

2009 SENATE FINANCE AND TAXATION

SB 2224

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2224

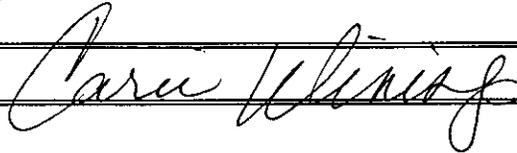
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/26/2009

Recorder Job Number: 7682

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opens hearing on SB 2224.

**Senator Curtis Olafson, District 10:** Introduced bill to committee. Explained what a refrigerated unit was. Amendment proposed by Tax Department.

**Chairman Cook:** Dyed diesel is the fuel that is dedicated for off hwy use, and it is just simply when the person buys the dyed diesel they don't pay the tax? Or do they buy the diesel and then apply for a refund?

**Senator Curtis Olafson:** Dyed diesel is for off road use, and you do not pay tax on it when you purchase it.

**Chairman Cook:** you can use dyed diesel in a refrigerated unit?

**Senator Curtis Olafson:** The only difference is the dye, and it is legal to put in refrigerated unit.

**Chairman Cook:** If there is not dyed diesel at the pump when he fills then what does the owner of the truck do?

**Senator Curtis Olafson:** They would fill the clear diesel fuel into both the truck and the refrigerator unit, and then apply through the process for the refund of the refrigerated unit

portion.

**Chairman Cook:** So he would apply for a refund?

**Senator Curtis Olafson:** Correct.

**Chairman Cook:** If the trucker is from out of state, he would apply for a refund?

**Senator Curtis Olafson:** That is my understanding.

**Sen. David O'Connell, District 6:** Testified in support of bill. Basically it is a fairness issue.

The fine is \$5000 the first time you get caught with dyed fuel in your tractor, and doubled after that. The fine is pretty heavy.

**Chairman Cook:** What is a typical refrigerator unit, all diesels?

**Senator David O'Connell:** As far as I know, and most use between 15-24 gallons a day.

**Tom Balzer, Managing Director, North Dakota Motor Carriers Association:** See Attachment #1 in support of bill. See Attachment #2 for proposed amendments.

**Senator Triplett:** Is it standard practice in the truck stop industry to have a special line for refrigerated units?

**Tom Balzer:** I do not know that it is standard practice, but it is my understanding that it is something that they can do very easily. It is just a matter of paying for them separately.

**Senator Dotzenrod:** The bill refers to special fuels tax, is that a percent of the value of the fuel as opposed to the tax that is so many cents a gallon?

**Tom Balzer:** Special fuels tax is based on a percent per gallon basis 23 cents a gallon.

**Chairman Cook:** Say that again.

**Tom Balzer:** The tax on special fuels tax is the same as motor fuel tax, it is based on a per cents, 23 cents a gallon, for special fuels or diesel fuel, just as it would be with gasoline, and not on a percentage basis.

**Chairman Cook:** The tax is 23 cents per gallon?

**Tom Balzer:** That is my understanding.

**Chairman Cook:** 100% on that is refunded or 19 cents is refunded?

**Tom Balzer:** 19 cents will be refunded.

**Chairman Cook:** Out of state trucking companies are very familiar with this?

**Tom Balzer:** Yes, in fact some businesses do that for companies.

**Mike Rud, President of the North Dakota Petroleum Marketers:** In support of bill with amendments presented.

**Senator Triplett:** How do petroleum marketers handle the receipt issue?

**Mike Rud:** We would have to set it up on our till system so that there would be two separate receipts. One of our concerns was the drive off issue, but we feel we can make this work. It is a way to bring some added business to our North Dakota truck stops.

**Senator Triplett:** You don't see it as a burden then on your industry?

**Mike Rud:** At this point in time we don't see it to do a problem. We will take a neutral approach to it and see where it goes.

**Chairman Cook:** Do drivers fill up own truck.

**Mike Rud:** Yes they do.

**Chairman Cook:** Further testimony in support? (No), Opposed? (No), neutral? (No) Tax department any comment at all?

**Kevin Schatz, Tax Department:** We are neutral on this bill. We do feel comfortable with the issue of doing the refunds.

