

Act No. 668  
Public Acts of 2002  
Approved by the Governor  
December 25, 2002  
Filed with the Secretary of State  
December 26, 2002  
EFFECTIVE DATE: April 1, 2003

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Reps. Hart, Gilbert and Stallworth

# **ENROLLED HOUSE BILL No. 5735**

AN ACT to amend 2000 PA 403, entitled "An act to prescribe a tax on the sale and use of certain types of fuel in motor vehicles on the public roads or highways of this state and on certain other types of gas; to prescribe the manner and the time of collection and payment of this tax and the duties of officials and others pertaining to the payment and collection of this tax; to provide for the licensing of persons involved in the sale, use, or transportation of motor fuel and the collection and payment of the tax imposed by this act; to prescribe fees; to prescribe certain other powers and duties of certain state agencies and other persons; to provide for exemptions and refunds and for the disposition of the proceeds of this tax; to provide for appropriations from the proceeds of this tax; to prescribe remedies and penalties for the violation of this act; and to repeal acts and parts of acts," by amending sections 2, 3, 4, 5, 8, 30, 37, 38, 92, 121, and 122 (MCL 207.1002, 207.1003, 207.1004, 207.1005, 207.1008, 207.1030, 207.1037, 207.1038, 207.1092, 207.1121, and 207.1122); and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 2. As used in this act:

- (a) "Alcohol" means fuel grade ethanol or a mixture of fuel grade ethanol and another product.
- (b) "Blendstock" means and includes any petroleum product component of motor fuel, such as naphtha, reformate, or toluene; or any oxygenate that can be blended for use in a motor fuel.
- (c) "Blended motor fuel" means a mixture of motor fuel and another liquid, other than a de minimis amount of a product including, but not limited to, carburetor detergent or oxidation inhibitor, that can be used as motor fuel in a motor vehicle.
- (d) "Blender" means and includes any person who produces blended motor fuel outside of the bulk transfer/terminal system.
- (e) "Blends" or "blending" means the mixing of 1 or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.
- (f) "Bulk end user" means a person who receives into the person's own storage facilities by transport truck or tank wagon motor fuel for the person's own consumption.
- (g) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be withdrawn by a tank wagon, a transport truck, or a marine vessel.
- (h) "Bulk transfer" means a transfer of motor fuel from 1 location to another by pipeline tender or marine delivery within the bulk transfer/terminal system, including, but not limited to, all of the following transfers:

- (i) A marine vessel movement of motor fuel from a refinery or terminal to a terminal.
- (ii) Pipeline movements of motor fuel from a refinery or terminal to a terminal.
- (iii) Book transfers of motor fuel within a terminal between licensed suppliers before completion of removal across the terminal rack.
- (iv) Two-party exchanges between licensed suppliers.

(i) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, pipeline, terminal, or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(j) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(k) "Commercial motor vehicle" means a motor vehicle licensed under the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

(l) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the tank's draw pipe. The amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more.

(m) "Denaturants" means and includes gasoline, natural gasoline, gasoline components, or toxic or noxious materials added to fuel grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(n) "Department" means the bureau of revenue within the department of treasury or its designee.

(o) "Destination state" means the state, Canadian province or territory, or foreign country to which motor fuel is directed for export.

(p) "Diesel fuel" means any liquid other than gasoline that is capable of use as a fuel or a component of a fuel in a motor vehicle that is propelled by a diesel-powered engine or in a diesel-powered train. Diesel fuel includes number 1 and number 2 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel fuel also includes any blendstock or additive that is sold for blending with diesel fuel, any liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a diesel-powered engine, airplane, or marine vessel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for diesel fuel. Diesel fuel does not include an excluded liquid.

(q) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with internal revenue service rules or pursuant to any other internal revenue service requirements, including any invisible marker requirements.

(r) "Eligible purchaser" means a person who has been authorized by the department under section 75 to make the election under section 74.

(s) "Excluded liquid" means that term as defined in 26 C.F.R. 48.4081-1.

