

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

2396

2007 SENATE EDUCATION

SB 2396

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2396

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2815, 2820, 2816

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2396, a bill relating to school bus transportation provisions regarding federal fuel tax refunds for fuel used in school buses. All members were present.

Senator O'Connell introduced the bill. (Written testimony attached) Senator Lindaas is tied up in appropriations and can't be here this morning. There is confusion regarding bids for transportation for schools; the contractor can claim the refund or the school can claim the refund. Bottineau filed for \$23,000. When bids are submitted, it is unclear who is getting the refund. This will clear it up in the law. Some schools have not been getting their refunds and some have. We hope no one is double dipping, he is not accusing anyone.

Representative Boucher testified in favor of the bill. Transportation costs have affected budgets. As we try to provide relief, we create some disparities. The refunds on the federal gas tax can be filed by the school district if they own and operate their own buses. If they contract for transportation, the contractor is not eligible for the refund. They have tried an arrangement for the school district to buy the gas but that was not recognized as acceptable.

This bill puts all on a level playing field. The intent is to provide a refund of the federal gas tax

for buses that provide transportation for school districts. Something like double dipping should not be a problem if we have due diligence with reporting and accountability.

Chairman Freborg asked if this were put in the contract, would it then be legal for the contractor to get the refund?

Representative Boucher said he hasn't thought through the mechanics. What exists at the present time is the school district is eligible if they own their own buses and buy the fuel. When they contract, they are not eligible. The party that is being penalized is the school district. We have districts that are receiving the refunds and some that cannot.

Senator Bakke said this is a federal program, can we change it?

Representative Boucher said he is not certain, Senator O'Connell has done a lot of research and he would refer the question to him.

Chairman Freborg said it is possible neither the school nor the contractor would receive the refund.

Representative Boucher said he would defer to Senator O'Connell.

Senator O'Connell said that has happened. Some schools did not even know about the refund. They questioned if the contractor was putting the refund in their pocket and not even telling the school district? They would like to make this a standard policy so the school districts know. One school district told him their bid price on fuel was only 1 cent per gallon cheaper than the pumps downtown so that tells you someone is either not getting the refund or they are putting it in their pocket.

Bev Nielson, North Dakota School Board Association, testified in favor of the bill. She did research with Senator Conrad's office this summer and with some other school districts in the state about the refund for non taxable fuel as far as federal excise tax is concerned. They want it clear on the contract whether the contractor will apply for the refund or if the schools

need to apply for the refund whether you are contracting fuel or making a bus contract. When bids are submitted it should be clear on the bid if the service provider will apply for the refund and how much it will be so bids can be judged accordingly. If the service provider is not going to apply for the refund, the school district knows they should do it. It is important that the refunds are going for the benefit of the schools, that is the purpose.

Chairman Freborg asked as long as it is in the contract, can either party apply for the refund?

Ms. Nielson said when Representative Boucher said the contractors can't get the refund, she did not know that. Maybe they can't. If they can't, the schools need to know they should apply for it.

Chairman Freborg said this will be hard to explain on the floor.

Ms. Nielson said she will find out today.

Senator Flakoll said if the service provider also used the buses to transport other clients, would they need to fill the buses with fuel before using them for school transportation?

Ms. Nielson said a part of the bid would be fuel.

Senator Flakoll asked if school boards pay on a per mile basis, are there fuel surcharges typically?

Ms. Nielson said she only talked to a couple of school districts that are contracting and some of them have clauses but it's minimal. They do not jump around like fuel prices do.

Senator Flakoll asked if this will be related to family/parent transportation agreements?

Ms. Nielson said it potentially could be. The law is very broad. They did not get very far into it. Their association could perhaps apply for the refund but they wouldn't because they don't have very many company cars. They are talking about the tens of thousands of dollars that may be going unrefunded or going into someone's pocket other than the school district. She will find out who can apply for the refund.

Senator Gary Lee said isn't this a contracting issue? Why does it have to be law? Why don't they just put it in their contracts?

Ms. Nielson said they are just holding people accountable.

Senator Gary Lee said it seems unnecessary.

Chairman Freborg asked if a school district does not buy fuel, can they transfer their refund?

Ms. Nielson said she has to find out, she thought the contractor could apply so the question is who is going to apply?

Ms. Nielson said it should be clear in bid. It's confusing, that's why it needs to be spelled out in the contract.

Senator Taylor asked if she has talked to school districts that have been in the situation with the fuel retailer? On his farm, he pays the tax and then applies for the refund at the end of the year. He did not know the retailer would have the ability to charge the lower price and apply for the refund themselves.