**Senator Dotzenrod:** On the amendments, have you seen them?

**Kevin Schatz:** We worked with Tom on drafting these so that we were comfortable.

**Senator Dotzenrod:** That last sentence that says the tax imposed must be deducted, is that the 4 cents?

**Kevin Schatz:** That applies to the 4 cents that would be applied.

**Chairman Cook:** Any other testimony?

Closed hearing on SB 2224

**Senator Oehlke:** Moved the amendments as presented by Tom Balzer.

**Vice Chairman Miller:** Seconded.

**A Vote was taken and agreed: Yea 7, Nay 0, Absent 0**

**Senator Triplett:** Clarified that the bill would be handled properly with amendments.

**Senator Dotzenrod:** I am unclear on the meaning on special fuels tax.

**Vice Chairman Miller:** See Tab 6, page 62 of tax binder give to us, the definition is there.

**Senator Dotzenrod:** Looks at binder and is satisfied with definition.

**Chairman Cook:** Wanted to make sure that clear that the refund on special fuels tax they are asking for is the 19 cents in the 23 cents?

**Kevin Schatz:** The intent was to refund the 19 cent difference between the two taxes, 19 cents and 4 cents that totals 23 cents.

**Chairman Cook:** I am clear now.

**Senator Dotzenrod:** Are some of the refrigerator units run on LP, or is diesel the great majority?

**Kevin Schatz:** We have looked at that, some do use propane, but as far as the bill is concerned it applies clear diesel fuel to the ones attached to a truck unit.

**Senator Triplett:** Moved a Do Pass as amended.

**Vice Chairman Miller:** Seconded the motion.

**A Roll Call vote was taken: Yea: 7, Nay: 0, Absent: 0.**

**Senator Miller will carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/28/2009

Amendment to: SB 2224

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2224 creates a refund provision for special fuels purchased for use in a separate refrigeration unit on a truck. The revenue loss to the highway distribution fund is not known.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/29/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/15/2009

Bill/Resolution No.: SB 2224

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2224 creates a refund provision for special fuels purchased for use in a refrigeration unit on a truck. The revenue loss to the highway distribution fund is not known.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/23/2008

**PROPOSED AMENDMENTS TO SENATE BILL 2224**

*Prepared and proposed by the North Dakota Motor Carriers Association  
January 26, 2009*

Page 1, line 8, after “unit” insert “with a separate supply tank”, after “truck” insert “or trailer”, and after “tax” insert “imposed under section 57-43.2-02”

Page 1, line 9, replace “is entitled to a refund upon filing a claim with the commissioner for a refund” with “may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.”

Page 1, remove line 10

Renumber accordingly

January 26, 2009

*JEB*  
1-27-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2224

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Page 1, line 9, replace "is entitled to a refund upon filing a claim with the commissioner for a refund" with "may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund."

Page 1, remove line 10

Renumber accordingly



Date: 01/26/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 2224

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 98267.0101

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup>

Motion Made By Sen. Triplett Seconded By Sen. Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2224: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the Sixth order on the calendar.

Page 1, line 8, after "unit" insert "that has a separate supply tank", after "truck" insert "or trailer", and after "tax" insert "imposed under section 57-43.2-02"

Page 1, line 9, replace "is entitled to a refund upon filing a claim with the commissioner for a refund" with "may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund."

Page 1, remove line 10

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2224

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2224

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03-04-09

Recorder Job Number: 10150

Committee Clerk Signature *Lou Engelson*

Minutes:

**Chairman Belter** opened the hearing on SB 2224.

**Sen. Curtis Olafson:** I am Curtis Olafson, District 10. We are dealing with SB 2224, and there will be expert testimony coming after so I will make my testimony very brief. What 2224 does is gives consumers who use diesel fuel in a refrigeration unit on a truck or trailer to apply for a refund of the special fuels tax paid. The problem is that at a lot of truck stops the dyed fuel, which is not taxed for road tax, is not available at truck stops, so a lot of truckers end up putting taxed fuel into their refrigeration unit in addition to the tractor units so they are going down the road being taxed on the fuel in the refrigeration unit when that should not, in fact, be taxed. This will allow them to apply for a refund of that part of the fuel that they put into their refrigeration unit. When the bill went through the senate, there was quite a bit of debate that came about on the floor. There was concern about somebody abusing this process in claiming more of a refund that they were eligible for because they would be may be claiming refund on fuel that actually went into the truck. So we tried to address that concern with a friendly amendment which you will see later with a later speaker here, but the current amendment will specify that no more than 30 gallons per day per unit is refundable. That would probably be

the maximum amount of fuel that a unit would use in the hottest temperature in order to keep the trailer cool. I would be glad to answer any questions that I could.

