

*See Ways and Means 5/3
Do Pass 5/6 (p. 1601)*

House File 745 1979

Ways and Means
Drake, Chairperson **IFANS CALENDAR**
Rush
Ramsey

HOUSE FILE 745

By COMMITTEE ON WAYS AND MEANS

(Formerly Study Bill 199)

Passed House, Date 4-30-79 (p. 1705) Passed Senate, Date 5-11-79 (p. 1711)

Vote: Ayes 80 Nays 0 Vote: Ayes 46 Nays 0

Approved June 4, 1979

A BILL FOR

1 An Act relating to the administration of the motor fuel and
2 special fuel laws.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section three hundred twenty-four point two
2 (324.2), subsection two (2), Code 1979, is amended to read
3 as follows:

4 2. "Distributor" shall mean and include any person who
5 first receives motor fuel within this state (within the meaning
6 of the word "received" as hereinafter defined), and any person
7 now or hereafter engaged in the business of selling motor
8 fuel to a dealer in this state for resale, ~~and shall include~~
9 ~~any person who sells special fuel as defined in section 324-33,~~
10 ~~subsection 1, in bulk for highway use~~ provided that a person
11 may bring into this state not to exceed ~~twenty~~ thirty gallons
12 of motor fuel in the fuel supply tank, or any other container,
13 directly connected to the motor of a motor vehicle without
14 becoming a distributor.

15 Sec. 2. Section three hundred twenty-four point four
16 (324.4), unnumbered paragraphs one (1), two (2), and five
17 (5), Code 1979, are amended to read as follows:

18 It shall be unlawful for any person to receive motor fuel
19 within this state or to otherwise act as a distributor ~~or~~
20 ~~to sell special fuel in bulk for highway use~~ unless he or
21 she holds an uncanceled distributor's license issued by the
22 department of revenue. To procure a license a distributor
23 shall file with the department of revenue an application
24 signed under penalty for false certificate and in such form
25 as the department of revenue may prescribe, setting forth:

26 ~~Concurrently with the filing of an application for a~~
27 ~~license, every distributor shall file with the department~~
28 ~~of revenue a bond of the character and in the amount provided~~
29 ~~for in this division. -- No~~ A license shall not be issued unless
30 ~~application is accompanied by the bond, nor,~~ if the applicant
31 is a foreign corporation, unless it is at the time properly
32 qualified under the laws of this state to do business therein.

33 The application in proper form having been accepted for
34 filing, the filing fee paid, ~~the bond having been accepted~~
35 ~~and approved~~ and the other conditions and requirements of

1 this section and division four (IV) of this chapter having
2 been complied with, the department of revenue shall issue
3 to the applicant a license to transact business as a
4 distributor in this state. The license shall remain in full
5 force and effect until canceled as provided in this chapter.

6 Sec. 3. Section three hundred twenty-four point ten
7 (324.10), Code 1979, is amended to read as follows:

8 324.10 ~~REQUIRED DISTRIBUTOR AND-SPECIAL-FUEL-DISTRIBUTOR~~
9 ~~AND DEALER RECORDS.~~ Each motor fuel distributor ~~and-special~~
10 ~~fuel-distributor~~ shall maintain and keep for a period of three
11 years, ~~such~~ records of all transactions by which he the
12 distributor receives, uses, sells, delivers or otherwise
13 disposes of motor fuel within this state, together with
14 invoices, bills of lading and other pertinent records and
15 papers as may reasonably be required by the department of
16 revenue for the administration of this division.

17 If in the normal conduct of a distributor's business ~~his~~
18 the distributor's records are maintained and kept at an office
19 outside the state of Iowa, it shall be a sufficient compliance
20 with this section if the records are made available for audit
21 and examination by the department of revenue at the office
22 outside Iowa, but such audit and examination outside Iowa
23 shall be without expense to the state.

24 Each dealer handling motor fuel in this state shall maintain
25 and keep for a period of two years records of all motor fuel
26 purchased or otherwise acquired by ~~him~~ the dealer, together
27 with delivery tickets, invoices, and bills of lading, and
28 such other pertinent records as the department of revenue
29 shall require.

30 The department of revenue, after an audit and examination
31 of the records of a distributor or dealer may authorize their
32 disposal, the authorization to be in writing after request
33 by the distributor or dealer.

34 Sec. 4. Section three hundred twenty-four point sixteen
35 (324.16), Code 1979, is amended by striking the section and

1 inserting in lieu thereof the following:

2 324.16 CREDIT TO LICENSEE--NONMOTOR VEHICLE OR WATERCRAFT
3 USE--CASUALTY LOSSES--NONTAXABLE PRODUCTS--REFUNDS. A distri-
4 butor, dealer or user licensed under this chapter who has
5 received motor fuel or has paid the tax on motor fuel or
6 special fuel shall be entitled to a memorandum of credit or
7 refund, when the fuel is used for any purpose other than as
8 fuel for propelling motor vehicles or in watercraft, or, while
9 owned by the licensee, is lost or destroyed through accountable
10 leakage or to fire, accident, lightning, flood, storm, act
11 of war, or public enemy or other like cause. A memorandum
12 of credit shall be allowed against subsequent liability under
13 this chapter upon application to the department of revenue
14 supported by such proof as the director of revenue prescribes
15 by rule. If the licensee is no longer engaged in activity
16 for which the license was issued, the department of revenue
17 shall refund the appropriate amount upon receipt of an
18 application for refund as provided by the department. Credits
19 and refunds shall be subject to the following conditions:

20 1. A credit or refund shall not be allowed with respect
21 to any motor fuel or special fuel purchased more than three
22 calendar months prior to the date the claim was filed with
23 the department of revenue or three calendar months from the
24 time the tax accrues, whichever time is longer.

25 2. A credit shall not be allowed which is in an amount
26 less than ten dollars.

27 3. With respect to fuel which is lost or destroyed through
28 accountable leakage or through fire, accident, lightning,
29 flood, storm, act of war, or public enemy or other like cause,
30 the licensee shall provide the department of revenue in writing
31 within thirty days of the loss or destruction, the following
32 information:

33 a. The amount of gallonage lost or destroyed.

34 b. A notarized affidavit sworn to by the person having
35 immediate custody of the fuel at the time of the loss or

1 destruction setting forth in full the circumstances and amount
2 of the loss or destruction and other such information with
3 respect thereto as the department of revenue may require.

4 Sec. 5. Section three hundred twenty-four point seventeen
5 (324.17), Code 1979, is amended to read as follows:

6 324.17 REFUND TO NONLICENSEE--FUEL USED OTHER THAN IN
7 WATERCRAFT OR MOTOR VEHICLES. Any person other than a ~~licensee~~
8 distributor, dealer or user licensed under this chapter who
9 shall use motor fuel or special fuel for the purpose of
10 operating or propelling farm tractors, corn shellers, roller
11 mills, truck-mounted feed grinders, stationary gas engines,
12 aircraft, for cleaning or dyeing or for any purpose other
13 than in watercraft or ~~in~~ for propelling motor vehicles operated
14 or intended to be operated upon the public highways and having
15 paid the motor fuel or special fuel tax on the fuel either
16 directly to the department of revenue or by having the tax
17 added to the price of the fuel, and who has a refund permit
18 shall, upon presentation to and approval by the department
19 of revenue of a claim for refund be reimbursed and repaid
20 the amount of the tax which the claimant has paid on the
21 gallonage so used. Every claim ~~filed-subsequent-to-July-4,~~
22 ~~1957,~~ shall be subject to the following conditions:

23 1. The claim shall be on a form prescribed by the
24 department of revenue and be certified by the claimant under
25 penalty for false certificate.