Senator Bakke asked if a school district can require it in the bid request?

Ms. Nielson said yes, but it wouldn't be against the law not to do it.

Doug Johnson, North Dakota Council of Educational Leaders, testified in favor of the bill. He was contacted by John Walstad of the legislative council last summer on behalf of Senator O'Connell and Representative Hunsakor. He was asked to contact the superintendents to let them know they could request this refund if they had not already done so. He got the information together and sent it out to everyone. He got some feedback from them. He found out many had already done the application. Some that contracted, had their vendor do the calculation on the refund and send it to the school district and the dollars would come back to the school district at the end of the year. The contractor would pay for the fuel but they would help the school district with the paperwork so they could apply for the refund.

Senator Taylor asked how many cents per gallon are we talking about?

Mr. Johnson said he remembers it's a portion of the tax and he thinks it's about 22 – 25 cents per gallon.

Chairman Freborg closed the hearing on SB 2396.

Chairman Freborg asked Senator Taylor if he was hired by his neighbor to put in his crop, who applies for the refund?

Senator Taylor said he "can't hardly get his own work done", much less his neighbor's.

Bev Nielson provided information for the committee which is attached.

Senator Bakke said she understands the school district or the fuel vendor can apply for the refund, does that mean the service provider, unless they have their own pumps, would not qualify?

Chairman Freborg said he does not know.

Senator Flakoll said he is trying to understand what this bill does that they can't do already.

Senator Gary Lee said he feels the same.

Chairman Freborg said it would seem so.

Senator Flakoll asked if they do three year contracts, what would this do to existing contracts?

Senator Taylor said we can't change the federal IRS rule. It seems like an educational process is necessary to be sure everyone is aware of the refund.

Chairman Freborg said it could be done with a memo to the school districts.

Senator Gary Lee said he has a question for Doug Johnson.

Mr. Johnson said he did contact Bismarck Public Schools to see how they set up their contract with Harlow's bus service. They currently are not able to get a refund when they work on a

contract basis. They worked with Harlow's about two years ago to see if they could work out

the details. The only way they could do it would be if the school district set themselves up as the vendor of the gas.

Chairman Freborg asked if they could contract to furnish the gas and let the contractor fill the buses.

Mr. Johnson said that would seem logical and that is what Bismarck was trying to do. Harlow's cannot receive the refund.

Senator Taylor said quite a few school district use contractors. How many?

Mr. Johnson said he can't guess. A lot of the larger school districts do, some of the smaller ones as well.

Senator Taylor asked if they are negotiated annually.

Mr. Johnson said he thinks they prefer an annual contract now because of the volatility of gas prices.

After a break, Senator Gary Lee said Mr. Johnson said he received a copy of Bismarck's contract with Harlow's and he thought it was being taken care of. They have let the school districts know, some were not aware of it and applied for refunds. Some went back three years and received \$25,000 in some cases.

Chairman Freborg asked what they were unaware of.

Senator Gary Lee said they were unaware they could apply for refunds. Harlow's is going to show a credit in their bill with Bismarck.

Senator Gary Lee moved a Do Not Pass on SB 2396, seconded by Senator Bakke.

Senator Gary Lee said this can be handled in the contracts. This bill has generated the discussion that is necessary.



Senator Flakoll said he echoes Senator Gary Lee. The bill doesn't allow them to do anything they can't already do unless we require North Dakota School Board Association to send out a memo.

Chairman Freborg said we could but I hope we don't.

The motion passed 5-0-0. Senator Gary Lee will carry the bill.

Date: 2/5/07  
Roll Call Vote #: /

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2396

Senate Education Committee

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Sen. Lee Seconded By Sen. Bakke

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor	✓	
Senator Flakoll	✓		Senator Bakke	✓	
Senator Gary Lee	✓				

Total Yes 5 No 0

Absent 0

Floor Assignment Sen. Lee

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

**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2007 12:36 p.m.

**Module No: SR-24-2125**  
**Carrier: G. Lee**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2396: Education Committee (Sen. Freborg, Chairman) recommends DO NOT PASS**  
**(5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2396 was placed on the**  
**Eleventh order on the calendar.**

2007 TESTIMONY

SB 2396

# **Senate Bill 2396 Summary**

Senator David P. O'Connell

Adds provision that provides schools and contractors with rights and responsibilities to file and allocate for purposes of federal fuel tax refunds for fuel used in school buses (line items 19-21, pg. 1).