**Chairman Belter:** Which tax are you talking about here? What are we at? 21 cents?

**Sen. Olafson:** I think that is correct.

**Chairman Belter:** Would they then pay the off road fuel tax which is 4 cents?

**Sen. Olafson:** That I'm not sure about what the exact amount is. But they would apply for a refund of the road tax portion. The Tax Department would have some kind of process where they would apply for that portion that goes into the unit, and the road tax would be refunded.

**Rep. Pinkerton:** Isn't there federal and state tax? Do they get a refund on the federal tax also?

**Sen. Olafson:** It would be a refund of the federal road tax, I believe.

**Rep. Brandenburg:** Just the state.

**Sen. Olafson:** Just the state.

**Chairman Belter:** Further testimony in support of 2224.

**Tom Balzer, North Dakota Motor Carriers' Association:** My name is Tom Balzer with the North Dakota Motor Carriers' Association, and we obviously support SB 2224. 2224 would in essence give us similar, the same fuel tax paid on biodiesel. Currently in these units which are separate tanks that hook on the trailer, they can run dyed fuel in there and not pay the fuel on road fuel tax. Or if they have a gasoline unit, they can currently, under a different section of the tax code, can apply for a refund. Very few, if any, of these units are on gasoline. Under the special fuels or the diesel fuel tax, they don't have the ability for that refund. This bill would give those refrigerator units the ability to apply for a refund. It would not include the federal tax so we understand that. But it gives us that break, kind of bring us back down. We're getting a refund of 19 cents. The 4 cent fuel tax on dyed fuel, everybody pays. The railroad pays it.

We have no issue with that. This would just deduct 19 cents per gallon off that cost. We look at this as almost a double tax because the unit is running. The refrigerator unit is running while they are driving down the road and the power unit, the tractor trailer is running so they are paying (inaudible) fuel tax as the same time. On the second page is the amendment, and it just simply says at the end of the paragraph "No more than 30 gallons per day, per unit is refundable." The reason in the bill it talks about a separate tank. The Tax Department is going to require that there be a separate receipt that specifies that this is a refrigerated unit fuel in order for this refund to be granted. We have no issue with that. That's a process that we are familiar with. It would also prevent them from taking the nozzle from the refrigerated unit tank and slipping it down into the other tank and filling that one up a little bit as well. So the 30 gallons comes from, if you have a very hot day, and you have to keep the product very cold, maybe you're carrying frozen product, that's about what these things will burn in that given day. So that's where that number comes from.

**Chairman Belter:** What are other states doing?

**Mr. Balzer:** it's kind of half and half. Some of them allow for it. A majority and a growing majority are allowing for a refund of that tax on refrigerated units. There's actually companies out there that that's services they provide for trucking companies is to get those refunds from all the different states. So there's a shrinking number of states that do not allow this.

**Chairman Belter:** What do our neighboring states do, and would this be prorated?

**Mr. Balzer:** Minnesota allows for it. South Dakota, I believe, allows for it, and Montana allows for it as well. Wyoming, I'm not sure. As far as it being prorated, right now we prorate our taxes, you know, in the trucking world, by miles traveled in each state. So you travel on a tank of gas 250 miles in North Dakota and 250 miles in Minnesota, you pay the fuel tax, and the states work it out and then the trucking companies work it out so everyone's paying equal tax

based on miles in that state. This would be a refund straight on any fuel pumped out of North Dakota. So it would not be prorated to other states.

**Chairman Belter:** My thought was if the neighboring states are not doing exactly what we're doing, then the trucks will come in here, fill up their tanks because there is no tax, which is guess is good for business. I'm not sure if help with care for the roads.

**Mr. Balzer:** I don't see that as being an issue because I think the other states around us are pretty similar in how they go about doing this.

**Rep. Pinkerton:** Do they run refrigerator units in the winter.

**Mr. Balzer:** Yes they do. In a lot of cases it just depends on what the product is on the inside.

**Rep. Weiler:** The 30 gallon, I believe it was stated earlier by the senator, is that about the maximum amount somebody could put in per day per truck?

**Mr. Balzer:** Yes and no. It depends on the size of the tank. What that is is that would the maximum burn of that particular unit running at its highest capacity. I asked some of our carriers, hottest day, coldest product, what are you going to burn in a day. That was the number they came up with.

