

**Illinois Department of Revenue
Regulations**

Title 86 Part 500 Section 500.265 Distributors' and Suppliers' Claims for Credit or Refund

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 500
MOTOR FUEL TAX**

Section 500.265 Distributors' and Suppliers' Claims for Credit or Refund

- a) Filing of Claims. Any distributor or supplier who shall have paid Motor Fuel Tax upon motor fuel used by the distributor or supplier for any purpose other than operating a motor vehicle upon the public highways or waters, may file a claim for credit or refund to recover the amount so paid. The claims shall be filed on forms prescribed by the Department. On and after January 1, 2016, claims are required to be filed electronically in accordance with 86 Ill. Adm. Code 760 only for periods for which an original return is required to be filed electronically. All other claims must be filed on paper forms. The claims shall be made to the Department, duly verified by the claimant (or by the claimant's legal representative if the claimant shall have died or become a person under legal disability). The claim shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary and shall state when the nontaxable use occurred and shall specify the purpose for which the motor fuel was used by the claimant, together with such other information as the Department may reasonably require. Claims for credit or refund for tax paid on motor fuel purchased on or after July 1, 1965, must be filed not later than one year after the date on which tax was paid by the claimant. In case the distributor or supplier requests and the Department determines that the claimant is entitled to a refund, the refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by the appropriation to elect to receive a cash refund, the Department shall provide for the payment of refunds in hardship cases as provided in 86 Ill. Adm. Code 130.1510.
- b) The Department will approve claims for refund only when the claims are based upon a showing that the motor fuel was used for a nontaxable purpose, and that the part for which refund is claimed can, as a practical matter, be calculated and itemized. When the claims are estimated or calculated, they must be supported by verifiable documentation retained in the claimant's books and records. Only claims that can be supported by proof of the amount of motor fuel not used for a taxable purpose will be approved.
- c) *For claims based upon taxes paid on or after January 1, 2001, no claim based upon the use of undyed diesel fuel shall be allowed except for claims for the following:*
 - 1) *Undyed diesel fuel used: in a manufacturing process, as defined in Section 2-45*

of the Retailers' Occupation Tax Act, wherein the undyed diesel fuel becomes a component part of a product or byproduct, other than fuel or motor fuel, when the use of dyed diesel fuel in that manufacturing process results in a product that is unsuitable for its intended use; or for testing machinery and equipment in a manufacturing process, as defined in Section 2-45 of the Retailers' Occupation Tax Act, wherein the testing takes place on private property.

- 2) *Undyed diesel fuel used by a manufacturer on private property in the research and development, as defined in Section 1.29 of the Law, of machinery or equipment intended for manufacture.*
- 3) *Undyed diesel fuel used by a single unit self-propelled agricultural fertilizer implement, designed for on and off road use, equipped with flotation tires and specially adapted for the application of plant food materials or agricultural chemicals.*
- 4) *Undyed diesel fuel used by a commercial motor vehicle for any purpose other than operating the commercial motor vehicle upon the public highways. Claims shall be limited to commercial motor vehicles that are operated for both highway purposes and any purposes other than operating such vehicles upon the public highways and shall be limited to the nonhighway portion of the fuel used. For instance, such claims include, but are not limited to, commercial motor vehicles such as 3-axle dump trucks operated both on public highways and on landfills in landfill operations. This subsection (c)(4) does not include claims filed for undyed diesel fuel used by power take-off equipment. This type of claim is described in subsection (c)(7).*
- 5) *Undyed diesel fuel used by a unit of local government in its operation of an airport if the undyed diesel fuel is used directly in airport operations on airport property.*
- 6) *Undyed diesel fuel used by refrigeration units that are permanently mounted to a semitrailer, as defined in Section 1.28 of the Law, wherein the refrigeration units have a fuel supply system dedicated solely for the operation of the refrigeration units. Claims may be made for 100% of the fuel consumed by the refrigeration units.*
- 7) *Undyed diesel fuel used by power take-off equipment as defined in Section 1.27 of the Law. (Section 13 of the Law) Claims shall be based upon actual consumption of undyed diesel fuel. The maximum amounts of undyed diesel fuel that may be claimed for refund under this Section, however, is 25% of the fuel consumed, unless prior to submission of the claim the claimant submits a specific study conducted by the claimant and approved by the Department for claims in excess of this amount. Approved studies shall be valid for 2 years after the date of approval. However, upon petition of a taxpayer, the Department may approve an extension of a previously approved study for no more than 2 years. No study may be relied upon for a total of more than 4 years.*
- 8) *Beginning on August 22, 2005, undyed diesel fuel used by tugs and spotter equipment to shift vehicles or parcels on both private and airport property. Any claim under this subsection (c)(8) may be made only by a claimant that owns*