26 2. The claim shall have attached thereto the original
27 invoice ~~or invoices~~ or other proof as prescribed by the
28 department showing the purchase of the motor fuel or special
29 fuel on which a refund is claimed.

30 3. ~~No~~ An invoice shall not be acceptable in support of
31 a claim for refund unless it is a separate serially numbered
32 invoice covering no more than one purchase of motor fuel or
33 special fuel, prepared by the seller on a form approved by
34 the department of revenue with double faced carbon paper under
35 the original; nor unless it is legibly written with no

1 corrections or erasures and shows the date of sale, the name
2 and address of the seller and of the purchaser, the kind of
3 ~~motor~~ fuel, the gallonage in words and figures, the per gallon
4 price of the motor fuel or special fuel, ~~the-per-gallon-rate~~
5 ~~of-any-tax-added-to-the-product-price~~, the total purchase
6 price including the Iowa motor fuel or special fuel tax and
7 that the total purchase price including tax has been paid;
8 provided, that as to refund invoices made on a billing machine
9 the department of revenue may waive any of the requirements
10 of this subsection.

11 4. The claim shall state the gallonage of motor fuel or
12 special fuel that was used or will be used by the claimant
13 other than in watercraft or to propel motor vehicles, the
14 manner in which the motor fuel or special fuel was used or
15 will be used and the equipment in which it was used or will
16 be used.

17 5. The claim shall also state whether or not the claimant
18 used fuel for watercraft or to propel motor vehicles from
19 the same tanks or receptacles in which the claimant kept the
20 motor fuel on which the refund is claimed.

21 6. No A refund will not be paid with respect to any motor
22 fuel or special fuel taken out of this state in fuel supply
23 tanks of motor vehicles.

24 7. No A refund shall not be paid with respect to motor
25 fuel or special fuel purchased more than three calendar months
26 prior to the date the claim was filed with the department
27 of revenue.

28 8. No A refund shall not be paid with respect to motor
29 fuel or special fuel used in the performance of a contract
30 which is paid out of state funds unless the contract for the
31 work contains a certificate made under penalty for false
32 certificate that the estimate, bid or price to be paid for
33 the work includes no amount representing motor fuel or special
34 fuel tax subject to refund.

35 9. If an original invoice is lost or destroyed the

1 department of revenue may in its discretion ~~approve a refund~~
2 ~~supported by~~ accept a copy identified and certified by the
3 seller as being a true copy of the original.

4 10. The right of a person to a refund under this section
5 shall not be assignable. Claim shall be made by and the
6 amount of the refund when determined by the department of
7 revenue shall be paid to the person who purchased the motor
8 fuel or special fuel as shown in the supporting invoice.

9 11. In order to verify the validity of a claim for refund
10 the department of revenue shall have the right to require
11 the claimant to furnish such additional proof of validity
12 as the department of revenue may determine and to examine
13 the books and records of the claimant. Failure of a claimant
14 to furnish his or her books and records for examination shall
15 constitute a waiver of all rights to refund related to the
16 transaction in question.

17 12. ~~Refund may also be made on special fuel taxes paid~~
18 ~~on fuel consumed in the operation of corn shellers, roller~~
19 ~~mills and feed grinders mounted on trucks under the same~~
20 ~~conditions as provided by law for refunds on motor vehicle~~
21 ~~fuel.~~

22 13. Refunds shall be made of motor vehicle fuel taxes
23 paid on motor fuel or special fuel placed in motor vehicles
24 and used, other than on public highways, in the extraction
25 and processing of natural deposits, without regard to whether
26 such motor vehicles are registered under section 321.18.
27 An applicant for a refund under this subsection must maintain
28 adequate records for a period of three years beyond the filing
29 of the claim. The department of revenue will pay the claim
30 upon the presentation of proof which ~~he~~ may reasonably ~~require~~
31 be required.

32 14 13. A bona fide commercial fisherman, licensed and
33 operating under an owner's certificate for commercial fishing
34 gear issued pursuant to section 110.1 shall be entitled to
35 receive a motor fuel or special fuel tax refund under this

1 section.

2 ~~is~~ 14. In lieu of the refund provided in this section,
3 a person may receive an income tax credit as provided in
4 chapter 422, division IX, but only as to motor fuel or special
5 fuel not used in motor vehicles or watercraft.

6 A claim for refund shall not be allowed which is in an
7 amount of less than ten dollars.

8 Sec. 6. Section three hundred twenty-four point thirty-
9 two (324.32), Code 1979, is amended to read as follows:

10 324.32 PURPOSE. The purpose of this division is to
11 supplement division I of this chapter, by imposing an excise
12 tax upon the receipt, delivery or placing into the fuel supply
13 tanks of motor vehicles which are within this state and into
14 motor vehicle special fuel holding tanks which are within
15 this state, of all fuels not taxed under division I.

16 Sec. 7. Section three hundred twenty-four point thirty-
17 three (324.33), subsections six (6) and seven (7), Code 1979,
18 are amended to read as follows:

19 6. "Licensee" shall mean and include any person who holds
20 an uncanceled special fuel distributor license, special fuel
21 dealer license or special fuel user license, issued pursuant
22 to this division.

23 7. "Motor vehicle special fuel holding tank" means a tank
24 with a capacity of not more than ~~five-hundred~~ one thousand
25 fifty gallons owned by or in the possession of a special fuel
26 user in which special fuel is contained for use by the special
27 fuel user only in a motor vehicle for highway use.

28 Sec. 8. Section three hundred twenty-four point thirty-
29 three (324.33), Code 1979, is amended by adding the following
30 new subsection:

31 NEW SUBSECTION. "Special fuel distributor" means any
32 person who sells special fuel in this state in bulk for highway
33 use. Delivery of special fuel into a motor vehicle special
34 fuel holding tank shall not be considered a bulk sale of
35 special fuel.

1 Sec. 9. Section three hundred twenty-four point thirty-
2 five (324.35), Code 1979, is amended by adding the following
3 new unnumbered paragraph:

4 NEW UNNUMBERED PARAGRAPH. A tax shall not be imposed under
5 this division and the provisions of sections three hundred
6 twenty-four point thirty-four (324.34), three hundred twenty-
7 four point thirty-six (324.36), and three hundred twenty-four
8 point thirty-eight (324.38) of the Code shall not be applicable
9 if special fuel is sold to the state, any of its agencies,
10 or any political subdivision of the state when the special
11 fuel is delivered into storage tanks, regardless of size,
12 and all of the special fuel is used for public purposes.

13 Sec. 10. Section three hundred twenty-four point thirty-
14 six (324.36), Code 1979, is amended to read as follows:

15 324.36 SPECIAL FUEL DISTRIBUTORS', SPECIAL FUEL DEALERS'
16 AND SPECIAL FUEL USERS' LICENSES.