**Rep. Froseth:** Is this going to be an inconvenience to the truck stops to have to separate that sale and offer another receipt?

**Mr. Balzer:** We have talked with the Petroleum Marketers' Association about that issue, and they indicated it would not be a problem in how they do it. It would just be a separate transaction that they would run.

**Chairman Belter:** Further testimony in support of 2224.

**Mike Rud, North Dakota Petroleum Marketers' Association:** My name is Mike Rud. I represent the North Dakota Petroleum Marketers' Association. We stand in support of 2224. We've been working with the Tax Department as well as Tom since November on this bill. The

marketers feel although it might be a little of an issue, they believe the truckers need this and want this. They would be willing to take a shot at establishing this and printing out a separate line item that meets the Tax Department's needs as well as the truckers' needs. We stand in support of it.

**Rep. Brandenburg:** At the pump, they are not going to take the tax off the pump. They'll have to send the slips in and get a refund.

**Mr. Rud:** Yes, they would have to submit it to the Tax Department is my understanding.

**Rep. Brandenburg:** This might be a question for the Tax Department. What are they looking at that you submit your slips every month or every quarter?

**Mr. Rud:** I guess I would defer that to the Tax Department. I don't have an answer on that question.

**Chairman Belter:** Further testimony in support of 2224. Any opposition to 2224. Neutral testimony. Any questions of the Tax Department.

**Kevin Schatz:** My name is Kevin Schatz. I'm with the Tax Department.

**Rep. Headland:** Do you see every truck that's pulling a refrigerator unit submitting that 30 gallon tax refund every day. I don't know how you would monitor it. The question I have is are they going to stick the nozzle into both tanks and take the slip in and say, I filled my refrigeration. I want 30 gallons. How are you going to monitor that?

**Mr. Schatz:** What we would do is use the same process we use for industrial refunds or agriculture refunds. If their refund adds up to \$400, they can apply for that refund any time during the year. Otherwise we have them do it once a year. What we require is that they submit the original receipts with the proper documentation usually once a year. If the amount comes up over \$400, they can do it at anytime.

**Rep. Headland:** Thirty gallons every day?

**Mr. Schatz:** We would look at those receipts and like Tom had mentioned, if they are putting in 50 gallons every day and that unit only uses 30, we would give a refund on 30. The other 20 gallons would not qualify.

**Rep. Headland:** If they are filling their rig, and they are buying 250 gallons, how are you going to distinguish or how would it be monitored.

**Mr. Schatz:** Our requirement to the petroleum dealers would be that that trucker would have to have a separate line item on every ticket that showed the amount of fuel they put in the truck and the amount of fuel they put in the refrigeration unit so that we can determine, this is how many gallons they put in that refrigeration unit. It can either be split out on one ticket, or we can have a separate ticket for each bill. It has a separate line item for filling the truck and a separate line item for filling the refrigeration.

**Rep. Drovdal:** You indicated that they would be required to file an original receipt. Aren't they required by the IRS to keep an original receipt for tax purposes?

**Mr. Schatz:** When we issue the refund, we return those original receipts.

**Chairman Belter:** Any other testimony on 2224. If not we'll close the hearing on 2224.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2224**

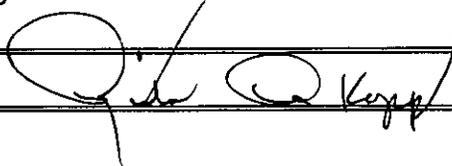
House Finance and Taxation Committee

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Hearing Date: March 10, 2009

Recorder Job Number: 10640

Committee Clerk Signature



Minutes:

**Chairman Belter:** SB 2224. That is the special fuels tax on refrigerated trucks, reefers.

**Vice Chairman Drovdal:** Did we get an answer back? Somebody had requested information on what the surrounding states had done.

**Chairman Belter:** Yes, the surrounding states all have a program where they get their tax back on this. Didn't Representative Weiler want to put on an amendment capping this?

**Representative Brandenburg:** I talked about a cap of \$1,000; but what are other states doing as far as the cap because I can see this being...