tugs and spotter equipment and operates that equipment on both private and airport property. The aggregate of all credits or refunds resulting from claims filed under this subsection (c)(8) by a claimant in any calendar year may not exceed \$100,000. A claim may not be made under this subsection (c)(8) by the same claimant more often than once each quarter. For purposes of this subsection (c)(8), "tug" means a vehicle designed for use on airport property that shifts custom-designed containers of parcels from loading docks to aircraft, and "spotter equipment" means a vehicle designed for use on both private and airport property that shifts trailers containing parcels between staging areas and loading docks. (Section 13 of the Law)

- 9) Claims for taxes paid on and after January 1, 2001 are not authorized for commercial vehicles unless the commercial vehicle falls within the definition of a "commercial motor vehicle" as provided in Section 500.100 of this Part and the claim is eligible for refund under subsection (c)(4), or the claim is eligible for refund under any of the other provisions of this subsection (c).
 - 10) Claims for taxes paid on and after January 1, 2001 are not authorized for undyed diesel fuel used by unlicensed commercial vehicles operating exclusively on private property, unless the vehicles are eligible for refund under any of the provisions of this subsection (c).
- d) *Effective July 1, 2001, any person who has paid the tax imposed by Section 2 of the Law upon undyed diesel fuel that is unintentionally mixed with dyed diesel fuel and who owns or controls the mixture of undyed diesel fuel and dyed diesel fuel may file a claim for refund to recover the amount paid. The amount of undyed diesel fuel unintentionally mixed must equal 500 gallons or more. Any claim for refund of unintentionally mixed undyed diesel fuel and dyed diesel fuel shall be supported by documentation showing the date and location of the unintentional mixing, the number of gallons involved, the disposition of the mixed diesel fuel, and any other information that the Department may reasonably require. Any unintentional mixture of undyed diesel fuel and dyed diesel fuel shall be sold or used only for nonhighway purposes. (Section 13 of the Law)*
- e) Issuance of Credit Memoranda – Use Thereof to Satisfy Prior Rights of Department. The Department may make such investigation of the correctness of the facts stated in the claims for credit or refund as it deems necessary. When the Department approves a claim for credit or refund the Department shall issue a refund or credit memorandum to the distributor or supplier who made the payment for which the refund or credit is being given or, in the event that the distributors or suppliers shall have died or become incompetent, to the distributor's or supplier's legal representative, as such. The amount of the refund or credit memorandum shall first be credited against any tax due or to become due under the Law from the distributor or supplier who made the payment for which credit has been given. This means that if there is an established or admitted unpaid Motor Fuel Tax liability on the part of the claimant, the amount of the credit or refund will be credited against the tax that is due. If the credit or refund is in an amount less than that of the unpaid liability, the credit or refund shall be applied against the liability. If the amount of the credit or refund exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out the unpaid liability, the Department will issue a new credit memorandum or refund representing the difference between that of the original credit or refund found to be due and that of the liability liquidated or paid as aforesaid, and such new credit memorandum or refund will be delivered to the person entitled to receive the delivery, provided that no proceeding is

pending against the claimant to establish an unpaid liability under the Law. If a proceeding to establish such an unpaid liability is pending, the credit memorandum or refund will be held by the Department until the proceeding is concluded; and if the proceeding results in a determination that Motor Fuel Tax is due from the claimant, the credit memorandum or refund will be applied by the Department, to the extent that may be necessary, in liquidation of the liability, and the balance of the credit memorandum or refund, if any (after cancellation of the credit memorandum or refund applied in liquidation of said liability), will be issued in the form of a new credit memorandum or refund and delivered to the person entitled to receive the delivery.