17 1. REQUIRED. It shall be unlawful for any person to act
18 as a special fuel dealer in this state unless he the person
19 holds an-uneaneeted a special fuel dealer's license issued
20 to him the person by the department of revenue. A person
21 who holds a special fuel distributor's license may dispense
22 special fuel into a motor vehicle special fuel holding tank
23 without obtaining a special fuel dealer's license. Except
24 for special fuel which is delivered by a special fuel dealer
25 into a fuel supply tank of any motor vehicle or into a motor
26 vehicle special fuel holding tank in this state or delivered
27 by a special fuel distributor into a motor vehicle special
28 fuel holding tank, the use (as herein defined) of special
29 fuel in this state by any person shall be unlawful unless
30 he the person holds an-uneaneeted a special fuel user's license
31 issued to him the person by the department of revenue. It
32 shall be unlawful for any person to sell special fuel in this
33 state in bulk for highway use without first obtaining a special
34 fuel distributor license. The license shall be issued under
35 the same procedure and subject to the same requirements and

1 limitations as provided in section three hundred twenty-four
2 point four (324.4) of the Code.

3 2. APPLICATION. Application for a special fuel dealer's
4 license or a special fuel user's license shall be made to
5 the department of revenue. A special fuel dealer's license
6 or a special fuel user's license, whichever is applicable,
7 shall be required for each separate place of business or
8 location where special fuels are regularly delivered or placed
9 into the fuel supply tank of a motor vehicle. Provided, that,
10 if a special fuel dealer also operates one or more bulk plants
11 from which the distribution of a special fuel is primarily
12 by tank vehicle, he the special fuel dealer need not obtain
13 a separate license for any of these plants not provided with
14 fixed equipment designed for fueling vehicles.

15 3. FORM OF APPLICATION. The application shall be filed
16 upon a form prepared and furnished by the department of revenue
17 and shall contain such information as the department of revenue
18 deems necessary.

19 4. ISSUANCE. Upon receipt of the application, the
20 department of revenue shall issue to the applicant a license
21 to act as a special fuel dealer or a special fuel user;
22 provided, however, the department of revenue may refuse to
23 issue a special fuel dealer's license or a special fuel user's
24 license to any person: (a) who formerly held either type
25 of license and which has been revoked for cause; or (b) who
26 is a subterfuge for the real party in interest whose license
27 has been revoked for cause; or (c) upon other sufficient cause
28 being shown. Before refusal, the department of revenue shall
29 grant the applicant a hearing and give ~~him~~ the applicant at
30 least fifteen days' written notice of the time and place
31 thereof.

32 5. EXPIRATION OF LICENSE. Each special fuel dealer's
33 license and special fuel user's license shall be valid until
34 suspended or revoked for cause or otherwise canceled.

35 6. ASSIGNMENT FORBIDDEN. No A special fuel dealer's

1 license or special fuel user's license shall not be
2 transferable.

3 Sec. 11. Section three hundred twenty-four point thirty-
4 seven (324.37), Code 1979, is amended by striking the section
5 and inserting in lieu thereof the following:

6 324.37 SPECIAL FUEL DISTRIBUTORS', SPECIAL FUEL DEALERS'
7 AND SPECIAL FUEL USERS' RECORDS.

8 1. Special fuel distributors shall prepare and maintain
9 with respect to the special fuel the same records as pro-
10 vided in section three hundred twenty-four point ten (324.10)
11 of the Code for motor fuel distributors, subject to the same
12 requirements.

13 2. For each location where special fuel is delivered or
14 placed into the fuel supply tank of a motor vehicle, the
15 special fuel dealer or user making the delivery shall prepare
16 and maintain for a period of three years such records as the
17 department of revenue may reasonably require with respect
18 to all these deliveries, and with respect to inventories,
19 receipts, purchases, and sales or other dispositions of special
20 fuel.

21 Sec. 12. Section three hundred twenty-four point thirty-
22 eight (324.38), Code 1979, is amended by striking the section
23 and inserting in lieu thereof the following:

24 324.38 RETURNS AND TAX PAYMENTS.

25 1. RETURNS FOR LICENSED DEALERS AND USERS. For the purpose
26 of determining the amount of liability for special fuel tax
27 each special fuel dealer and each special fuel user shall
28 file with the department of revenue not later than the last
29 day of the month next following the month in which this
30 division becomes effective and not later than the last day
31 of each calendar month thereafter a monthly tax return
32 certified under penalties for false certificate. The return
33 shall show, with reference to each location at which special
34 fuel is delivered or placed by the dealer or user into a fuel
35 supply tank of any motor vehicle during the next preceding

1 calendar month, such information as the department of revenue
2 may reasonably require for the proper administration and
3 enforcement of this division. However, if a special fuel
4 dealer or user is also a wholesale distributor of special
5 fuel at a location where special fuel is delivered into the
6 supply tank of a motor vehicle, the monthly return to the
7 department of revenue covering the location need not include
8 inventory control data covering bulk storage from which
9 wholesale distribution of special fuel is made.

10 2. COMPUTATION. The amount of tax due shall be computed
11 by multiplying the appropriate tax rate per gallon by the
12 number of gallons of special fuel delivered or placed by the
13 special fuel dealer or user into supply tanks of motor
14 vehicles.

15 3. PAYMENTS. The return shall be accompanied by remittance
16 in the amount of the tax due for the month in which the special
17 fuel was placed in the fuel tanks of motor vehicles.

18 4. QUARTERLY RETURNS AND TAX PAYMENT BY SPECIAL FUEL
19 DISTRIBUTORS. For the purpose of determining the amount of
20 the tax liability for special fuel tax, each special fuel
21 distributor licensed under this chapter shall file with the
22 department of revenue, not later than the last day of the
23 month next following each calendar quarter, a quarterly tax
24 return certified under penalties for false certificate. The
25 return shall show the total amount of special fuel sold during
26 the quarter, the amount of special fuel sold for nonhighway
27 use, the amount of fuel sold to licensed special fuel dealers
28 and users, the amount of special fuel delivered into motor
29 vehicle special fuel holding tanks, the amount of tax due,
30 and such other pertinent information required by the department
31 of revenue. The amount of tax due shall be computed by
32 multiplying the appropriate tax rate per gallon by the number
33 of gallons of special fuel delivered or placed by the special
34 fuel distributor into the motor vehicle special fuel holding
35 tanks. The return shall be accompanied by a remittance in

1 the amount of the tax due for the quarter.

2 5. EXEMPTION FOR FUELING BY LICENSED DEALERS OR DIS-
3 TRIBUTORS. If the purchase of special fuel within this state
4 by a person not required to be licensed under this division
5 is purchased solely in one or more of the following manners,
6 the person need not file a return:

7 a. Special fuels purchased tax paid and delivered into
8 the fuel supply tank of the user's motor vehicles by licensed
9 special fuel dealers.

10 b. Special fuels purchased tax paid and delivered into
11 the user's motor vehicle special fuel holding tanks by licensed
12 special fuel dealers.

13 c. Special fuels purchased tax paid and delivered into
14 the user's motor vehicle special fuel holding tanks by licensed
15 special fuel distributors.

16 6. PRESUMPTION. For purposes of this section there shall
17 be a prima-facie presumption that all special fuel received
18 by a special dealer or special fuel user into storage and
19 dispensing equipment designed to fuel motor vehicles is to
20 be delivered by the special fuel dealer or special fuel user
21 into the fuel supply tanks of motor vehicles.