(t) "Export" means to obtain motor fuel in this state for sale or other distribution outside of this state. Motor fuel delivered outside of this state by or for the seller constitutes an export by the seller and motor fuel delivered outside of this state by or for the purchaser constitutes an export by the purchaser.

(u) "Exporter" means a person who exports motor fuel.

### Sec. 3. As used in this act:

(a) "Fuel feedstock user" means a person who receives motor fuel for the person's own use in the manufacture or production of any substance other than motor fuel.

(b) "Fuel grade ethanol" means the American society for testing and materials standard in effect on the effective date of this act as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

(c) "Fuel transportation vehicle" means a vehicle designed or used to transport motor fuel on the public roads or highways. Fuel transportation vehicle includes, but is not limited to, a transport truck and a tank wagon. Fuel transportation vehicle does not include a vehicle transporting a nurse tank or limited volume auxiliary-mounted supply tank used for fueling an implement of husbandry.

(d) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches, or 4 quarts, or its metric equivalent expressed in liters. Where the term gallon appears in this act, the term liters is interchangeable so long as the equivalence of a gallon and 3.785 liters is preserved. A quantity required to be furnished under this act may be specified in liters when authorized by the department.

(e) "Gasohol" means a blended motor fuel composed of gasoline and fuel grade ethanol.

(f) "Gasoline" means and includes gasoline, alcohol, gasohol, casing head or natural gasoline, benzol, benzine, naphtha, and any blendstock additive, or other product including methanol that is sold for blending with gasoline or for use on the road other than products typically sold in containers of less than 5 gallons. Gasoline also includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel, including a product obtained by blending together any 1 or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel. The blending of all of the above named products, regardless of their name or characteristics, shall conclusively be presumed to have been done to produce motor fuel, unless the product obtained by the blending is entirely incapable of use as motor fuel. Gasoline also includes transmix. Gasoline does not include diesel fuel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for gasoline.

(g) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations, or deductions, in gallons.

(h) "Heating oil" means a motor fuel including dyed diesel fuel that is burned in a boiler, furnace, or stove for heating, agricultural, or industrial processing purposes.

(i) "Implement of husbandry" means and includes a farm tractor, a vehicle designed to be drawn or pulled by a farm tractor or animal, a vehicle that directly harvests farm products, and a vehicle that directly applies fertilizer, spray, or seeds to a farm field. Implement of husbandry does not include a motor vehicle licensed for use on the public roads or highways of this state.

(j) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. However, import does not include bringing motor fuel into this state in the fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle. Motor fuel delivered into this state from outside of this state by or for the seller constitutes an import by the seller, and motor fuel delivered into this state from out of this state by or for the purchaser constitutes an import by the purchaser.

(k) "Importer" means a person who imports motor fuel into this state.

(l) "Import verification number" means the number assigned by the department to an individual delivery of motor fuel by a transport truck, tank wagon, marine vessel, or rail car in response to a request for a number from an importer or transporter carrying motor fuel into this state for the account of an importer.

(m) "In this state" means the area within the borders of this state, including all territories within the borders owned by, held in trust by, or added to the United States of America.

(n) "Invoiced gallons" means the number of gallons actually billed on an invoice.

#### Sec. 4. As used in this act:

(a) "Kerosene" means all grades of kerosene, including, but not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K, commonly known as K-1 kerosene and K-2 kerosene respectively, described in American society for testing and materials specifications D-3699, in effect on January 1, 1999, and kerosene-type jet fuel described in American society for testing and materials specification D-1655 and military specifications MIL-T-5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor internal revenue service rules or regulations, as the specification for kerosene and kerosene-type jet fuel. Kerosene does not include an excluded liquid.

(b) "Liquid" means any substance that is liquid in excess of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(c) "Motor fuel" means gasoline, diesel fuel, kerosene, a mixture of gasoline, diesel fuel, or kerosene, or a mixture of gasoline, diesel fuel, or kerosene and any other substance.