**YAHOO! MAIL**

Print - Close Window

**Subject:** FW: School District tax refunds**Date:** Tue, 10 Oct 2006 16:19:30 -0400**From:** "Clancy, Lynn (Conrad)" <Lynn\_Clancy@conrad.senate.gov>**To:** bgnielson@yahoo.com**CC:** "Huffer, Joan (Conrad)" <Joan\_Huffer@conrad.senate.gov>

Hi Bev,  
Please see the note below from Frank Reischel and the attached Publication 510. I will call to see if someone may be available for a briefing and will conference you in, if that works out.

Lynn

-----Original Message-----

**From:** Gilchrist Lorelei L [mailto:lorelei.l.gilchrist@irs.gov]**Sent:** Tuesday, October 10, 2006 2:09 PM**To:** Clancy, Lynn (Conrad)**Subject:** FW: School District tax refunds

Hi Lynn,

Hopefully this will answer any questions that the School Board Association has. If they still have any questions about the excise taxes on the fuels purchased, Frank said that they may call him directly at the phone number listed below - 651-726-1472.

*Lorie Gilchrist*

Governmental Liaison

Ph: 605-226-7216 Ext. 235

Fax: 605-226-7270

Email: lorelei.l.gilchrist@irs.gov

**From:** Reischel Frank J**Sent:** Tuesday, October 10, 2006 1:48 PM**To:** Gilchrist Lorelei L**Cc:** Jaspersen Kellie L**Subject:** School District tax refunds

Lorelei, attached is Publication 510 that explains the fuel credits allowed for school districts. Pages 13-19 explain the credits in detail. The credit can be applied for by the fuel vendor or by the school district. If the fuel vendor possesses the UV (Ultimate Vendor Registration) and obtains an exemption certificate from the school district, the fuel company will apply for the credit and not charge the school district the tax. However, if the school district is traveling and fuels up at a gas station, generally the tax will be charged to the school district and they will have to apply for the fuel credit. They are considered the ultimate purchaser for diesel fuel and gasoline as explained on pages 13 and 14 of Publication 510. They will not have to apply for any exempt registration to receive the fuel tax refund from the IRS. The school buses are exempt from taxes based on type of use number 7 which is located on page 16 of Publication 510. The school district's other vehicles if used exclusively by the school district is considered a political subdivision of the state and qualify for exempt status within the type of use number 14 found on page 16. If you have any additional questions, feel free to call me at 651/726-1472. Frank Reischel

**Attachments**

Files:

15014F06.pdf (344k)

*Bu Nielson 2396*

returning from the fishing site with its catch. A vessel is not transporting property in the business of the owner, lessee, or operator by merely transporting fish or other aquatic animal life caught on the voyage.

However, the tax does apply to fuel used by a commercial vessel along the specified waterways while traveling to pick up aquatic animal life caught by another vessel and while transporting the catch of that other vessel.

**Deep-draft ocean-going vessels.** Fuel is not taxable when used by a vessel designed primarily for use on the high seas if it has a draft of more than 12 feet on the voyage. For each voyage, figure the draft when the vessel has its greatest load of cargo and fuel. A voyage is a round trip. If a vessel has a draft of more than 12 feet on at least one way of the voyage, the vessel satisfies the 12-foot draft requirement for the entire voyage.

**Passenger vessels.** Fuel is not taxable when used by vessels primarily for the transportation of persons. The tax does not apply to fuel used in commercial passenger vessels while being operated as passenger vessels, even if such vessels also transport property. Nor does it apply to ferryboats carrying passengers and their cars.

**Ocean-going barges.** Fuel is not taxable when used in tugs to move LASH and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

However, it is taxable when any of the following conditions apply.

- One or more of the barges in the tow is not a LASH barge, SEABEE barge, or other ocean-going barge carried aboard an ocean-going vessel.
- One or more of the barges is not on an international voyage.
- Part of the cargo carried is not being transported internationally.

**State or local governments.** No tax is imposed on the fuel used in a vessel operated by a state or local government in transporting property on official business. The ultimate use of the cargo must be for a function ordinarily carried out by governmental units. An Indian tribal government is treated as a state only if the fuel is used in the exercise of an essential tribal government function.



All operators of vessels used in commercial waterway transportation who acquire liquid fuel must keep adequate records of all fuel used for taxable purposes. Operators who are seeking an exclusion from the tax must keep records that will support any exclusion claimed.

Your records should include all of the following information.