22 Sec. 13. Section three hundred twenty-four point fifty-
23 three (324.53), Code 1979, is amended to read as follows:

24 324.53 PERMIT--BOND. The advance arrangements referred
25 to in the preceding section shall include the procuring of
26 a permanent interstate fuel permit or single trip interstate
27 permit ~~and may at the discretion of the state department of~~
28 ~~transportation include the posting of a suitable indemnity~~
29 ~~bond in a sum to be fixed by the state department of~~
30 ~~transportation to assure the required reporting, tax payments~~
31 ~~and the keeping of required records.~~

32 Persons choosing not to make advance arrangements with
33 the state department of transportation by procuring a permit
34 are not relieved of their responsibility to purchase motor
35 fuel and special fuel commensurate with their use of the

1 state's highway system. ~~The~~ When there is reasonable cause
2 to believe that there is evasion of the fuel tax on commercial
3 motor vehicles, the state department of transportation may
4 audit persons not holding a permit ~~who-are-suspected-of-evading~~
5 ~~the-fuel-tax-on-commercial-motor-vehicles~~. Audits shall be
6 conducted pursuant to section 324.55.

7 A permanent permit may be obtained upon application to
8 the state department of transportation. A fee of five dollars
9 shall be charged for each permit issued. The holder of a
10 permanent permit shall have the privilege of bringing into
11 this state in the fuel supply tanks of commercial motor
12 vehicles any amount of motor fuel or special fuel to be used
13 in the operation of the vehicles and for that privilege shall
14 pay Iowa motor fuel or special fuel taxes as provided in
15 section 324.54. A single trip interstate permit as provided
16 for in this section may be obtained from the state department
17 of transportation. A fee of twelve dollars shall be charged
18 for each individual single trip interstate permit issued.
19 A single trip interstate permit shall be subject to the
20 following provisions and limitations:

21 1. The permit shall be issued and be valid for seventy-
22 two consecutive hours, except in emergencies, or until the
23 time of leaving the state, whichever first occurs.

24 2. The permit shall cover only one commercial motor vehicle
25 and is not transferable.

26 3. Single trip interstate fuel permits may be made
27 available from sources other than indicated in this section
28 at the discretion of the state department of transportation.

29 Each vehicle operated into or through Iowa in interstate
30 operations using motor fuel or special fuel acquired in any
31 other state shall carry in or on the vehicle a duplicate or
32 evidence of the permit required in this section. A fee not
33 to exceed fifty cents shall be charged for each duplicate
34 or other evidence of permit issued.

35 Sec. 14. Section three hundred twenty-four point sixty-

1 four (324.64), Code 1979, is amended by striking the section
2 and inserting in lieu thereof the following:

3 324.64 FAILURE TO FILE RETURN--INCORRECT RETURN. If a
4 return required by this chapter is not filed, or if a return
5 when filed is incorrect or insufficient and the filer fails
6 to file a corrected or sufficient return within twenty days
7 after the same is required by notice from the appropriate
8 state agency, the appropriate state agency shall determine
9 the amount of tax due. The determination shall be made from
10 all information that the appropriate state agency may be able
11 to obtain and, if necessary, the agency may estimate the tax
12 on the basis of external indices. The appropriate state
13 agency shall give notice of the determination to the person
14 liable for the tax. The determination shall finally and
15 irrevocably fix the tax unless the person against whom it
16 is assessed shall, within thirty days after the giving of
17 notice of such determination, apply to the director of the
18 appropriate state agency for a hearing or unless the director
19 reduces the assessment. At the hearing, evidence may be
20 offered to support the determination or to prove that it is
21 incorrect. After the hearing, the director shall give notice
22 of the decision to the person liable for the tax. The findings
23 of the appropriate state agency as to the amount of fuel
24 taxes, penalties and interest due from any person shall be
25 presumed to be the correct amount and in any litigation which
26 may follow, the certificate of the agency shall be admitted
27 in evidence, shall constitute a prima facie case and shall
28 impose upon the other party the burden of showing any error
29 in the findings and the extent thereof or that the finding
30 was contrary to law.

31 Sec. 15. Section three hundred twenty-four point sixty-
32 six (324.66), Code 1979, is amended by striking the section
33 and inserting in lieu thereof the following:

34 324.66 STATUTES APPLICABLE TO MOTOR VEHICLE FUEL TAX.
35 The appropriate state agency shall administer the taxes imposed

1 by this chapter in the same manner and subject to all the
2 provisions of section four hundred twenty-two point twenty-
3 five (422.25), subsection four (4) of the Code and section
4 four hundred twenty-two point fifty-two (422.52), subsection
5 three (3) of the Code.

6 All the provisions of section four hundred twenty-two point
7 twenty-six (422.26) of the Code shall apply in respect to
8 the taxes, penalties, interest, and costs imposed by this
9 chapter excepting that as applied to any tax imposed by this
10 chapter, the lien therein provided shall be prior and paramount
11 over all subsequent liens upon any personal property within
12 this state, or right to such personal property, belonging
13 to the taxpayer without the necessity of recording as therein
14 provided. The requirements for recording shall, as applied
15 to the tax imposed by this chapter, apply only to the liens
16 upon real property. When requested to do so by any person
17 from whom a taxpayer is seeking credit, or with whom the
18 taxpayer is negotiating the sale of any personal property,
19 or by any other person having a legitimate interest in such
20 information, the director shall, upon being satisfied that
21 such a situation exists, inform such person as to the amount
22 of unpaid taxes due by such taxpayer under the provisions
23 of this chapter. The giving of such information under such
24 circumstances shall not be deemed a violation of section three
25 hundred twenty-four point sixty-three (324.63) of the Code
26 as applied to this chapter.

27 Sec. 16. Section three hundred twenty-four point sixty-
28 seven (324.67), Code 1979, is amended by striking the section
29 and inserting in lieu thereof the following:

30 324.67 LIMITATION ON COLLECTION PROCEEDINGS. An action
31 or other proceeding shall not be maintained to enforce
32 collection of any amount of fuel tax, penalty, or interest
33 over and above the amount shown to be due by reports filed
34 by a licensee except upon an assessment by the department
35 of revenue as authorized in this chapter. No assessment shall

1 be made covering any period beyond three years prior to the
2 date of assessment.

3 Sec. 17. Section three hundred twenty-four point seventy-
4 one (324.71), Code 1979, is amended to read as follows:

5 324.71 REFUNDS TO PERSONS OTHER THAN DISTRIBUTORS AND
6 SPECIAL FUEL DEALERS AND USERS. Except as provided in section
7 324.54, any person other than a licensed distributor, licensed
8 special fuel dealer or licensed special fuel user who has
9 paid or has had charged to the person's account with a
10 distributor, dealer or special fuel dealer fuel taxes imposed
11 under this chapter with respect to motor fuel or special fuel
12 in excess of one hundred gallons, which is subsequently lost
13 or destroyed, while the person is the owner, through leakage,
14 fire, explosion, lightning, flood, storm, or other casualty,
15 except evaporation, shrinkage, or unknown causes, the person
16 shall be entitled to a refund of the tax so paid or charged.
17 To qualify for the refund, the person shall notify the
18 department of revenue in writing of the loss or destruction
19 and the gallonage lost or destroyed within ten days from the
20 date of discovery of the loss or destruction. Within sixty
21 days after filing the notice, the person shall file with the
22 department of revenue an affidavit sworn to by the person
23 having immediate custody of the motor fuel or special fuel
24 at the time of the loss or destruction setting forth in full
25 the circumstances and amount of the loss or destruction and
26 such other information as the department of revenue may
27 require.

28 Sec. 18. Section three hundred twenty-four point seventy-
29 four (324.74), Code 1979, is amended by adding the following
30 new subsection:

31 NEW SUBSECTION. For special fuel dealers or special fuel
32 distributors to deliver special fuel on a tax paid basis into
33 a tank with a capacity greater than one thousand fifty gallons.

