

1 HB550
2 168059-1
3 By Representative Greer
4 RFD: Ways and Means General Fund
5 First Read: 23-APR-15

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8 SYNOPSIS: This bill would levy a motor fuel tax on
9 certain fuels that are delivered to a destination
10 in this state, and would clarify an exemption from
11 taxation for certain motor fuel exported from this
12 state for which a proof of export is available.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT
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18 To amend Sections 40-17-328 and 40-17-329, Code of
19 Alabama 1975, relating to the levy of motor fuel tax, and
20 exemptions from such tax; to levy the tax on certain fuel not
21 exported to another state; and to exempt from the motor fuel
22 tax certain motor fuel exported to another state.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 40-17-328 and 40-17-329, Code of
25 Alabama 1975, are amended to read as follows:

26 "§40-17-328.

1 "(a) The tax levied pursuant to Section 40-17-325 is
2 levied on all of the following:

3 "(1) Dyed diesel fuel that is used to operate a
4 highway vehicle other than dyed diesel fuel used in city and
5 county vehicles.

6 "(2) Motor fuel that is used to operate a highway
7 vehicle after an application for a refund of tax paid on the
8 motor fuel is made or allowed on the basis that the motor fuel
9 was used for an off-highway purpose.

10 "(3) Aviation gasoline on which a tax was imposed
11 under subdivision (3) of subsection (a) of Section 40-17-325
12 that is used other than for fuel in an aircraft is subject to
13 the tax rate imposed under subdivision (1) of subsection (a)
14 of Section 40-17-325.

15 "(4) Aviation jet fuel on which a tax was imposed
16 under subdivision (3) of subsection (a) of Section 40-17-325
17 that is used other than for fuel in an aircraft is subject to
18 the tax rate imposed under subdivision (2) of subsection (a)
19 of Section 40-17-325.

20 "(5) Motor fuel acquired exempt pursuant to
21 subdivision (1) of subsection (a) of Section 40-17-329 that
22 was not exported but rather was delivered to a destination in
23 this state.

24 "(b) The operator of a highway vehicle that uses
25 untaxed or refunded motor fuel that is taxable under
26 subdivisions (1) and (2) of subsection (a) is liable for the
27 tax. If the highway vehicle that uses the motor fuel is owned

1 by or leased to a motor carrier, the operator of the highway
2 vehicle and the motor carrier are jointly and severally liable
3 for the tax. If the ultimate vendor of motor fuel taxable
4 under this section knew or had reason to know that the motor
5 fuel would be used for a purpose that is taxable under this
6 section, the operator of the highway vehicle and the end
7 seller are jointly and severally liable for the tax.

8 "(c) The licensed aviation fuel dealer selling the
9 aviation gasoline or aviation jet fuel that is not used in an
10 aircraft is liable for the tax owed under subdivisions (3) and
11 (4) of subsection (a).

12 "(d) The tax liability levied by this section is in
13 addition to any other penalty imposed pursuant to this
14 article.

15 "§40-17-329.

16 "(a) Unless otherwise provided for in this
17 subsection, sales of motor fuel to the following are exempt
18 from the tax levied by subsection (a) of Section 40-17-325 and
19 shall not be paid at the rack:

20 "(1) All motor fuel exported from this state for
21 which proof of export is available in the form of a terminal
22 issued destination state shipping document ~~that is a. exported~~
23 ~~by a supplier who is licensed in the destination state or b.~~
24 ~~is sold by a supplier to a licensed exporter for immediate~~
25 ~~export to a state for which the applicable destination state~~
26 ~~motor fuel excise tax has been collected by the supplier who~~
27 ~~is licensed to remit the tax to the destination state and the~~

1 terminal supplier collects and remits to the destination state
2 the appropriate amount of tax due on the motor fuel to be
3 transported to that state. This exemption shall not apply to
4 any motor fuel which is transported and delivered outside this
5 state in the motor fuel supply tank of a highway vehicle.

6 "(2) All K-1 Kerosene or aviation jet fuel that is
7 produced at a refinery in this state and is either exported
8 from this state directly by the operator of that refinery or
9 is sold for immediate export by the operator to a licensed
10 exporter. In either case proof of export is to be available in
11 the form of a terminal destination state shipping document and
12 in addition all relevant sales documents are to reference the
13 product known as "K-1 Kerosene" or "aviation jet fuel," as
14 applicable.

15 "(3) All sales of dyed diesel fuel.

16 "(4) Gasoline blendstocks or cellulosic biofuel when
17 sold to a. a licensed supplier or b. a person who will not be
18 using the blendstocks or cellulosic biofuel in the manufacture
19 of gasoline or as a motor fuel, as evidenced by the exemption
20 certificate prescribed under regulations promulgated under
21 Section 4081, Title 26 of the United States Code.

22 "(5) All motor fuel sold by a licensed supplier or
23 licensed permissive supplier to an exempt agency electing to
24 be licensed under Section 40-17-332.

25 "(6) Motor fuel that is delivered by a licensed
26 supplier from one terminal to another terminal when ownership
27 in the motor fuel has not changed, or by a licensed supplier

1 from a terminal to a refinery operated by the licensed
2 supplier.