(d) "Motor vehicle" means a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's mobile use on the public roads or highways of this state. Motor vehicle does not include any of the following:

(i) An implement of husbandry.

(ii) A train or other vehicle operated exclusively on rails.

(iii) Machinery designed principally for off-road use and not licensed for on-road use.

(iv) A stationary engine.

(e) "Net gallons" means the remaining product, after all considerations and deductions have been made, measured in gallons, corrected to a temperature of 60 degrees Fahrenheit, 13 degrees Celsius, and a pressure of 14.7 pounds per square inch, the ultimate end amount.

(f) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which may be used as a fuel or fuel supplement.

(g) “Permissive supplier” means a person who may not be subject to the taxing jurisdiction of this state but who does meet both of the following requirements:

(i) Is a position holder in a federally registered terminal located outside of this state, or a person who acquires from a position holder motor fuel in an out-of-state terminal in a transaction that otherwise qualifies as a 2-party exchange under this act.

(ii) Is registered under section 4101 of the internal revenue code for transactions in motor fuel in the bulk transfer/terminal system.

(h) “Person” means and includes an individual, cooperative, partnership, firm, association, limited liability company, limited liability partnership, joint stock company, syndicate, and corporation, both private and municipal, and any receiver, trustee, conservator, or any other officer having jurisdiction and control of property by law or by appointment of a court other than units of government.

(i) “Position holder” means a person who has a contract with a terminal operator for the use of storage facilities and other terminal services for motor fuel at the terminal, as reflected in the records of the terminal operator. Position holder includes a terminal operator who owns motor fuel in the terminal.

(j) “Public roads or highways” means a road, street, or place maintained by this state or a political subdivision of this state and generally open to use by the public as a matter of right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel is restricted for the purpose of construction, maintenance, repair, or reconstruction.

Sec. 5. (1) As used in this act:

(a) “Rack” means a mechanism for delivering motor fuel from a refinery, a terminal, or a marine vessel into a railroad tank car, a transport truck, a tank wagon, the fuel supply tank of a marine vessel, or other means of transfer outside of the bulk transfer/terminal system.

(b) “Refiner” means a person who owns, operates, or otherwise controls a refinery within the United States.

(c) “Refinery” means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which motor fuel may be removed by pipeline, by marine vessel, or at a rack.

(d) “Removal” or “removed” means a physical transfer other than by evaporation, loss, or destruction of motor fuel from a terminal, manufacturing plant, customs custody, pipeline, marine vessel, or refinery that stores motor fuel.

(e) “Retail diesel dealer” means a person who sells or distributes diesel fuel to an end user in this state.

(f) “Retail marine diesel dealer” means a person who sells or distributes diesel fuel to an end user in this state for use in boats or other marine vessels.

(g) “Source state” means the state, Canadian province or territory, or foreign country from which motor fuel is imported.

(h) “Stationary engine” means a temporary or permanently affixed engine designed and used to supply power primarily for agricultural or construction work. Stationary engine includes, but is not limited to, an engine powering irrigation equipment, generators, or earth-moving equipment.

(i) “Supplier”, in addition to subsection (2), means a person who meets all of the following requirements:

(i) Is subject to the general taxing jurisdiction of this state.

(ii) Is registered under section 4101 of the internal revenue code for transactions in motor fuel in the bulk transfer/terminal distribution system.

(iii) Is any 1 of the following:

(A) The position holder in a terminal or refinery in this state.

(B) A person who imports fuel grade ethanol into this state.

(C) A person who acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to a 2-party exchange.

(D) The position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state on its account.

(2) Supplier also means a person who either produces alcohol or alcohol derivative substances in this state or produces alcohol or alcohol derivative substances for import into a terminal in this state, or who acquires immediately upon import by transport truck, tank wagon, rail car, or marine vessel into a terminal or refinery or other storage facility that is not part of a terminal or refinery, alcohol or alcohol derivative substances. A terminal operator is not considered a supplier merely because the terminal operator handles motor fuel consigned to it within a terminal. Supplier includes a permissive supplier unless otherwise specifically provided in this act.