- The acquisition date and quantity of fuel delivered into storage tanks or the tanks on your vessel.
- The identification number or name of each vessel using the fuel.
- The departure time, departure point, route traveled, destination, and arrival time for each vessel.

If you claim an exemption from the tax, include in your records the following additional information as it pertains to you.

- The draft of the vessel on each voyage.
- The type of vessel in which you used the fuel.
- The ultimate use of the cargo (for vessels operated by state or local governments).

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## Alcohol Sold as But Not Used as Fuel

If the credit was claimed (either as an excise tax credit or income tax credit) or a refund was claimed, you are liable for an excise tax if you did any of the following: used the mixture or straight alcohol other than as a fuel, separated the alcohol from a mixture, or mixed the straight alcohol.

Report the tax on Form 720. The rate of tax depends on the applicable rate used to figure the credit. No deposits are required.

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## Biodiesel Sold as But Not Used as Fuel

If the credit was claimed (either as an excise tax credit or income tax credit) or a refund was claimed, you are liable for an excise tax if you did any of the following: used the mixture or straight biodiesel other than as a fuel, separated the biodiesel from a mixture, or mixed the straight biodiesel.

Report the tax on Form 720. The rate of tax depends on the applicable rate used to figure the credit. No deposits are required.

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## 2.

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## Fuel Tax Credits and Refunds

Federal excise taxes are imposed on certain fuels as discussed in Chapter 1. This chapter lists the nontaxable uses of each fuel and defines the nontaxable uses. Information on the refund of second tax is included. This chapter also explains credits and refunds for the alcohol fuel mixture credit, the biodiesel mixture credit, the alcohol fuel credit, the biodiesel fuel credit, the renewable diesel credits, and the alternative fuel credits.

Information on how to make a claim for credit or refund is included in this chapter and can also be found in the instructions for the following forms.

- Form 720.

- Form 4136.
- Form 8849.
- Form 6478.
- Form 8864.

**Exported taxable fuel.** The claim rates for exported taxable fuel are listed on Form 720 (Schedule C), Form 8849 (Schedule 1), and Form 4136. Taxpayers making a claim for exported taxable fuel must include with their records proof of exportation. Proof of exportation includes:

- A copy of the export bill of lading issued by the delivering carrier,
- A certificate by the agent or representative of the export carrier showing actual exportation of the fuel,
- A certificate of lading signed by a customs officer of the foreign country to which the fuel is exported, or
- A statement of the foreign consignee showing receipt of the fuel.

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## Gasoline and Aviation Gasoline

### Ultimate Purchasers

The following are the uses of gasoline (defined earlier) for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes (credit only).
- Off-highway business use.
- Export.
- In a boat engaged in commercial fishing.
- In certain intercity and local buses.
- In a school bus.
- In a highway vehicle owned by the United States that is not used on a highway.
- Exclusive use by a nonprofit educational organization (see sales by registered ultimate vendors and registered credit card issuers later).
- Exclusive use by a state, political subdivision of a state, or the District of Columbia (see sales by registered ultimate vendors and registered credit card issuers later).
- In an aircraft or vehicle owned by an aircraft museum.

The following are the uses of aviation gasoline for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes (credit only).
- Export.
- In foreign trade.

- Certain helicopter and fixed-wing air ambulance uses.
- In commercial aviation (other than foreign trade).
- Exclusive use by a nonprofit education organization (see sales by registered ultimate vendors and registered credit card issuers later).
- Exclusive use by a state, political subdivision of a state, or the District of Columbia (see sales by registered ultimate vendors and registered credit card issuers later).
- In an aircraft owned by an aircraft museum.
- In military aircraft.

**Claims by persons who paid the tax to the government.** Except for sales to nonprofit educational organizations and states and local governments, a credit or refund is allowable to the person that paid the tax to the government if the gasoline was sold to the ultimate purchaser (including an exporter) by either that person or by a retailer for a purpose listed above.

### Sales by Registered Ultimate Vendors

This is an ultimate vendor that sells gasoline or aviation gasoline to any of the following and that is purchased without the use of a credit card.

- A state or local government for its exclusive use (including essential government use by an Indian tribal government).
- A nonprofit educational organization for its exclusive use.

The registered ultimate vendor may make the claim if the ultimate purchaser waives its right to the credit or refund by providing the registered ultimate vendor with a certificate. A sample certificate is included as *Model Certificate M* in the *Appendix*. The registered ultimate vendor must have the certificate at the time the credit or refund is claimed.

The ultimate vendor must be registered by the IRS. See *Registration Requirements* earlier.

