

Minnesota Department of Revenue

STATEMENT OF NEED AND REASONABLENESS

Proposed Rules Relating to Gasoline and Special Fuel Tax; Refunds for Fuel Used in Power Take-off Units; Minnesota Rules, part 8125.1301

I. INTRODUCTION

The Minnesota Department of Revenue plans to propose rules relating to the Gasoline and Special Fuel Tax; Refunds for Fuel Used in Power Take-off Units. This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed rules. In preparing this Statement of Need and Reasonableness (SONAR), the Department has considered this rules' impact on local public bodies, agricultural land, and small businesses. The proposed rules will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land, or small business.

A Request for Comments regarding the proposed rules was published in the *State Register* on April 7, 1997. The Request for Comments invited interested persons to submit comments or information on these planned rules in writing to the Department by Friday, September 19, 1997. In addition, the Department set up informal meetings with several industry representatives who had expressed an interest in the content of the proposed rules and who requested a meeting with the Department. Information gained from these meetings was extremely useful in drafting the proposed rules.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, please contact: Larry Trimble, Director, at the Minnesota Department of Revenue, Petroleum Tax Division, 10 River Park Plaza, St. Paul, MN 55146; by phone at (612) 296-0889; or by fax at (612) 297-2099. TDD users may call the Department at 297-2196. You may also e-mail Mr. Trimble at: larry.trimble@state.mn.us

III. DEPARTMENT'S STATUTORY AUTHORITY

Minnesota Statutes, section, 270.06, clause (14), authorizes the Department to adopt rules for the administration and enforcement of state tax laws. In addition, Minnesota Statutes, section 296.27, authorizes the Department to adopt rules relating to the administration and enforcement of laws regulating the sale, distribution, and use of petroleum products and special fuel. The 1997 Legislature directed the Department to

“adopt rules that determine the rates and percentages necessary to develop formulas for calculating and administering the refund” under Minnesota Statutes, section 296.18, subd. 1 (2)(b). (See: Laws 1997, chapter 231, article 7, section 5)

Under these statutes, the Department has the necessary authority to adopt the proposed rules.

IV. NEED FOR THE RULES

Minnesota Statutes, chapter 14, requires the Department to explain the facts establishing the need and reasonableness for the rules as proposed. “Need” means that a problem exists which requires administrative attention. The need for the rules is explained in this section.

As already stated, the 1997 Legislature directed the Department to “adopt rules that determine the rates and percentages necessary to develop formulas for calculating and administering the refund.” These proposed rules are in response to this directive from the Legislature. The rules are needed in order for the Department to be able to calculate and administer the refunds properly.

V. REASONABLENESS OF THE RULES

Minnesota Statutes, chapter 14 requires the Department to explain the facts establishing the reasonableness of the proposed rules. “Reasonableness” means that there is a rational basis for the Department’s proposed action. The reasonableness of the proposed rules is explained in this section.

A. Reasonableness of the Rules as a Whole

The overall approach of the proposed rules is reasonable, because the Department has been directed by the Minnesota Legislature to adopt rules in order to effectively administer the new refund program. One of the best tests of the reasonableness of a proposed rule is the fact that it has been drafted using input from a broad spectrum of persons affected by the rule. The drafting of these proposed rules was not done unilaterally by the Department. It was accomplished as a team effort. The Department met with interested parties, including representatives from most of the affected industries, to come up with a fair and reasonable method to calculate and administer the refunds. In addition, the Department surveyed several other states with similar tax refund provisions and used these models in drafting its own language.

Minnesota Statutes, section 14.131 sets out six factors for a regulatory analysis that must be included in the SONAR. The Department’s response to these six factors follows:

(1) “a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.”

The classes of persons who will be affected by the proposed rules are individuals and companies who own and operate vehicles that have a power take-off unit (PTO) or auxiliary engine fueled from the same supply tank as the highway vehicle. All of these affected parties will be eligible to benefit from the proposed rules in that they will now be able to file a claim for refund for the fuel used in their PTO's. Following is a list of industries that utilize these types of vehicles -- those that would most likely be affected by these proposed rules: (This list is not all-inclusive)