**Chairman Belter:** No, they don't have a cap and I guess my personal feeling is I see a real problem with a cap because how do you deal with a cap? You have one company that has one truck and the next trucking firm has 150 trucks. From that perspective, I guess I don't want to see capping as a way to handle it. When I talked to the gentleman who is with the Tax Department here, he didn't foresee us having any difficulty. They didn't think that they would have any difficulty. One of the concerns I have with this bill is I do not like the 30 gallon cap. Because to me, a 30 gallon cap is saying when you fill up your truck and it only burns five gallons a day but you are allowed 30 gallons a day, I think it is more of an incentive to abuse the program than to be a cap on the program.

(General discussion on whether cap is in bill and who put amendment on.)

**Representative Headland:** It was a proposed amendment—no more than 30 gallons.

**Representative Brandenburg:** You are saying don't put any limit on. Otherwise you will have people trying to get that 30 gallons all the time. You are probably right.

**Chairman Belter:** Representative Headland, you had a conversation with a trucking organization in your district and he said they only fill up those tanks...

**Representative Headland:** If they run 24 hours a day, they burn about 5 gallons a day and they only hold 25 gallons to start with and they will last about 5 days. He indicated to me he didn't even see a reason for the legislation at all, but that is up to this committee to decide what they want to do with it. He has 20 some refrigerated units on the road and he has his own storage facility at his business place where he is able to use the red fuel. He indicated to me that it lasts long enough where he makes his trips and it really doesn't impact him.

**Chairman Belter:** One thing we need to do is there is an error on line 9. It says 57-43.2-03 and it should be -.02. We have a **motion from Representative Drovdal and a second from Representative Grande to strike to .03 and make that .02 on line 9.**

**Representative Drovdal:** It is on line 10 too.

**Chairman Belter:** They did not bring that to my attention.

**Representative Winrich:** If sounds like it is the same tax. Oh no, it is a different tax.

**Chairman Belter:** I think we are talking about two different taxes because one is talking about the special fuels and the other is talking about the road tax as I would read it. That is correct. On line 9 they are talking about the special fuels tax.

**Representative Winrich:** If they were the same the way it is written, the refund would always be zero because it said you can apply for a refund of this tax but then the tax in the other section must be deducted from the refund.

**Representative Grande:** Did they talk about how many pumps they are talking about and how the procedure really works? You pull up and you put in the clear, then does the guy selling you the fuel stamp it and then you have a receipt that you are going to send in for?

**Chairman Belter:** The Tax Department will set up a procedure on just how to handle this.

**Representative Grande:** I would think that the people selling fuel are going to have to somehow have to document this (inaudible)?

**Chairman Belter:** Not necessarily; I think it is the responsibility of the trucking firm to document. When they fill up, technically they will probably require them to have separate receipts maybe out of the same pump.

**Representative Headland:** Mr. Chairman, I've got the answer. 57-43.2.02 is the 2%; 57-43.2.03 is the 23 cents a gallon.

**Representative Drovdal:** The other way around. .02 is the 23 cents a gallon and .03 is the other. They are separate.

**Chairman Belter:** Did we vote on the amendment? We have a motion and a second to strike the last numerical .03 on line 9 and replace it with .02. Any discussion? **(The motion carried**

**by a voice vote.)** What are your wishes on SB 2224? We have a motion for a “do pass” from Representative Brandenburg and a second from Representative Winrich.

**Representative Weiler:** I have a concern about not putting a cap on. My concern is that they can go in and fill their tank up, both tanks up and there are no restrictions on the amount that they can claim for a tax refund. I don't see it being very workable. I think when a trucker is at the station, if it is not being policed and it is impossible to police it, without some kind of cap on there, I just don't think I can support this even though I am on the bill.

**Representative Headland:** I would just be curious as to what would the penalty be if you were caught trying to buy more than; is there currently in law some kind of penalty?

**Representative Weiler:** I don't believe there is any other provisional law anywhere that allows someone to....

**Chairman Belter:** Yes, the whole farm gas tax refund is purely...

**Representative Brandenburg:** That is my point. Why even pass the bill?

**Representative Grande:** My thought on this too is this guy fills with the wrong fuel and he heads down the road. He gets stopped and gets checked. That is why I am worried about this receipt. Something stamped that says I have the right to have the wrong fuel in.

**Chairman Belter:** There is no such thing as wrong fuel. For a refrigerator unit, there is no such thing as a wrong fuel. He can put either dyed fuel or clear fuel in it. If he puts clear fuel in it, then that is what this bill does, it allows him to ask for a refund of the 23 cent gas tax and instead of paying the 23 cent gas tax, he is going to pay the 4 cents per gallon special fuels tax.

