	
Gallons subject to refund	970	gallons	
MULTIPLIED BY: Rate of state excise tax paid	\$.10	/gallon	
Amount subject to refund	\$		\$97.00
	97.00		
LESS: Sales tax (64.7(3) "c")			
Gallons subject to refund	970	gallons	
× (.46 + .04) cost basis	\$.50	/gallon	
Net Cost	\$485.00		
× sales tax rate*	.03		
Total Sales Tax	\$		14.55
	14.55		
Credit			\$82.45

2. Taxpayer, a licensed distributor, requests a credit for taxes paid on 1,000 gallons of motor fuel the distributor "uses" for sales tax exempt farming purposes:

Credit requested on	1,000	gallons	
LESS: 3% (64.7(3) "a")	30	gallons	
Gallage subject to refund	970	gallons	
MULTIPLIED BY: Rate of state excise tax paid	\$.10	/gallon	
Amount subject to refund	\$97.00		
LESS: Sales tax (exempt)	0		
Credit	\$		97.00

(*These rates are for illustrative purposes only and may not indicate the current statutory rate.)

64.7(4) Credit memo. Rescinded IAB 10/12/94, effective 11/16/94.

64.7(5) Time for filing request for credit.

a. Casualty loss. In the event fuel is lost through accident or leakage, the taxpayer must inform the department of such loss within 30 days of the loss. The notification must contain (1) the amount of gallonage lost or destroyed, and (2) a notarized affidavit sworn to by the person having immediate custody of the fuel at the time of the loss or destruction setting forth, in full detail, the circumstances of the loss or destruction. An application for credit must be submitted to the department within three calendar months of the loss.

b. Nonhighway use. An application for credit concerning fuel used for nonhighway purposes (including pumping credits) must accompany a periodic report once the \$10 amount has been

accumulated. If the credit will become barred by the three-month statute of limitation, an application for credit may be filed separate from the current monthly or quarterly report.

A credit will not be allowed for less than \$10; therefore, these credits may be accumulated for a period of time not exceeding the statute of limitations for filing credits. The statute of limitations is either three calendar months from the date of purchase or three calendar months from the time the tax accrues, whichever time is longer. (See Iowa Code section 452A.16.)

Any application for credit must be filed within the time frame set out in this rule, or the credit will not be allowed.

The following example illustrates the application of this subrule:

Black Gold Oil Company received 10,000 gallons of motor fuel on April 2. On April 3, the storage tank in which this fuel was stored ruptured and 5,000 gallons were lost. Black Gold Oil Company must report the loss to the department by May 3, 30 days, and must file the application for credit by July 3, three calendar months. The motor fuel received on April 2 is received, and therefore, taxable as of that date. On the report for April, which the distributor must file by May 31, the distributor must include the entire 10,000 gallons received on April 2, as taxable and pay the tax thereon.

64.7(6) *Ready mix concrete and solid waste refuse vehicles.* For the periods beginning July 1, 1979, and April 1, 1987, respectively, tax on fuel used in the off-loading or mixing of cement and the loading and off-loading of solid waste will be refunded or credited on the basis of 30 percent of the fuel placed in the fuel supply tank of the vehicle provided proper records are maintained. Proper records shall consist of records of fills for each vehicle from bulk storage tanks or sales tickets where fuel is purchased directly from a service station. Each vehicle must be identifiable by a unit number so the department can trace fuel usage to specific vehicles. An additional allowance will be granted where it can be substantiated through (1) the use of separate meters which operate to measure the fuel when the vehicle is stationary or (2) the use of separate tanks which fuel the vehicle only when the vehicle is stationary, that the actual nonhighway fuel usage exceeds 30 percent.

This rule is intended to implement Iowa Code section 452A.16.