34 Sec. 19. Section three hundred twenty-four point fifty-
35 six (324.56), Code 1979, is repealed.

EXPLANATION

1
 2 The bill increases the limit on the amount of gasoline
 3 which may be brought into this state in the gas tank of motor
 4 vehicles from 20 gallons to 30 gallons. There are technical
 5 corrections relating to the new "motor vehicle special fuel
 6 holding tank." The bonding and collection procedures are
 7 changed to conform to the sales tax law. Special fuel
 8 distributors are changed from monthly to quarterly filing.
 9 Fuels and persons subject to a credit or refund of taxes are
 10 redefined. Tax-paid special fuel users and dealers are
 11 eliminated. The distributor exemption to the interstate fuel
 12 use collection method is eliminated. The activities subject
 13 to criminal sanctions are expanded. A thirty-day protest
 14 period is added. The licensing of special fuel distributors
 15 is changed from division I to division II.

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HOUSE FILE 745

4180

1 Amend House File 745 as follows:

2 1. Page 1, by inserting before line 1 the
3 following new section:

4 "Sec. ____ . Section two hundred fourteen A point
5 eleven (214A.11), Code 1979, is amended to read as
6 follows:

7 "214A.11 VIOLATIONS. Any person violating the
8 provisions of this chapter shall be guilty of a
9 simple serious misdemeanor."

10 2. By renumbering sections of the bill as
11 necessary.

H-4180 FILED *H/D, drawn 4/26/79 (p. 1904)* BY O'KANE of Woodbury
APRIL 27, 1979

35

LSB 1408H 68

bk/jw/5.2

S-3733

HOUSE FILE 745

1 Amend House File 745, as passed by the House, as
2 follows:

3 1. Page 1, by inserting after line 14 the following
4 new sections:

5 "Sec. 2. Section three hundred twenty-four point
6 three (324.3), unnumbered paragraph two (2), Code
7 1979, is amended to read as follows:

8 Motor fuel shall be sold tax paid to the state
9 of Iowa, any of its agencies, ~~or~~ to any political
10 subdivision of the state, any private educational
11 institution or any governmental or private nonprofit
12 agency. Tax on fuel which is used for public purposes
13 or for the purpose for which the exemption is granted
14 under section two (2) of this Act shall be subject
15 to refund. Claims for refunds will be filed with
16 the department on a quarterly basis and in no case
17 will the director grant a refund of motor fuel or
18 special fuel tax where a claim is not filed within
19 one year from the date the tax was due. The claim
20 shall contain the number of gallons purchased, the
21 calculation of the amount of motor fuel and special
22 fuel tax subject to refund and any other information
23 required by the department necessary to process the
24 refund.

25 Sec. 3. Section three hundred twenty-four point
26 three (324.3), Code 1979, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. Motor fuel sold to a private
29 educational institution or a governmental or private
30 nonprofit agency if the fuel is used to transport
31 regular school students, handicapped students or
32 persons sixty years of age or older."

33 2. Page 7, by inserting after line 35 the following
34 new section:

35 "Sec. 10. Section three hundred twenty-four point
36 thirty-five (324.35), unnumbered paragraph two (2),
37 Code 1979, is amended to read as follows:

38 Tax on special fuel sold to the state of Iowa,
39 any of its agencies, or any political subdivisions
40 of the state where such fuel is used for public
41 purposes shall be subject to refund. Tax on special
42 fuel sold to a private educational institution or
43 a governmental or private nonprofit agency if the
44 fuel is used for the purpose for which the exemption
45 is granted under section two (2) of this Act is subject
46 to refund. Claims shall be filed in accordance with
47 the claims for motor fuel tax refunds provided by
48 section 324.3."

49 3. Page 16, by inserting after line 35 the
50 following new sections:

S-3733

PAGE 2

1 "Sec. 21. Section four hundred twenty-two point
2 forty-five (422.45), subsection eleven (11), Code
3 1979, is amended to read as follows:

4 11. The gross receipts from the sale of motor
5 fuel and special fuel consumed for highway use or
6 in watercraft where the fuel tax has been imposed
7 and paid and no refund has been or will be allowed.
8 The gross receipts from the sale of motor fuel and
9 special fuel which are exempt from the state fuel
10 tax under sections three (3) and ten (10) of this
11 Act.

12 Sec. 22. The provisions of sections two (2), three
13 (3), ten (10) and twenty-one (21) of this Act are
14 effective January first following its enactment."

S-3733 FILED *H. Brown 5/7 (p. 114)* BY JOE BROWN
MAY 7, 1979

HOUSE FILE 745

S-3815

1 Amend House File 745, as passed by the House, as
2 follows:

3 1. Page 1, by inserting after line 14 the following
4 new section:

5 "Sec. _____. Section three hundred twenty-four point
6 three (324.3), unnumbered paragraphs two (2) and three
7 (3), Code 1979, are amended to read as follows:

8 Motor fuel shall be sold tax paid to the state
9 of Iowa, any of its agencies, ~~or~~ to any political
10 subdivision of the state or to any private educational
11 institution which provides bus transportation for
12 students in grades kindergarten through twelve. Tax
13 on fuel which is used for public purposes shall be
14 subject to refund. Claims for refunds will be filed
15 with the department on a quarterly basis and in no
16 case will the director grant a refund of motor fuel
17 or special fuel tax where a claim is not filed within
18 one year from the date the tax was due. The claim
19 shall contain the number of gallons purchased, the
20 calculation of the amount of motor fuel and special
21 fuel tax subject to refund and any other information
22 required by the department necessary to process the
23 refund.

24 Each state agency and political subdivision of
25 the state and private educational institution which
26 provides bus transportation for students in grades
27 kindergarten through twelve which has purchased special
28 fuel tax free as a user shall file with the department
29 of revenue, prior to January 45 fifteenth in each
30 year, a report of the number of gallons of special
31 fuel purchased tax free by the state agency or the
32 political subdivision of the state or the private
33 educational institution which provides bus
34 transportation for students in grades kindergarten
35 through twelve in the prior calendar year and a
36 calculation of the amount of special fuel tax that
37 would have been required for the previous calendar
38 year if the state agency or political subdivision
39 or the private educational institution which provides
40 bus transportation for students in grades kindergarten
41 through twelve had been required to pay state motor
42 fuel and state special fuel taxes."

43 2. Page 7, by inserting after line 35 the following
44 new section:

45 "Sec. _____. Section three hundred twenty-four point
46 thirty-five (324.35), unnumbered paragraph two (2),
47 Code 1979, is amended to read as follows:

48 Tax on special fuel sold to the state of Iowa,
49 any of its agencies, or any political subdivisions
50 of the state, or any private educational institution

S-3815
PAGE 2

1. which provides bus transportation for students in
2. grades kindergarten through twelve where such fuel
3. is used for public purposes shall be subject to refund.
4. Claims shall be filed in accordance with the claims
5. for motor fuel tax refunds provided by section 324.3."
6. 3. Page 8, line 10, by inserting after the word
7. "state" the words "or any private educational
8. institution".
9. 4. Renumber sections and correct internal
10. references as are necessary in accordance with this
11. amendment.