**Representative Headland:** Just another point I would like to make before we vote on this bill is these companies have the opportunity to pass this cost along to the customer and I am sure they are all doing that already. He did say that it is not covered under the fuel surcharge that they charge the companies for the price of fuel. I just don't that we need to go down this road.

**Chairman Belter:** I guess my only big deal with this bill; the only thing I would say is that these truckers have the ability to fill up wherever they want. If they want to make their stop in Minnesota or Montana, where they don't pay the tax, versus ND, most of them are probably not going to make that decision. They are going to fill up where they normally fill up, but they do have that right. If they stop and put on 20 gallons and save 19 cents, will they do it or won't they? I don't know. But they are able to do it in these other states.

**Representative Pinkerton:** It makes me a little nervous when Representative Headland goes out and gets the information and they say they burn 5 gallons and different testimony says they are burning 30 gallons. There is quite a difference there between those numbers, but I would trust Representative Headland.

**Chairman Belter:** It may make a difference too. You are talking to a trucker who is hauling in the northern tier if you have a refrigerated unit running in ND versus somebody who is heading south and gets down to Texas and has to keep his refrigerator running more. It could vary quite a bit depending on temperatures and summer temperatures would be different than winter temperatures.

**Representative Headland:** The point that you made on the fact that they could bypass the state altogether in their fueling is a very good point; however, a two cent difference in cost of

fuel per gallon when they fill their big rig might be enough incentive to get them to stop where it is cheaper regardless of the fuel for their refrigeration unit.

**Chairman Belter:** Of course, everything is prorated. That would apply to tax. They are going to stop and buy the fuel where they can get it the cheapest, but the tax will be prorated by state.

**Representative Headland:** Do you mean the trucker will make one stop in ND to fill his rig and then stop in Minnesota and put in 20 gallons?

**Representative Froseth:** Mr. Chairman, have you ever been stopped for burning dyed fuel in your truck? If you were penalized for that, what is the penalty for that?

**Chairman Belter:** I don't know. I have never burned dyed fuel in my truck. There is a huge penalty because you are dealing with the feds.

**Representative Schmidt:** Senator Olafson brought this from a neighbor of his, a farmer that raises potatoes and he probably has a reefer. We should help him out. I think that is where this came from, Ryan Trucking; they haul potatoes.

**Representative Drovdal:** Do they have to refrigerate potatoes?

**Representative Schmidt:** They do.

**Chairman Belter:** Probably to keep them from freezing, both ways. We do have bigger issues.

**Representative Brandenburg:** I guess when you look at what they are going to say, they are talking \$5 for a fill is maybe not really that big a deal, but sometimes it might be a buck; that is

true. But just to go on the dyed fuel, if you put dyed fuel in a clear fuel and you get picked up, you are looking at a minimum of a couple of thousand dollar fine. It can be more depending on the amount.

**Chairman Belter:** But in the reefer unit, it doesn't make any difference whether you used dyed or clear. It is only in your truck where you have to.

**Representative Headland:** With the uncertainty of this bill, I wonder if you would allow me to propose one more amendment. I would like to put a sunset on it and let's see how the Tax Department does with it; let's see if anybody uses it.

**Chairman Belter:** Every bill has a sunset.

**Representative Headland:** Well, this would bring it back.

**Representative Winrich:** I would suggest that the uncertainty is more in the minds of committee members than it is in the bill. One, there is no point in a penalty. There already is a penalty if the trucker puts dyed fuel in his fuel tank, a big penalty. If he puts dyed fuel or clear fuel in the refrigerator tank, it doesn't matter. There is no penalty. We are talking about a tax refund and a relatively trivial one apparently that was asked for by some truckers. The Tax Department testified in our hearing I have in my notes that they could easily set up a procedure to manage this, require separate receipts. A similar procedure already exists in Minnesota, South Dakota, and Montana. We are wasting a lot of time here.

**Representative Brandenburg:** These poor old boys; they sleep in their trucks to make a living.

**Chairman Belter:** We have a “do pass as amended” before us on SB 2224. (A roll call vote resulted in 10 ayes, 2 nays, 1 absent/not voting/Froelich. Representative Winrich will carry the bill.)

