

1 *Senate* BILL NO. *114*
 2 INTRODUCED BY *Dev. E. Smith Klatat*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE
 5 FOR CALCULATING THE REFUND OF THE GASOLINE LICENSE TAX;
 6 AMENDING SECTION 84-1855, R.C.M. 1947."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 84-1855, R.C.M. 1947, is amended to
 10 read as follows:

11 "84-1855. Refund of gasoline license tax -- procedure.

12 (1) Any person who shall purchase and use any gasoline, on
 13 which the Montana gasoline license tax has been paid, for
 14 operating or propelling stationary gasoline engines,
 15 tractors used off the public highways and streets,
 16 motorboats, or for cleaning or dyeing, or for any commercial
 17 use other than propelling vehicles upon any of the public
 18 highways or streets of this state, shall be allowed a refund
 19 of the amount of tax paid directly or indirectly on the
 20 gasoline so used. Provided, that such refund or drawback
 21 ~~shall~~ may in no instance exceed the tax paid or to be paid,
 22 to the state of Montana, and no refund shall be allowed of
 23 that portion of the tax per gallon upon aviation gasoline
 24 allocated to the board of aeronautics by section 1-501,
 25 R.C.M. 1947.]

1 Any distributor paying the gasoline license tax to this
 2 state erroneously shall be allowed a credit or refund of the
 3 amount of tax so paid.

4 (2) The application for refund shall be a signed
 5 statement on a form furnished by the department, accompanied
 6 by the original invoice or invoices issued to the claimant
 7 at the time of purchase and delivery, showing the total
 8 amount of gasoline purchased, the total amount of gasoline
 9 on which a refund is claimed, and the amount of the tax
 10 claimed for refund. Such further information pertaining to
 11 such claim shall be furnished as required by the
 12 department.

13 ~~(3) provided that when the~~ gallons of gasoline used
 14 off the roadways, ~~where are~~ not verifiable by records of
 15 actual use, ~~may be estimated by the applicant~~ the applicant
 16 shall estimate the gallons used according to the following
 17 schedule:

- 18 (a) on the first one thousand (1,000) gallons of
- 19 gasoline purchased, or any part thereof, forty-five per cent
- 20 (45%) of gasoline purchased.
- 21 (b) on the next one thousand (1,000) gallons of
- 22 gasoline purchased, or any part thereof, sixty per cent
- 23 (60%) of gasoline purchased.
- 24 (c) on the next one thousand (1,000) gallons of
- 25 gasoline purchased, or any part thereof, sixty-five per cent

1 (65%) of gasoline purchased.

2 (d) on any gasoline purchased in excess of three
3 thousand (3,000) gallons, seventy per cent (70%) of gasoline
4 purchased.

5 If any invoice is either lost or destroyed, the
6 purchaser may support his claim for refund by submitting an
7 affidavit relating the circumstances of such loss or
8 destruction and by producing such other evidence as may be
9 required by the department.

10 ~~(3)~~ (4) Any applicant who does not elect to estimate
11 the off-highway use of gasoline according to the schedule in
12 subsection ~~(2)~~ (3) shall maintain records as provided for in
13 this subsection.

14 (a) Highway and off-highway use of gasoline from
15 common storage. Gasoline purchased and delivered into bulk
16 storage for use in motor vehicles on public roads and
17 nonhighway use must be fully accounted for by detail
18 withdrawal records to accurately show the manner in which
19 used. Gasoline on hand, determined by actual measurement,
20 shall be deducted from a claim and shall be reported as an
21 opening inventory on the next claim. Credit for the
22 inventory is allowed on the next claim if filed within
23 fourteen (14) months from the filing date of the claim which
24 established the inventory.

25 (b) Highway and off-highway use of gasoline from

1 separate storage. If separate storage tanks are maintained
2 on the applicant's premises for highway use and off-highway
3 use, the bulk purchase invoices shall be so marked by the
4 dealer at the time of delivery. No further record is
5 required, provided that no gasoline is withdrawn from the
6 off-highway tank for licensed vehicles. Withdrawal of
7 gasoline from the off-highway tank for licensed vehicles
8 will invalidate this method of determining refundable
9 gallonage.

10 (c) An applicant who maintains a storage tank on his
11 premises for off-highway use only must submit the original
12 invoice issued at the time of purchase and delivery and
13 records substantiating the purchase of gasoline for licensed
14 vehicles from another source and the miles traveled by these
15 licensed vehicles. An applicant having such records may
16 claim a refund for the entire amount of gasoline stored on
17 his premises for nonhighway use. Withdrawal of gasoline from
18 the off-highway tank for licensed vehicles will invalidate
19 this method of determining the number of gallons subject to
20 refund.

21 ~~(e)~~ (d) Use of gasoline from restricted use storage.
22 Special storage facilities in the woods, or in farm fields,
23 or for other uses for certain periods, must be identified
24 and explained. If such storage is used entirely for
25 off-highway purposes and is not used in licensed vehicles,

1 no records will be required other than purchase invoices
2 showing the delivery into such storage.

3 ~~(d)~~ (e) Gasoline purchased for other than bulk storage.
4 Fuel purchased in small containers for nonhighway use must
5 be identified on the purchase invoice and a further record
6 is required.