3 "(b) Having first paid the tax owed under this
4 article, a licensed distributor shall have the right to apply
5 to the department on a monthly basis for a refund of the taxes
6 paid on the gallons sold by that licensed distributor to the
7 exempt agencies listed under subsection (e), provided the
8 exempt agency has elected to obtain a license under Section
9 40-17-332.

10 "(c) Having first paid the tax owed under this
11 article, an exporter shall have the right to apply to the
12 department on a monthly basis for a refund of the taxes paid
13 to this state on the gallons of motor fuel that are ultimately
14 exported by the exporter. The department will require the
15 exporter to provide proof of payment of the applicable
16 destination state excise taxes before issuing a refund.

17 "(d) Having first paid the tax owed under this
18 article, a licensed aviation fuel purchaser shall have the
19 right to apply to the department on a monthly basis for a
20 refund of the taxes paid to this state on the gallons of jet
21 fuel sold to a certificated or licensed air carrier that
22 purchases jet fuel within this state and uses the jet fuel to
23 propel aircraft powered by jet or turbine engines operated in
24 scheduled all-cargo operations being conducted on
25 international flights or in international commerce. For the
26 purposes of this subsection, the following words or terms
27 shall be defined and interpreted as follows:

1 "(1) AIR CARRIER. Any person, firm, corporation, or
2 entity undertaking by any means, directly or indirectly, to
3 provide air transportation.

4 "(2) ALL-CARGO OPERATIONS. Any flight conducted by
5 an air carrier for compensation or hire other than a passenger
6 carrying flight, except passengers as specified in Section
7 121.583 (a) or 135.85 of the Federal Aviation Regulations, as
8 amended.

9 "(3) INTERNATIONAL COMMERCE. Any air carrier engaged
10 in all-cargo operations transporting goods for compensation or
11 hire on international flights.

12 "(4) INTERNATIONAL FLIGHTS. Any air carrier
13 conducting scheduled all-cargo operations between any point
14 within the 50 states of the United States and the District of
15 Columbia and any point outside the 50 states of the United
16 States and the District of Columbia, including any interim
17 stops within the United States so long as the ultimate origin
18 or destination of the aircraft is outside the United States
19 and the District of Columbia.

20 "(e) Having first paid the tax to its vendor, the
21 following entities shall have the right to apply to the
22 department for a refund on a quarterly basis for any purchases
23 of motor fuel:

24 "(1) The United States government or any agency
25 thereof.

26 "(2) Any county governing body of this state.

1 "(3) Any incorporated municipal governing body of
2 this state.

3 "(4) City and county boards of education of this
4 state.

5 "(5) The Alabama Institute for Deaf and Blind, the
6 Department of Youth Services school district, and private and
7 church school systems as defined in Section 16-28-1, and which
8 offer essentially the same curriculum as offered in grades
9 K-12 in the public schools of this state.

10 "(f) If the sale of taxable motor fuel to exempt
11 entities listed in subsection (e) occurs at a fixed retail
12 pump available to the general public and is charged to a
13 credit card issued to the exempt entity, the issuer of the
14 card, having billed the exempt entity without the tax, may
15 apply on a quarterly basis for a refund of the motor fuel
16 excise taxes by submitting the application and supporting
17 documentation as prescribed by the department.

18 "(g) Having first paid the tax, a licensed air
19 carrier with a hub operation within this state shall have the
20 right to apply to the department for a refund on a quarterly
21 basis for any purchases of jet fuel used to propel aircraft.
22 For the purposes of this subsection, the words "hub operation
23 within this state" shall be construed to have all of the
24 following criteria:

25 "(1) There originates from the location 15 or more
26 flight departures and five or more different first-stop

1 destinations five days per week for six or more months during
2 the calendar year; and

3 "(2) Passengers and/or property are regularly
4 exchanged at the location between flights of the same or a
5 different certificated or licensed air carrier.

6 "(h) End users who first pay the tax levied by
7 subdivision (2) of subsection (a) of Section 40-17-325 on all
8 gallons of diesel fuel used in designated off-road vehicles,
9 other off-road equipment, or for other off-road use may apply
10 to the department for a refund on a quarterly basis.

11 "(i) End users who first pay the tax levied by
12 subdivision (1) of subsection (a) of Section 40-17-325 on
13 gallons of gasoline blendstocks not used in the manufacture of
14 gasoline or as a motor fuel may apply to the department for a
15 refund on a quarterly basis.

16 "(j) Tax paid on motor fuel that (1) is lost or
17 destroyed as a direct result of a sudden and unexpected
18 casualty, or (2) becomes unsalable or unusable as highway fuel
19 due to such things as the contamination by dye or mixture of
20 gasoline and diesel shall be refundable.

21 "(k) Tax paid on transmix not used as a motor fuel
22 or that is delivered to a refinery for further processing
23 shall be refundable, with the person so using the transmix
24 being eligible to file for the refund on a quarterly basis or
25 if a licensed supplier, a credit may be taken on its monthly
26 supplier return.

1 "(1) Tax paid on motor fuel within the bulk transfer
2 system may be refunded upon sufficient proof that (1) a second
3 tax had been paid pursuant to Section 40-17-325 or (2) the
4 fuel was exported to another state or country. The party
5 paying the second tax or exporting the fuel may file for a
6 refund on a monthly basis."

7 Section 2. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.