

ILLINOIS REGISTER

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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 500
- 3) 

<u>Section Number:</u> 500.210	<u>Proposed Action:</u> Amendment
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- 4) Statutory Authority: Implementing the Motor Fuel Tax Law [35 ILCS 505] and authorized by Section 2505-20 of the Department of Revenue Law [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of P.A. 102-1019 that modify the conditions under which dyed diesel may be sold free from Motor Fuel Tax for non-highway purposes to avoid tax-free sales for resale to unlicensed persons. Under the prior version of the statute, as long as dyed diesel fuel was delivered in a manner that met the statutory requirements designed to ensure its non-highway use, the statute allowed the sale to “someone other than a licensed distributor or supplier.” This change provides that dyed diesel must be sold by a licensed distributor or supplier to the end user of the fuel who is not a licensed distributor or supplier, thus prohibiting the sale for resale of dyed diesel to anyone who is not a licensed distributor or supplier.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number</u> 500.200	<u>Proposed Action</u> Amendment	<u>Illinois Register Citation</u> 46 Ill. Reg. 13956; August 5, 2022
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- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Samuel J. Moore  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The changes made by P.A. 102-1019 related to Motor Fuel Tax and implemented in this rulemaking affect any small business licensed as distributors or suppliers of motor fuel.
- B) Reporting, bookkeeping or other procedures required for compliance: General bookkeeping.
- C) Types of professional skills necessary for compliance: Bookkeeping, accounting.

- 14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:

42 Wholesale Trade  
44-45 Retail Trade

- B) Categories that the agency reasonably believes the rulemaking will impact, including:

viii. record keeping

- 15) Regulatory Agenda on which this rulemaking was summarized: July 2022

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The full text of the Proposed Amendment begins on the next page:

**Section 500.210 Documentation of Tax-free Sales of Motor Fuel Made by  
Licensed Distributors and Suppliers**

- a) A distributor or supplier may make tax free sales of motor fuel, with respect to which the distributor or supplier is otherwise required to collect tax, only as specified in subsections (b) through (i).
- b) Sales of motor fuel delivered to points outside Illinois. The seller must retain the invoice date and number, name of carrier, bill of lading/manifest number, purchaser's name and address, Illinois origin, destination location, and invoiced gallons.
- c) Sales of motor fuel to the Federal government or its instrumentalities. The seller shall retain the invoice number and date, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, and invoiced gallons.
- d) Sales of motor fuel to a municipal corporation owning and operating a local transportation system for public service in Illinois. The seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination and invoiced gallons. In addition, the seller shall include with the seller's return a Certificate of Exemption, in the form required by Section 500.280 of this Part, for each sale.
- e) Sales of motor fuel to a privately owned public utility owning and operating 2-axle vehicles designed and used for transporting more than 7 passengers, for the operation of vehicles that are used as common carriers in general transportation of passengers, are not devoted to any specialized purpose and are operated entirely within the territorial limits of a single municipality or any group of municipalities or in a close radius thereof, and the operations of which are subject to the regulations of the Illinois Commerce Commission. The seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination and invoiced gallons. In addition, the seller shall include with the seller's return a Certificate of Exemption, in the form required by Section 500.285 of this Part, for each sale.

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- f) Sales of gasoline for aviation purposes. A Seller shall retain the invoice date and number, name of carrier, bill of lading/manifest number, name of purchaser, Illinois origin, Illinois destination, and invoiced gallons. The seller must also include a "Certificate of Gas Sold For Propulsion of Aircraft" with the seller's return to document this type of exemption.
- g) Sales to end users who are not licensed distributors or suppliers
  - 1) Sales of dyed fuel sold by licensed distributors or suppliers to end users of the fuel who are not licensed distributors or licensed suppliers for non-highway purposes only when:
    - A) *The fuel is delivered from a vehicle designed for the specific purpose of such sales and delivered directly into a stationary bulk storage tank that displays the notice required by Section 4f of the Act;*
    - B) *The fuel is delivered from a vehicle designed for the specific purpose of such sales and delivered directly into the fuel supply tanks of non-highway vehicles that are not required to be registered for highway use; or*
    - C) *The fuel is dispensed from a dyed diesel fuel dispensing facility that has withdrawal facilities that are not readily accessible to and are not capable of dispensing dyed diesel fuel into the fuel supply tank of a motor vehicle.*
  - 2) *For purposes of this subsection (g), a dyed diesel fuel dispensing facility is considered to have withdrawal facilities that are "not readily accessible to, and not capable of dispensing dyed diesel fuel into, the fuel supply tank of a motor vehicle" only when the dyed diesel fuel is delivered from:*
    - A) *A dispenser hose that is short enough that it will not reach the fuel supply tank of a motor vehicle; or*
    - B) *A dispenser that is enclosed by a fence or other physical barrier so that a vehicle cannot pull alongside the dispenser to permit fueling. (Section 6 of the Law)*

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- 3) For each sale of dyed diesel fuel described in this subsection (g), a specific notation of the nature of the exemption must be made on the invoice for these sales. The seller must retain the invoice number and date, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination, and invoiced gallons sold (see 86 Ill. Adm. Code 130.815). A legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only, Penalty For Taxable Use" must appear on all shipping papers (including delivery tickets or manifests and excluding material safety data sheets), bills of lading, and invoices accompanying any sale of dyed diesel fuel.
- h) Sales of 1-K kerosene delivered into a storage tank located at a facility that has withdrawal facilities that are readily accessible to, and are capable of dispensing 1-K kerosene into the fuel supply tanks of, motor vehicles are taxable. *For purposes of the exemption described in this subsection (h), a facility is considered to have withdrawal facilities that are not "readily accessible to and capable of dispensing 1-K kerosene into the fuel supply tanks of motor vehicles" only when the 1-K kerosene is delivered from:*
  - 1) *a dispenser hose that is short enough that it will not reach the fuel supply tank of a motor vehicle; or*
  - 2) *a dispenser that is enclosed by a fence or other physical barrier so that a vehicle cannot pull alongside the dispenser to permit fueling.* (Section 2 of the Law)
- i) Sales of motor fuel made to licensed distributors or suppliers. A specific notation of the nature of the exemption must be made on the invoice for these sales. Also, the seller must retain the invoice number and date, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination, purchaser's license number, and invoiced gallons sold.

(Source: Amended at 47 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)