7 ~~(e)~~ (f) Resellers. Service stations, bulk dealers and
8 marinas must prepare a separate and complete invoice for
9 each withdrawal of gasoline for own use upon which a refund
10 is to be claimed.

11 ~~(f)~~ (g) Proof of highway use. When no highway use of
12 gasoline is deducted from the claim, the applicant must
13 substantiate purchases of gasoline and miles traveled for
14 licensed motor vehicles upon request of the department.

15 ~~(g)~~ (h) Any person who operates a licensed motor
16 vehicle on and off the public roads for commercial purposes
17 may claim refund of the state license tax on the gasoline
18 used to operate the vehicle on roads or property in private
19 ownership, if such person has maintained the following
20 records:

21 (i) the total number of highway miles operated by each
22 licensed motor vehicle, including private passenger cars;

23 (ii) total gallons of gasoline used in each vehicle to
24 include both refund and nonrefund use;

25 (iii) purchase invoices supporting all gasoline

1 handled through bulk storage, as well as all fuels purchased
2 at service stations or received from other sources. Highway
3 use for each vehicle may be determined by actual
4 measurement, or may be computed by dividing the average
5 miles per gallon highway operation consumption rate into the
6 number of highway miles operated.

7 ~~(4)~~ (5) All applications for refunds shall be filed
8 with the department of revenue within fourteen (14) months
9 after the date on which the gasoline was purchased as shown
10 by invoices or after the date on which the tax was
11 erroneously paid. Provided, however, that a distributor may
12 file a claim for refund of taxes erroneously paid within
13 three (3) years after the date of such erroneous payment.
14 The department shall have one hundred twenty (120) days
15 after receiving the claim to approve or reject it. If
16 approved, the department shall issue a credit in lieu of
17 refund for the amount of the claim, if the claimant is a
18 distributor. For all other persons, a warrant shall be drawn
19 upon the state treasurer for the amount of the claim.

20 ~~(5)~~ (6) Should the department of revenue find that the
21 statement contains errors which are not fraudulently
22 inserted, it may correct the statement and approve it as
23 corrected, or the department may require the claimant to
24 file an amended statement. If the state department of
25 revenue determines that any claim has been fraudulently

1 presented or is supported by invoice or invoices
2 fraudulently made or altered or that any statement in the
3 claim or affidavit is willfully false and made for the
4 purpose of misleading, the department may reject such claim
5 in full. If a claim is rejected, the department may suspend
6 claimant's right to refund for a period not to exceed one
7 (1) year.

8 ~~(6)~~ (7) Any person, other than a licensed distributor,
9 shall obtain a license from the state department of revenue
10 prior to selling gasoline on which a refund may be claimed.
11 The application for license shall contain the applicant's
12 name, address, place or places of business in the state of
13 Montana, and other information which may be required by the
14 department. Licenses issued shall bear a license number and
15 the date of issuance. The department shall keep a record of
16 all licenses issued, canceled, or suspended. A
17 nontransferable license shall be issued for three (3) years
18 upon payment of a fee of three dollars (\$3). Licenses must
19 be renewed and the fee paid every three (3) years from date
20 of issuance.

21 (8) Any person failing to comply with this subsection
22 shall be subject to a fine of not less than twenty-five
23 dollars (\$25) or more than two hundred dollars (\$200) or
24 imprisonment in the county jail for a period not less than
25 ten (10) days or more than sixty (60) days, or both fine and

1 imprisonment."

-End-

STATE OF MONTANA

REQUEST NO. 571-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 114 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This bill is an act to revise the procedure for calculating the refund of the gasoline license tax.

ASSUMPTION

This bill has no fiscal impact. The bill clarifies another method of computing the refund for gasoline used off the highways.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Dunnington
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-77

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 114

INTRODUCED BY DOVER, E. SMITH, KOLSTAD

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motorboats, or for cleaning or dyeing, or for any commercial
use other than propelling vehicles upon any of the public
highways or streets of this state, shall be allowed a refund
of the amount of tax paid directly or indirectly on the
gasoline so used. Provided, that such refund or drawback
~~should~~ may in no instance exceed the tax paid or to be paid,
to the state of Montana, and no refund shall be allowed of
that portion of the tax per gallon upon aviation gasoline
allocated to the board of aeronautics by section 1-501,
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Any distributor paying the gasoline license tax to this
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11 the off-highway use of gasoline according to the schedule in
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21 (C) (I) IF THE APPLICANT MAINTAINS A SEPARATE
22 ON-PREMISES TANK SOLELY FOR OFF-HIGHWAY USE AND UTILIZES
23 OTHER SOURCES OF GASOLINE FOR HIGHWAY USE, THE FOLLOWING
24 RECORDS SHALL ACCOMPANY ANY APPLICATION FOR REFUND:

25 (A) ORIGINAL INVOICES AND RETAIL SALES SLIPS ISSUED AT

1 TIME OF PURCHASE AND DELIVERY; AND

2 (B) THE NUMBER OF MILES TRAVELED ON-HIGHWAY BY
 3 LICENSED VEHICLES.

4 (II) UTILIZATION OF ANY GASOLINE FROM THE ON-PREMISES
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