- Concrete pumping trucks
- Corn shellers
- Sewer cleaning/jet vactors
- Ready mixed concrete trucks
- Sanitation and garbage trucks, including transfer trucks, rolloff trucks, recycling trucks, and container delivery trucks
- Septic pumpers
- Self loaders and chip hauling vans (timber/logging)
- Line truck with digger/aerial lift (utility trucks)
- Semi-wreckers
- Bulk feed trucks
- Service truck with jack hammer/drill/crane
- Oil and water well service trucks (pump hoists and drill rigs)
- Dump trailer trucks and dump trucks
- Seeder trucks
- Tank trucks
- Tank transport
- Fertilizer spreaders/Bulk fertilizer tender trucks
- Feed grinders
- Truck with hydraulic winch
- Carpet cleaning van
- Wreckers
- Hot asphalt distribution trucks
- Car carrier with hydraulic winch

(2) “ the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”

The Department expects there to be only minimal costs to itself in processing the refund claims and issuing the refunds. No other agencies are affected. The expected impact on state revenues is also minimal.

(3) “a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”

In meeting with many industry representatives, the Department is confident that its proposed rules reflect the least costly and least intrusive method of calculating the refunds, to the ultimate benefit of the taxpayer.

(4) “a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.”

The Department did consider having one straight percentage for calculating the refund. This method, however, was rejected as being inequitable for certain taxpayers/industries. The proposed rules contain different percentages for different types of vehicles, as well as optional ways to calculate the refund if a hubometer is used or if on-board computer data or other data is provided. These different methods are necessary and reasonable in order to be fair to the various industries and different types of vehicles represented.

(5) “the probable costs of complying with the proposed rule.”

Since the data or information needed to calculate the refund is data generally maintained by the industries in their ordinary course of business, there should be no additional cost to file for the refund. Some individuals or industries may elect to purchase hubometers for their vehicles, in lieu of having the Department use the straight percentage to calculate the refunds. The cost of a hubometer, according to Blaine Truck & Trailer Parts (telephone: (800) 833-3257), runs from \$34, for the meter alone, to \$50, for the meter with the mounting bracket and/or a wheelhub cover. This is a one-time cost, per vehicle. Industry representatives have expressed that this one-time, minimal cost, is not an unreasonable burden on their members, in order to provide the Department with accurate data, with which to calculate the refund.

(6) “an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”

Not applicable.

B. Reasonableness of Individual Rules

This section addresses the reasonableness of each specific part of the proposed rules.

Minnesota Rules, part 8125.1301.

Subpart 1. General rule. This provision sets out the general rule for claiming a refund for taxes paid on gasoline or special fuel used in a power take-off unit (PTO). The provision directs the claimant to file a claim for refund, as directed under subpart 2, and that the refund will be calculated as directed under subparts 4 or 5. The statement that the refund may not be obtained for fuel consumed during idling time is reasonable because the Department is directed as such in the underlying statutory authority for the rules.

Subpart 2. Claim for refund. Claims for refund must be submitted on a form PDR-1. This is reasonable because all other refunds of gasoline or special fuel tax are obtained by filing this form with the Department. Taxpayers of the gasoline and special fuel tax are, therefore, already familiar with the form and the general filing procedures.

Claims must be filed within one year of the date of purchase of the fuel. This is reasonable because this is the normal statute of limitations for claims for refund.

Taxpayers who elect to file on an annual basis, whether that be a calendar-year basis or fiscal-year basis, must file their claims within 60 days of the end of their accounting year. This extension is reasonable because it allows certain taxpayers additional time to file for the refund.

All claims for refund must have attached an original sales ticket, bulk fuel invoice, or a signed dealer affidavit. The requirement to include one of these attachments is reasonable because the Department must be able to determine that the tax has been paid prior to the issuance of a refund.

Subpart 3. Records to be maintained. This provision lists the records that must be maintained by the claimant. It is necessary and reasonable for the Department to require that these records be maintained, and made available for inspection, because the Department must be able to determine whether the claimant is entitled to the refund claimed.

Subpart 4. Calculation of the refund. This provision lists the straight percentages that the Department will use to calculate the refund, based on the type of vehicle on which the PTO is attached. The amounts are specified as a percentage of the total taxable fuel used by the vehicle; in other words, the percent of the fuel actually placed into the supply tank of the motor vehicle on which the PTO is attached. Seven other states with similar refund provisions for PTO's were surveyed and most of the percentages listed are based on a comparison with those other states' percentages. Some percentages listed are different than other states, based on additional information provided to the Department by industry representatives. In no case is the Minnesota percentage listed less than the percentage listed for any of the other states surveyed.