BY JOE BROWN
BASS VAN-GILST
BOB CARR
C. JOSEPH COLEMAN
JOHN SCOTT
C. W. HUTCHINS

S-3815 FILED
MAY 11, 1979

RULED OUT OF ORDER (p. 1740)

HOUSE FILE 745
FISCAL NOTE

DATE: May 11, 1979
REQUESTED BY: SENATOR JOE BROWN

In compliance with a written request received May 11, 19 79, there is hereby submitted a Fiscal Note for H.F. 745, Amend. S-3815 pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

Amendment S-3815 to House File 745

This amendment makes provisions for private educational institutions which provide bus transportation for students in the grades kindergarten through twelve to be eligible for a fuel tax refund on fuel used exclusively in these buses for public purposes.

In determining the fiscal impact of this proposal, the state Department of Transportation has made the assumptions that the average miles traveled per bus per year is 10,000 miles, and that those buses get an average of six miles per gallon.

One thousand five hundred (1,500) buses will be eligible for this fuel tax refund. Under the tax rate which will be in effect July 1, 1979, \$250,000 in fuel tax revenue will be lost per year as a result of this proposal.

SOURCE: DEPARTMENT OF TRANSPORTATION

FILED
MAY 11, 1979

BY GERRY RANKIN, DIRECTOR
LEGISLATIVE FISCAL BUREAU

HOUSE FILE 745

AN ACT

RELATING TO THE ADMINISTRATION OF THE MOTOR FUEL AND SPECIAL FUEL LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section three hundred twenty-four point two (324.2), subsection two (2), Code 1979, is amended to read as follows:

2. "Distributor" shall mean and include any person who first receives motor fuel within this state (within the meaning of the word "received" as hereinafter defined), and any person now or hereafter engaged in the business of selling motor fuel to a dealer in this state for resale, ~~and shall include any person who sells special fuel as defined in section 324.33, subsection 1, in bulk for highway use~~ provided that a person may bring into this state not to exceed ~~twenty~~ thirty gallons of motor fuel in the fuel supply tank, or any other container, directly connected to the motor of a motor vehicle without becoming a distributor.

Sec. 2. Section three hundred twenty-four point four (324.4), unnumbered paragraphs one (1), two (2), and five (5), Code 1979, are amended to read as follows:

It shall be unlawful for any person to receive motor fuel within this state or to otherwise act as a distributor ~~or to sell special fuel in bulk for highway use~~ unless he or she holds an uncanceled distributor's license issued by the department of revenue. To procure a license a distributor

shall file with the department of revenue an application signed under penalty for false certificate and in such form as the department of revenue may prescribe, setting forth:

~~Concurrently with the filing of an application for a license, every distributor shall file with the department of revenue a bond of the character and in the amount provided for in this division. No~~ A license shall not be issued ~~unless application is accompanied by the bond, nor~~ if the applicant is a foreign corporation, unless it is at the time properly qualified under the laws of this state to do business therein.

The application in proper form having been accepted for filing, the filing fee paid, ~~the bond having been accepted and approved~~ and the other conditions and requirements of this section and division four (IV) of this chapter having been complied with, the department of revenue shall issue to the applicant a license to transact business as a distributor in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

Sec. 3. Section three hundred twenty-four point ten (324.10), Code 1979, is amended to read as follows:

324.10 REQUIRED DISTRIBUTOR ~~AND SPECIAL FUEL DISTRIBUTOR~~ AND DEALER RECORDS. Each motor fuel distributor ~~and special fuel distributor~~ shall maintain and keep for a period of three years, ~~such~~ records of all transactions by which he the distributor receives, uses, sells, delivers or otherwise disposes of motor fuel within this state, together with invoices, bills of lading and other pertinent records and papers as may reasonably be required by the department of revenue for the administration of this division.

If in the normal conduct of a distributor's business ~~his~~ the distributor's records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the department of revenue at the office outside Iowa, but such audit and examination outside Iowa shall be without expense to the state.

Each dealer handling motor fuel in this state shall maintain and keep for a period of two years records of all motor fuel purchased or otherwise acquired by ~~him~~ the dealer, together with delivery tickets, invoices, and bills of lading, and such other pertinent records as the department of revenue shall require.

The department of revenue, after an audit and examination of the records of a distributor or dealer may authorize their disposal, the authorization to be in writing after request by the distributor or dealer.

Sec. 4. Section three hundred twenty-four point sixteen (324.16), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.16 CREDIT TO LICENSEE--NONMOTOR VEHICLE OR WATERCRAFT USE--CASUALTY LOSSES--NONTAXABLE PRODUCTS--REFUNDS. A distributor, dealer or user licensed under this chapter who has received motor fuel or has paid the tax on motor fuel or special fuel shall be entitled to a memorandum of credit or refund, when the fuel is used for any purpose other than as fuel for propelling motor vehicles or in watercraft, or, while owned by the licensee, is lost or destroyed through accountable leakage or to fire, accident, lightning, flood, storm, act of war, or public enemy or other like cause. A memorandum of credit shall be allowed against subsequent liability under this chapter upon application to the department of revenue supported by such proof as the director of revenue prescribes by rule. If the licensee is no longer engaged in activity for which the license was issued, the department of revenue shall refund the appropriate amount upon receipt of an application for refund as provided by the department. Credits and refunds shall be subject to the following conditions:

1. A credit or refund shall not be allowed with respect to any motor fuel or special fuel purchased more than three calendar months prior to the date the claim was filed with the department of revenue or three calendar months from the time the tax accrues, whichever time is longer.

2. A credit shall not be allowed which is in an amount less than ten dollars.

3. With respect to fuel which is lost or destroyed through accountable leakage or through fire, accident, lightning, flood, storm, act of war, or public enemy or other like cause, the licensee shall provide the department of revenue in writing within thirty days of the loss or destruction, the following information:

- a. The amount of gallonage lost or destroyed.
- b. 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 the circumstances and amount of the loss or destruction and other such information with respect thereto as the department of revenue may require.

Sec. 5. Section three hundred twenty-four point seventeen (324.17), Code 1979, is amended to read as follows:

324.17 REFUND TO NONLICENSEE--FUEL USED OTHER THAN IN WATERCRAFT OR MOTOR VEHICLES. Any person other than a ~~licensee~~ distributor, dealer or user licensed under this chapter who shall use motor fuel or special fuel for the purpose of operating or propelling farm tractors, corn shellers, roller mills, truck-mounted feed grinders, stationary gas engines, aircraft, for cleaning or dyeing or for any purpose other than in watercraft or ~~is~~ for propelling motor vehicles operated or intended to be operated upon the public highways and having paid the motor fuel or special fuel tax on the fuel either directly to the department of revenue or by having the tax added to the price of the fuel, and who has a refund permit shall, upon presentation to and approval by the department of revenue of a claim for refund be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used. Every claim ~~filed subsequent to July 4,~~ ~~1957,~~ shall be subject to the following conditions:

1. The claim shall be on a form prescribed by the Department of revenue and be certified by the claimant under penalty for false certificate.

2. The claim shall have attached thereto the original invoice ~~or invoices~~ or other proof as prescribed by the department showing the purchase of the motor fuel or special fuel on which a refund is claimed.

3. ~~No~~ An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or special fuel, prepared by the seller on a form approved by the department of revenue with double faced carbon paper under the original; nor unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of motor fuel, the gallonage in words and figures, the per gallon price of the motor fuel or special fuel, ~~the per-gallon-rate of-any-tax-added-to-the-product-price,~~ the total purchase price including the Iowa motor fuel or special fuel tax and that the total purchase price including tax has been paid; provided, that as to refund invoices made on a billing machine the department of revenue may waive any of the requirements of this subsection.