Sec. 8. (1) Subject to the exemptions provided for in this act, tax is imposed on motor fuel imported into or sold, delivered, or used in this state at the following rates:

(a) Nineteen cents per gallon on gasoline.

(b) Fifteen cents per gallon on diesel fuel.

(2) Tax shall not be imposed under this section on motor fuel that is in the bulk transfer/terminal system.

(3) The collection, payment, and remittance of the tax imposed by this section shall be accomplished in the manner and at the time provided for in this act.

(4) Tax is also imposed at the rate described in subsection (1)(a) or (b) on net gallons of motor fuel, including transmix, lost or unaccounted for, at each terminal in this state. The tax shall be measured annually and shall apply to the net gallons of motor fuel lost or unaccounted for that are in excess of 1/2 of 1% of all net gallons of fuel removed from the terminal across the rack or in bulk.

(5) It is the intent of this act:

(a) To require persons who operate a motor vehicle on the public roads or highways of this state to pay for the privilege of using those roads or highways.

(b) To impose on suppliers a requirement to collect and remit the tax imposed by this act at the time of removal of motor fuel unless otherwise specifically provided in this act.

(c) To allow persons who pay the tax imposed by this act and who use the fuel for a nontaxable purpose to seek a refund or claim a deduction as provided in this act.

(d) That the tax imposed by this act be collected and paid at those times, in the manner, and by those persons specified in this act.

Sec. 30. (1) Motor fuel is exempt from the tax imposed by section 8 and the tax shall not be collected by the supplier if the motor fuel:

(a) Is dyed diesel fuel or dyed kerosene.

(b) Is gasoline or diesel fuel that is sold directly by the supplier to the federal government, the state government, or a political subdivision of the state for use in a motor vehicle owned and operated or leased and operated by the federal or state government or a political subdivision of the state.

(c) Is sold directly by the supplier to a nonprofit, private, parochial, or denominational school, college, or university and is used in a school bus owned and operated or leased and operated by the educational institution that is used in the transportation of students to and from the institution or to and from school functions authorized by the administration of the institution.

(d) Is fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper under any of the following circumstances:

(i) The motor fuel is exported by a supplier who is licensed in the destination state.

(ii) Until December 31, 2000, the motor fuel is sold by a supplier to a licensed exporter for immediate export.

(iii) The motor fuel is sold by a supplier to another person for immediate export to a state for which the destination state fuel tax has been paid to the supplier who is licensed to remit tax to that destination state.

(e) Is gasoline removed from a pipeline or marine vessel by a taxable fuel registrant with the internal revenue service as a fuel feedstock user.

(f) Is motor fuel that is sold for use in aircraft but only if the purchaser paid the tax imposed on that fuel under the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, and the purchaser is registered under section 94 if required to be registered under that section.

(2) Motor fuel is exempt from the tax imposed by section 8 if it is acquired by an end user outside of this state and brought into this state in the fuel supply tank of a motor vehicle that is not a commercial motor vehicle, but only if the fuel is retained within and consumed from that same fuel supply tank.

(3) A person who uses motor fuel for a taxable purpose where the tax imposed by this act was not collected shall pay to the department the tax imposed by section 8 and any applicable penalties or interest. The payment shall be made on a form or in a format prescribed by the department.

Sec. 37. (1) A person may seek a refund for tax paid under this act on motor fuel that the person exported out of a bulk plant in this state in a tank wagon if proof of reporting of import to the destination state and proof of payment of the tax imposed by this act have been provided. The refund is subject to conditions established by the department.