Subpart 5. Use of hubometers or hub meters; information needed for refund claim.

A. This provision defines “hubometer” or “hub meter,” for purposes of these rules, as a device that measures the road use mileage of a vehicle. The information gained from the use of a hubometer may vary, depending on whether the hubometer is used on a vehicle where (1) the odometer measures only the total road mileage and no PTO miles, or (2) the odometer measures both the road mileage and the PTO miles, or the total odometer miles. Depending on the mileage registered by the odometer on the vehicle, the Department will use either the formula given in paragraph B or the formula given in paragraph C to calculate the appropriate refund for the claimant. This subpart and the formulas contained herein are to be used only by claimants who use hubometers on their vehicles and who provide the Department with the necessary data to calculate the refunds. If sufficient information or documentation is not provided by the claimant with the refund claim, the Department will use the straight percentage listed under subpart 4 to calculate the refund. This position by the Department is reasonable in order to assure that the claims filed will contain sufficient records or the specific documentation needed in order to calculate the refunds properly and accurately. (See subpart 7)

B. This provision outlines the formula used to calculate the refund if the hubometer is used on a vehicle where the odometer on the vehicle measures only the total road mileage and no PTO mileage. This formula is reasonable because it will accurately calculate the refundable PTO gallons.

C. This provision outlines the formula used to calculate the refund if the hubometer is used on a vehicle where the odometer on the vehicle measures both road mileage and PTO mileage, or total odometer miles. This formula is reasonable because it will accurately calculate the refundable PTO gallons.

Subpart 6. Computerized records; information needed for refund claim.

Some vehicles contain an on-board computer which enables a claimant to produce an accurate print-out of that particular vehicle’s mileage and performance. These computer print-outs may also state the exact amount of fuel used to propel a PTO attached to that vehicle. This provision states that the Department will accept these computerized records or print-outs to substantiate a refund claim, and that the computer information will be used to independently calculate the refund, as opposed to using the applicable straight percentage under subpart 4. It is reasonable for the Department to accept these alternative records because they accurately reflect the information needed, and because in some cases they are extremely convenient for the claimant to provide.

Subpart 7. Insufficient information or documentation. This provision states that if the claimant does not submit sufficient documentation as specified in subparts 5 or 6, the Department may apply the general percentage listed for the applicable vehicle under subpart 4. This is reasonable in order to assure that the claims filed will contain

sufficient records or documentation needed to calculate the refunds properly and accurately.

VI. ADDITIONAL NOTICE

In addition to mailing a copy of the proposed rules and SONAR to the Department's official Rulemaking Mailing List, the Department also intends to mail copies of the information to an additional Mailing List made up of industry representatives, legislators, business owners, and lobbyists, who have expressed an interest in the content of the proposed rules. In addition, the Department plans to put the proposed rules on the Department's web site, the address of which is:

<http://www.taxes.state.mn.us/laws/laws.html>

Several industry representatives have voluntarily published articles in their industry newsletters regarding the proposed rules:

- The June 1997 edition of "Well Advisor," a newsletter published by the Minnesota Water Well Association, has a front-page article explaining the legislative change and the Department's plan to propose rules. The article also recommends to its members that "hub meters" be installed on their vehicles in order to correctly determine the mileage applicable to the refund.
- The June 11, 1997 issue of the "Minnesota Petroleum Marketer" (Bulletin No. 1560), a newsletter published by the Northwest Petroleum Association, contained an article alerting its members to the fact that a refund will soon be available for fuel used in PTO's and that the Department will be adopting rules outlining the procedure.

The October 27, 1997 issue of the "News Conveyor," published by the Northwest Agri-Dealers Association also contains an article about the Department's proposed rules.

VII. COMMISSIONER OF FINANCE REVIEW OF CHARGES

Minnesota Statutes, section 16A.1285, does not apply because the proposed rules do not set or adjust fees or charges.

VIII. LIST OF WITNESSES

If these rules go to public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Larry Trimble, Director of the Petroleum Division, Department of Revenue, will testify about the development and content of the rules.
2. Linda Geier, Attorney with the Department of Revenue, will also testify about the development and content of the rules.
3. Other Department of Revenue employees, as deemed necessary or appropriate.

IX. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Dated: _____

James L. Girard
Commissioner of Revenue