4. The claim shall state the gallonage of motor fuel or special fuel that was used or will be used by the claimant other than in watercraft or to propel motor vehicles, the manner in which the motor fuel or special fuel was used or will be used and the equipment in which it was used or will be used.

5. The claim shall also state whether or not the claimant used fuel for watercraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed.

6. ~~No~~ A refund will not be paid with respect to any motor fuel or special fuel taken out of this state in fuel supply tanks of motor vehicles.

7. ~~No~~ A refund shall not be paid with respect to motor fuel or special fuel purchased more than three calendar months

prior to the date the claim was filed with the department of revenue.

8. ~~No~~ A refund shall not be paid with respect to motor fuel or special fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel or special fuel tax subject to refund.

9. If an original invoice is lost or destroyed the department of revenue may in its discretion ~~approve-a-refund supported-by~~ accept a copy identified and certified by the seller as being a true copy of the original.

10. The right of a person to a refund under this section shall not be assignable. Claim shall be made by and the amount of the refund when determined by the department of revenue shall be paid to the person who purchased the motor fuel or special fuel as shown in the supporting invoice.

11. In order to verify the validity of a claim for refund the department of revenue shall have the right to require the claimant to furnish such additional proof of validity as the department of revenue may determine and to examine the books and records of the claimant. Failure of a claimant to furnish his or her books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

~~12. Refund may also be made on special fuel taxes paid on fuel consumed in the operation of corn shellers, roller mills and feed grinders mounted on trucks under the same conditions as provided by law for refunds on motor vehicle fuel.~~

~~13.~~ Refunds shall be made of motor vehicle fuel taxes paid on motor fuel or special fuel placed in motor vehicles and used, other than on public highways, in the extraction and processing of natural deposits, without regard to whether

such motor vehicles are registered under section 321.18. An applicant for a refund under this subsection must maintain adequate records for a period of three years beyond the filing of the claim. The department of revenue will pay the claim upon the presentation of proof which ~~he~~ may reasonably ~~require~~ be required.

~~14~~ 13. A bona fide commercial fisherman, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 110.1 shall be entitled to receive a motor fuel or special fuel tax refund under this section.

~~15~~ 14. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel or special fuel not used in motor vehicles or watercraft.

A claim for refund shall not be allowed which is in an amount of less than ten dollars.

Sec. 6. Section three hundred twenty-four point thirty-two (324.32), Code 1979, is amended to read as follows:

324.32 PURPOSE. The purpose of this division is to supplement division I of this chapter, by imposing an excise tax upon the receipt, delivery or placing into the fuel supply tanks of motor vehicles which are within this state and into motor vehicle special fuel holding tanks which are within this state, of all fuels not taxed under division I.

Sec. 7. Section three hundred twenty-four point thirty-three (324.33), subsections six (6) and seven (7), Code 1979, are amended to read as follows:

6. "Licensee" shall mean and include any person who holds an uncanceled special fuel distributor license, special fuel dealer license or special fuel user license, issued pursuant to this division.

7. "Motor vehicle special fuel holding tank" means a tank with a capacity of not more than ~~five-hundred one thousand~~ fifty gallons owned by or in the possession of a special fuel

user in which special fuel is contained for use by the special fuel user only in a motor vehicle for highway use.

Sec. 8. Section three hundred twenty-four point thirty-three (324.33), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. "Special fuel distributor" means any person who sells special fuel in this state in bulk for highway use. Delivery of special fuel into a motor vehicle special fuel holding tank shall not be considered a bulk sale of special fuel.

Sec. 9. Section three hundred twenty-four point thirty-five (324.35), Code 1979, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A tax shall not be imposed under this division and the provisions of sections three hundred twenty-four point thirty-four (324.34), three hundred twenty-four point thirty-six (324.36), and three hundred twenty-four point thirty-eight (324.38) of the Code shall not be applicable if special fuel is sold to the state, any of its agencies, or any political subdivision of the state when the special fuel is delivered into storage tanks, regardless of size, and all of the special fuel is used for public purposes.

Sec. 10. Section three hundred twenty-four point thirty-six (324.36), Code 1979, is amended to read as follows:

324.36 SPECIAL FUEL DISTRIBUTORS', SPECIAL FUEL DEALERS' AND SPECIAL FUEL USERS' LICENSES.

1. REQUIRED. It shall be unlawful for any person to act as a special fuel dealer in this state unless ~~he~~ the person holds ~~an uncanceled~~ a special fuel dealer's license issued to ~~him~~ the person by the department of revenue. A person who holds a special fuel distributor's license may dispense special fuel into a motor vehicle special fuel holding tank without obtaining a special fuel dealer's license. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle or into a motor

vehicle special fuel holding tank in this state or delivered by a special fuel distributor into a motor vehicle special fuel holding tank, the use (as herein defined) of special fuel in this state by any person shall be unlawful unless he the person holds an-uncanceled a special fuel user's license issued to him the person by the department of revenue. It shall be unlawful for any person to sell special fuel in this state in bulk for highway use without first obtaining a special fuel distributor license. The license shall be issued under the same procedure and subject to the same requirements and limitations as provided in section three hundred twenty-four point four (324.4) of the Code.

2. APPLICATION. Application for a special fuel dealer's license or a special fuel user's license shall be made to the department of revenue. A special fuel dealer's license or a special fuel user's license, whichever is applicable, shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle. Provided, that, if a special fuel dealer also operates one or more bulk plants from which the distribution of a special fuel is primarily by tank vehicle, he the special fuel dealer need not obtain a separate license for any of these plants not provided with fixed equipment designed for fueling vehicles.

3. FORM OF APPLICATION. The application shall be filed upon a form prepared and furnished by the department of revenue and shall contain such information as the department of revenue deems necessary.

4. ISSUANCE. Upon receipt of the application, the department of revenue shall issue to the applicant a license to act as a special fuel dealer or a special fuel user; provided, however, the department of revenue may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (a) who formerly held either type of license and which has been revoked for cause; or (b) who

is a subterfuge for the real party in interest whose license has been revoked for cause; or (c) upon other sufficient cause being shown. Before refusal, the department of revenue shall grant the applicant a hearing and give him the applicant at least fifteen days' written notice of the time and place thereof.

5. EXPIRATION OF LICENSE. Each special fuel dealer's license and special fuel user's license shall be valid until suspended or revoked for cause or otherwise canceled.

6. ASSIGNMENT FORBIDDEN. No A special fuel dealer's license or special fuel user's license shall not be transferable.

Sec. 11. Section three hundred twenty-four point thirty-seven (324.37), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.37 SPECIAL FUEL DISTRIBUTORS', SPECIAL FUEL DEALERS' AND SPECIAL FUEL USERS' RECORDS.

1. Special fuel distributors shall prepare and maintain with respect to the special fuel the same records as provided in section three hundred twenty-four point ten (324.10) of the Code for motor fuel distributors, subject to the same requirements.

2. For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle, the special fuel dealer or user making the delivery shall prepare and maintain for a period of three years such records as the department of revenue may reasonably require with respect to all these deliveries, and with respect to inventories, receipts, purchases, and sales or other dispositions of special fuel.

Sec. 12. Section three hundred twenty-four point thirty-eight (324.38), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.38 RETURNS AND TAX PAYMENTS.