(2) A person who is registered with the federal government under section 4101 of the internal revenue code as an ultimate vendor may apply for a refund or claim a deduction for tax paid under this act on K-1 kerosene that is sold tax-free by that person through a blocked pump if he or she meets the requirements described in section 6427 of the

internal revenue code and any regulations concerning a blocked pump. The department may revoke a person's license under this act if the person allows anyone to fuel a motor vehicle from a blocked pump or allows anyone to purchase K-1 kerosene from a blocked pump for a taxable purpose. As used in this subsection, "blocked pump" means that term as defined in 65 F.R. 48.6427-10, p. 17162 (March 31, 2000).

Sec. 38. A retail diesel dealer may claim a refund for tax paid under this act on sales of undyed diesel fuel in amounts of 100 gallons or less sold tax-free for a nontaxable purpose. If a sale of undyed diesel fuel for a nontaxable purpose exceeds 100 gallons, tax shall be charged and collected by the retail diesel dealer, and the end user may file a claim for a refund. A sale for a nontaxable purpose shall meet the invoicing requirement of the department.

Sec. 92. (1) A person shall not deliver diesel fuel into the fuel supply tank of an end user's boat or other marine vessel or make a bulk delivery of diesel fuel to an unlicensed end user unless licensed as a retail marine diesel dealer under this act.

(2) The fee for a retail marine diesel dealer license is \$50.00.

(3) A retail marine diesel dealer shall file with the department on forms or in a format prescribed by the department a quarterly report containing the information the department requires as reasonably necessary for the department to determine the amount of diesel fuel tax due. A licensed retail marine diesel dealer shall report the amount of dyed diesel fuel sold for a taxable purpose.

(4) The report shall be filed and the tax paid to the department on or before the twentieth day of the month following the close of the reporting period.

(5) The department may waive the requirement for filing a report under this section.

Sec. 121. A person shall not sell or use or hold for sale or use dyed diesel fuel or other exempt fuel, including, but not limited to, excluded liquid, undyed diesel fuel that is repackaged into a container that holds 55 gallons or less, or aviation, aircraft, or jet fuel, for any use that the person knows or has reason to know is a taxable use of the diesel fuel under this act or the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

Sec. 122. (1) A person shall not operate or maintain a motor vehicle on the public roads or highways of this state with dyed diesel fuel in the vehicle's fuel supply tank.

(2) This section does not apply to dyed diesel fuel used in any of the following:

(a) A motor vehicle owned and operated or leased and operated by the federal or state government or a political subdivision of this state.

(b) A motor vehicle used exclusively by the American red cross.

(c) An implement of husbandry.

(d) A passenger vehicle that has a capacity of 10 or more and that operates over regularly traveled routes expressly provided for in 1 or more of the following that applies to the passenger vehicle:

(i) A certificate of authority issued by the state transportation department.

(ii) A municipal franchise.

(iii) A municipal license.

(iv) A municipal permit.

(v) A municipal agreement.

(vi) A municipal grant.

(3) An owner, operator, or driver of a vehicle who uses dyed diesel fuel on the public roads or highways of this state is subject to a civil penalty of \$200.00 for each of the first 2 violations within a 12-month period. For a third violation within a 12-month period, and for each subsequent violation thereafter, the person is subject to a civil penalty of \$5,000.00. An owner, operator, or driver of a motor vehicle who knowingly violates the prohibition against the sale or use of dyed diesel fuel upon the public roads or highways of this state is subject to a civil penalty equal to that imposed by section 6714 of the internal revenue code.

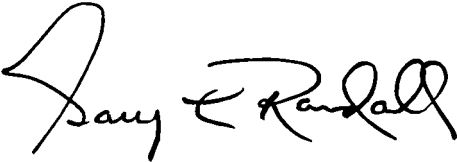
Enacting section 1. Sections 90 and 91 of the motor fuel tax act, 2000 PA 403, MCL 207.1090 and 207.1091, are repealed.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

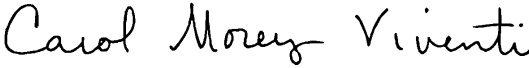
(a) House Bill No. 5734.

(b) House Bill No. 5736.

Enacting section 3. This amendatory act takes effect April 1, 2003.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.