f) Disposition of Credit Memoranda by Holder Thereof

1) Assignment of Credit Memoranda. Credit memoranda may be assigned or transferred only after a request for that purpose is filed with the Department upon forms prescribed and furnished by it, and subject to the following conditions:

A) That the assignment is made to a person who is licensed as a distributor of motor fuel or a supplier of special fuel under the Law;

B) that there is no proceeding pending to establish an unpaid Motor Fuel Tax liability against the assignor; and

C) that there is no established or admitted unpaid Motor Fuel Tax liability against the assignor; provided, that if the amount of the credit memorandum must first be applied, in whole or in part, against an unpaid liability of the claimant-assignor, notice to this effect will be given the claimant-assignor by the Department. If any balance is due the claimant-assignor, after application of the credit memorandum in the manner and to the purposes aforesaid, the balance may be assigned upon receipt by the Department of instructions to that effect. If there is no unpaid liability and no proceedings pending to determine a liability as aforesaid, and if the assignee is a licensed distributor of motor fuel, the request for leave to assign will be approved. The original credit memorandum will be cancelled, and a new credit memorandum will be issued to the assignee in the amount shown on the cancelled memorandum. However, before a credit memorandum is issued to the assignee, the amount of the credit will be applied, to the extent that may be necessary, in liquidation of any unpaid Motor Fuel Tax liability of the assignee, and a credit memorandum for the balance, if any, will be issued to the assignee, provided that there is no proceeding pending against the assignee to establish an unpaid Motor Fuel Tax liability against him or her. If a proceeding to establish such an unpaid liability is pending, the credit memorandum will be held by the Department until the proceeding is concluded; and if the proceeding results in a determination that Motor Fuel Tax is due from the assignee, the credit will be applied by the Department, to the extent that may be necessary in liquidation of the liability, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of said liability), will be issued in the form of a new credit memorandum and delivered to the person entitled to receive the delivery.

2) Submission of Credit Memoranda With Monthly Returns. Credit memoranda, in the hands either of the original claimant or of his or her assignee, may be

submitted to the Department, along with monthly tax returns, in payment of Motor Fuel Tax due from the holder of the credit memoranda. If, after applying any such credit memorandum against the amount of tax shown to be due by the tax return with which the credit memorandum is submitted, the Department finds that there is a balance of the credit memorandum in favor of the distributor or supplier submitting the credit memorandum, the Department will cancel the credit memorandum that has been submitted and will issue and deliver to the distributor or supplier a new credit memorandum for the balance. This process will be followed until the credit, to which the distributor or supplier is entitled, is exhausted. However, any new credit memorandum, which is issued as provided in this subsection (f)(2) for a balance of credit due the distributor or supplier after applying the amount of a credit memorandum to the payment of current taxes, is subject to the prior rights of the Department to the same extent that such prior rights take precedence when a credit memorandum is first issued (see subsection (e) of this Section) or when leave to assign a credit memorandum is requested (see subsection (f)(1) of this Section).

- g) Refunds to Distributors and Suppliers. If any distributor or supplier ceases to be licensed as a distributor or supplier while still holding an unused credit memorandum, the distributor or supplier may, at his or her election (instead of assigning the credit memorandum to another licensed distributor or supplier under the Law), surrender the unused credit memorandum to the Department and receive a refund in lieu of the credit.
- h) *Claims filed under this Section for overpayment of the Motor Fuel Tax imposed by Section 2 of the Law shall bear interest at the rate and in the manner specified in the Uniform Penalty and Interest Act. Claims made under this Section that are based upon motor fuel used for any purpose other than operating a motor vehicle upon the public highways or waters shall be paid within 90 days after receipt of a complete and correct application for credit. If credits based upon motor fuel used for any purpose other than operating a motor vehicle upon the public highways or waters are issued after expiration of the 90 day period, the Department shall include interest at the rate and in the manner set by the Uniform Penalty and Interest Act [35 ILCS 735]. (Section 13 of the Law) Refunds paid after the expiration of the 90 day period shall bear interest from the date that a properly completed claim for refund was filed with the Department.*

(Source: Amended at 39 Ill. Reg. 14728, effective October 23, 2015)