1. RETURNS FOR LICENSED DEALERS AND USERS. For the purpose of determining the amount of liability for special fuel tax each special fuel dealer and each special fuel user shall file with the department of revenue not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certificate. The return shall show, with reference to each location at which special fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, such information as the department of revenue may reasonably require for the proper administration and enforcement of this division. However, if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, the monthly return to the department of revenue covering the location need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

2. COMPUTATION. The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of special fuel delivered or placed by the special fuel dealer or user into supply tanks of motor vehicles.

3. PAYMENTS. The return shall be accompanied by remittance in the amount of the tax due for the month in which the special fuel was placed in the fuel tanks of motor vehicles.

4. QUARTERLY RETURNS AND TAX PAYMENT BY SPECIAL FUEL DISTRIBUTORS. For the purpose of determining the amount of the tax liability for special fuel tax, each special fuel distributor licensed under this chapter shall file with the department of revenue, not later than the last day of the month next following each calendar quarter, a quarterly tax return certified under penalties for false certificate. The

return shall show the total amount of special fuel sold during the quarter, the amount of special fuel sold for nonhighway use, the amount of fuel sold to licensed special fuel dealers and users, the amount of special fuel delivered into motor vehicle special fuel holding tanks, the amount of tax due, and such other pertinent information required by the department of revenue. The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of special fuel delivered or placed by the special fuel distributor into the motor vehicle special fuel holding tanks. The return shall be accompanied by a remittance in the amount of the tax due for the quarter.

5. EXEMPTION FOR FUELING BY LICENSED DEALERS OR DISTRIBUTORS. If the purchase of special fuel within this state by a person not required to be licensed under this division is purchased solely in one or more of the following manners, the person need not file a return:

a. Special fuels purchased tax paid and delivered into the fuel supply tank of the user's motor vehicles by licensed special fuel dealers.

b. Special fuels purchased tax paid and delivered into the user's motor vehicle special fuel holding tanks by licensed special fuel dealers.

c. Special fuels purchased tax paid and delivered into the user's motor vehicle special fuel holding tanks by licensed special fuel distributors.

6. PRESUMPTION. For purposes of this section there shall be a prima facie presumption that all special fuel received by a special dealer or special fuel user into storage and dispensing equipment designed to fuel motor vehicles is to be delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles.

Sec. 13. Section three hundred twenty-four point fifty-three (324.53), Code 1979, is amended to read as follows:

324.53 PERMIT--~~BOND~~. The advance arrangements referred

to in the preceding section shall include the procuring of a permanent interstate fuel permit or single trip interstate permit ~~and may at the discretion of the state department of transportation include the posting of a suitable indemnity bond in a sum to be fixed by the state department of transportation to assure the required reporting, tax payments and the keeping of required records.~~

Persons choosing not to make advance arrangements with the state department of transportation by procuring a permit are not relieved of their responsibility to purchase motor fuel and special fuel commensurate with their use of the state's highway system. The When there is reasonable cause to believe that there is evasion of the fuel tax on commercial motor vehicles, the state department of transportation may audit persons not holding a permit ~~who are suspected of evading the fuel tax on commercial motor vehicles.~~ Audits shall be conducted pursuant to section 324.55.

A permanent permit may be obtained upon application to the state department of transportation. A fee of five dollars shall be charged for each permit issued. The holder of a permanent permit shall have the privilege of bringing into this state in the fuel supply tanks of commercial motor vehicles any amount of motor fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Iowa motor fuel or special fuel taxes as provided in section 324.54. A single trip interstate permit as provided for in this section may be obtained from the state department of transportation. A fee of twelve dollars shall be charged for each individual single trip interstate permit issued. A single trip interstate permit shall be subject to the following provisions and limitations:

1. The permit shall be issued and be valid for seventy-two consecutive hours, except in emergencies, or until the time of leaving the state, whichever first occurs.

2. The permit shall cover only one commercial motor vehicle and is not transferable.

3. Single trip interstate fuel permits may be made available from sources other than indicated in this section at the discretion of the state department of transportation.

Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on the vehicle a duplicate or evidence of the permit required in this section. A fee not to exceed fifty cents shall be charged for each duplicate or other evidence of permit issued.

Sec. 14. Section three hundred twenty-four point sixty-four (324.64), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.64 FAILURE TO FILE RETURN--INCORRECT RETURN. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the filer fails to file a corrected or sufficient return within twenty days after the same is required by notice from the appropriate state agency, the appropriate state agency shall determine the amount of tax due. The determination shall be made from all information that the appropriate state agency may be able to obtain and, if necessary, the agency may estimate the tax on the basis of external indices. The appropriate state agency shall give notice of the determination to the person liable for the tax. The determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director of the appropriate state agency for a hearing or unless the director reduces the assessment. At the hearing, evidence may be offered to support the determination or to prove that it is incorrect. After the hearing, the director shall give notice of the decision to the person liable for the tax. The findings of the appropriate state agency as to the amount of fuel

taxes, penalties and interest due from any person shall be presumed to be the correct amount and in any litigation which may follow, the certificate of the agency shall be admitted in evidence, shall constitute a prima facie case and shall impose upon the other party the burden of showing any error in the findings and the extent thereof or that the finding was contrary to law.

Sec. 15. Section three hundred twenty-four point sixty-six (324.66), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.66 STATUTES APPLICABLE TO MOTOR VEHICLE FUEL TAX.

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner and subject to all the provisions of section four hundred twenty-two point twenty-five (422.25), subsection four (4) of the Code and section four hundred twenty-two point fifty-two (422.52), subsection three (3) of the Code.

All the provisions of section four hundred twenty-two point twenty-six (422.26) of the Code shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such

circumstances shall not be deemed a violation of section three hundred twenty-four point sixty-three (324.63) of the Code as applied to this chapter.

Sec. 16. Section three hundred twenty-four point sixty-seven (324.67), Code 1979, is amended by striking the section and inserting in lieu thereof the following:

324.67 LIMITATION ON COLLECTION PROCEEDINGS. An action or other proceeding shall not be maintained to enforce collection of any amount of fuel tax, penalty, or interest over and above the amount shown to be due by reports filed by a licensee except upon an assessment by the department of revenue as authorized in this chapter. No assessment shall be made covering any period beyond three years prior to the date of assessment.

Sec. 17. Section three hundred twenty-four point seventy-one (324.71), Code 1979, is amended to read as follows:

324.71 REFUNDS TO PERSONS OTHER THAN DISTRIBUTORS AND SPECIAL FUEL DEALERS AND USERS. Except as provided in section 324.54, any person other than a licensed distributor, licensed special fuel dealer or licensed special fuel user who has paid or has had charged to the person's account with a distributor, dealer or special fuel dealer fuel taxes imposed under this chapter with respect to motor fuel or special fuel in excess of one hundred gallons, which is subsequently lost or destroyed, while the person is the owner, through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation, shrinkage, or unknown causes, the person shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, the person shall notify the department of revenue in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, the person shall file with the department of revenue an affidavit sworn to by the person having immediate custody of the motor fuel or special fuel

at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information as the department of revenue may require.

Sec. 18. Section three hundred twenty-four point seventy-four (324.74), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. For special fuel dealers or special fuel distributors to deliver special fuel on a tax paid basis into a tank with a capacity greater than one thousand fifty gallons.

Sec. 19. Section three hundred twenty-four point fifty-six (324.56), Code 1979, is repealed.

FLOYD H. MILLEN
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 745, Sixty-eighth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 4, 1979

ROBERT D. RAY
Governor