### Credit Card Purchases

If gasoline and aviation gasoline are purchased with a credit card issued to a state or local government for its exclusive use (including essential government use by an Indian tribal government), or a nonprofit educational organization for its exclusive use, the person who extended credit to the ultimate purchaser (the credit card issuer) is treated as the person that paid the tax and makes the claim if the following conditions are met:

- Is registered by the IRS.
- Has established that the amount of tax has not been collected from the person who purchased the gasoline or has obtained written consent from the ultimate purchaser to the allowance of the credit or refund, and
- Has repaid or agreed to repay the amount of the tax to the ultimate vendor, has ob-

tained the written consent of the ultimate vendor to the allowance of the credit or refund, or has made arrangements which provides the ultimate vendor with reimbursement of the tax.

If the requirements above are not met by the credit card issuer, the credit card issuer must collect the tax from the ultimate purchaser and only the ultimate purchaser may make the claim.

**How to make the claim.** If the claim is made by the credit card issuer, see Schedule C (Form 720) or Schedule 8 (Form 8849).

If the claim is made by the ultimate purchaser, see *Ultimate Purchasers* earlier.

## Undyed Diesel Fuel and Undyed Kerosene (Other Than Kerosene Used in Aviation)

For conditions to an allowance of a credit or refund on exported dyed diesel fuel and dyed kerosene, see *Exported taxable fuel* above.

### Ultimate Purchasers

The following are nontaxable uses of diesel fuel and kerosene (defined earlier) for which a credit or refund may be allowable to an ultimate purchaser.

- On a farm for farming purposes.
- Off-highway business use.
- Export.
- In a qualified local bus.
- In a school bus.
- Other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (such as home heating oil).
- In a highway vehicle owned by the United States that is not used on a highway.
- Exclusive use by a nonprofit educational organization (see sales by registered ultimate vendors and registered credit card issuers later).
- Exclusive use by a state, political subdivision of a state, or the District of Columbia (see sales by registered ultimate vendors and registered credit card issuers later).
- In a vehicle owned by an aircraft museum.
- As a fuel in a propulsion engine of a diesel-powered train (subject to back-up tax, discussed earlier).

### Sales by Registered Ultimate Vendors

The following are the sales for which a credit or refund may be allowable to the registered ultimate vendor only.

- Undyed diesel fuel or undyed kerosene sold for the exclusive use by a state or

local government (if credit card rules (defined below) do not apply),

- Undyed kerosene sold from a blocked pump (defined below), or
- Undyed diesel fuel or undyed kerosene used in certain intercity and local buses, only if the ultimate purchaser waives its right to the credit or refund by providing the registered ultimate vendor with a waiver.

### Registered ultimate vendor (state use).

This is a person that sells undyed diesel fuel or undyed kerosene to a state or local government for its exclusive use (including essential government use by an Indian tribal government). The diesel fuel or kerosene must be purchased by the state without the use of a credit card, issued to the state by the credit card issuer, in order for the ultimate vendor to make the claim. The ultimate vendor must be registered by the IRS. See *Registration Requirements* earlier.

### Registered ultimate vendor (blocked pump).

This is an ultimate vendor that sells undyed kerosene from a blocked pump.

A credit or refund may be allowable to a registered ultimate vendor (blocked pump) if the vendor sold to a buyer undyed kerosene from a blocked pump for use other than as a fuel in a diesel-powered highway vehicle and the vendor had no reason to believe the kerosene would not be used in that manner.

**Blocked pump.** A blocked pump is a fuel pump that meets all the following requirements.

1. It is used to make retail sales of undyed kerosene for use by the buyer in any nontaxable use.
2. It is at a fixed location.
3. It is identified with a legible and conspicuous notice stating, "UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY."
4. It meets either of the following conditions.
  - a. It cannot reasonably be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or train.
  - b. It is locked by the vendor after each sale and unlocked by the vendor only in response to a buyer's request for undyed kerosene for use other than as a fuel in a diesel-powered highway vehicle or train.

### Registered ultimate vendor (certain intercity and local buses).

This is an ultimate vendor that sells undyed diesel fuel or undyed kerosene to the ultimate purchaser for use in certain intercity and local buses.

The registered ultimate vendor may make the claim if the ultimate purchaser waives its right to the credit or refund by providing the registered ultimate vendor with a waiver. A sample waiver is included as *Model Waiver N* in the *Appendix*. The registered ultimate vendor must have the waiver at the time the credit or payment is claimed.