98267.0201  
Title.0300

Adopted by the Finance and Taxation  
Committee

March 10, 2009

VR  
3/11/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2224

Page 1, line 9, replace "57-43.2-03" with "57-43.2-02"

Renumber accordingly

Date: March 10, 2009

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 0224**

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Drovdal Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weller					
Representative Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*to strike 3 make 2 on  
lines 9-10*

*Motion carries*

Date: March 10, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2024

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Brandenburg Seconded By Winick

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande	/		Representative Winick	/	
Representative Headland		/			
Representative Weiler		/			
Representative Wrangham	/				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Representative Winick

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2009 10:36 a.m.

**Module No: HR-44-4674**  
**Carrier: Winrich**  
**Insert LC: 98267.0201 Title: .0300**

**REPORT OF STANDING COMMITTEE**

**SB 2224, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2224 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "57-43.2-03" with "57-43.2-02"

Renumber accordingly

2009 TESTIMONY

SB 2224

#1

**TESTIMONY  
SENATE BILL 2224  
FINANCE & TAXATION COMMITTEE  
JANUARY 26, 2009**

Mr. Chairman and members of the Senate Finance & Taxation Committee my name is Tom Balzer, managing director of the North Dakota Motor Carriers Association. I am here this morning to testify in support of Senate Bill 2224.

Senate Bill 2224 gives consumers who use diesel fuel in a refrigeration unit on a truck or trailer to apply for a refund of the special fuels tax paid.

Currently, a person can legally use dyed diesel to power one of these units without paying special fuels tax or they can use gasoline in one of these units and apply for a refund of the motor vehicle fuel tax under Chapter 57-43.1, but cannot get a refund for the use of diesel fuel to power one of these units as Chapter 57-43.2 does not have a refund provision.

Dyed diesel fuel is not available at most Interstate truck stops. By taxing this product trucking companies are being taxed double, once for the fuel in the main tank, which burns at about 5 miles per gallon and fuel in the refrigerated unit, which burns at about one half gallon per hour.

I have included proposed amendments derived from work with the North Dakota Tax Commissioners Office. After the amendments, the bill will read as follows:

A consumer who buys or uses any special fuel for a refrigeration unit with a separate supply tank on a truck or trailer on which special fuels tax imposed under section 57-43.2-02 has been paid may file a claim for a refund with the commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.

As amended the refund provision will have the same effect as using dyed diesel.

Mr. Chairman, this concludes my testimony, I ask for your DO PASS recommendation and would be happy to answer any questions the committee members may have.

#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2224

Page 1, line 8, after "unit" insert "with a separate supply tank"

Page 1, line 8, after "truck" insert "or trailer"

Page 1, line 8, after "tax" insert "imposed under section 57-43.2-02"

Page 1, line 9, replace "is entitled to a refund upon filing a claim with the commissioner for a refund under this chapter." with "may file a claim for a refund with the commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund."

**TESTIMONY  
SENATE BILL 2224  
FINANCE & TAXATION COMMITTEE  
MARCH 4, 2009**

Mr. Chairman and members of the House Finance & Taxation Committee my name is Tom Balzer, managing director of the North Dakota Motor Carriers Association. I am here this morning to testify in support of Senate Bill 2224.

Senate Bill 2224 gives consumers who use diesel fuel in a refrigeration unit on a truck or trailer to apply for a refund of the special fuels tax paid.

Currently, a person can legally use dyed diesel to power one of these units were the special fuels tax is already deducted or they can use gasoline in one of these units and apply for a refund of the motor vehicle fuel tax under Chapter 57-43.1, but cannot get a refund for the use of diesel fuel to power one of these units as Chapter 57-43.2 does not have a refund provision.

Dyed diesel fuel is not available at most Interstate truck stops. By taxing this product trucking companies are being taxed double, once for the fuel in the main tank, which burns at about 5 miles per gallon and fuel in the refrigerated unit, which burns at about two gallon per hour depending on the outside and inside temperatures.

The Senate passed this measure by a vote of 36-10 with the bulk of the object being the concern for potential fraud. I have included a proposed amendment to elevate this concern by limiting the number of gallons available for refund per day to 30.

Mr. Chairman, this concludes my testimony, I ask for your DO PASS recommendation and would be happy to answer any questions the committee members may have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2224

Page 1, line 11, after "refund." insert "No more than 30 gallons per day, per unit is refundable."