

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 1024

INTRODUCER: Commerce Committee and Senator Dean

SUBJECT: Reimbursement of Federal Excise Taxes on Fuel

DATE: March 18, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.			JU	
3.			FT	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1024 (CS) creates a new section to address contracts which require reimbursement of federal excise taxes. This new section does not require any action by the Florida Department of Revenue (DOR).

This CS allows a party who is required by contract to reimburse another party for federal fuel excise taxes imposed by federal law, to exercise an option to make the reimbursement 1 business day before the tax is to be remitted to the Internal Revenue Service (IRS). The CS specifies that this does not relieve a party of an obligation to make reimbursement but alters the timing of that payment.

This CS requires that notice of exercise of the option be made in writing, and shall not be effective for 30 days or the beginning of the other party's next federal excise tax quarter, whichever is later. The reimbursed party may require a security for the amount due and may request funds to be delivered by electronic transfer.

This applies to all contracts entered into after July 1, 2009, and all continuing contracts with no fixed expiration in effect on July 1, 2009; this does not apply to contracts of fixed expiration entered into prior to July 1, 2009.

CS/SB 1024 creates s. 686.701 of the Florida Statutes.

II. Present Situation:

There are about 9,200 retail facilities in Florida that purchase fuel products subject to excise taxes.

Federal Fuel Excise Taxes:

The federal excise tax is imposed on the removal, entry, or sale of fuel. Generally when a distributor or retailer picks-up the fuel at a terminal rack, the tax is imposed.¹ This is also known as “tax at the rack.” The tax is imposed solely upon certain entities, such as producers, and not on consuming buyers.²

Federal excise taxes are collected by the IRS through the submission of payment with applicable forms, either electronically or paper. Generally, semimonthly deposits of excise taxes are required. A semimonthly period is the first 15 days of a month (the first semimonthly period) or the 16th through the last day of a month (the second semimonthly period).³

26 U.S.C. s. 4081 (s. 4081) imposes the federal excise tax upon taxable fuels. “Taxable fuel” is defined in 26 U.S.C. 4083 as, in general, gasoline, diesel fuel, and kerosene. Under s. 4081, the applicable tax rates are:

- Gasoline, other than aviation gasoline, 18.3 cents per gallon (after September 30, 2011, 4.3 cents per gallon).
- Aviation Gasoline, 19.3 cents per gallon (after March 31, 2009, 4.3 cents per gallon)
- Commercial Aviation Kerosene, 4.3 cents per gallon
- All Other Aviation Kerosene, 21.8 cents per gallon (after March 31, 2009, 4.3 cents per gallon)
- Diesel Fuel or Kerosene, 24.3 cents per gallon (after September 30, 2011, 4.3 cents per gallon).

ExSTARS (Excise Summary Terminal Activity Reporting System) is a fuel reporting system developed with the cooperation of the IRS, Department of Transportation, States, and Motor Fuel Industry. It is designed to track the movement of fuel to and from approved terminals by electronically filed monthly returns (Fuel Transaction Reports) reflecting fuel quantity and type as it moves through the distribution chain. The Fuel Transaction Reports are filed by approved terminal operators and bulk carriers who report from an approved terminal with a Terminal Control Number. The Terminal Control Number (TCN)/Terminal Locations Directory contains

¹ IRS Publication 510 (2008), Excise Taxes, Part 1, at <http://www.irs.gov/publications/p510/index.html> (last visited 3/3/2009).

² See Gurley v. Rhoden, 421 U.S. 200, 207-208 (1975).

³ IRS Publication 510 (2008), Excise Taxes, Part 3, at <http://www.irs.gov/publications/p510/index.html> (last visited 3/3/2009).

terminal control numbers and locations for IRS approved terminals. The Fuel Transaction reports are compared to the information entered on Quarterly Federal Excise Tax returns.⁴

26 U.S.C. s. 4091 was repealed in on October 24, 2004 by Pub.L. 108-357, Title VIII, s. 853(d)(1); this repealed section dealt with aviation-grade kerosene.

Florida Fuel Taxes:

The Florida Department of Revenue (DOR) is created by s. 20.21, F.S., in part to collect taxes. Section 213.05, F.S., authorizes DOR to collect taxes pursuant to ch. 206, F.S., for motor and other fuel taxes. DOR is not authorized or directed to collect federal excise taxes on motor or other fuels.

Chapter 206, F.S., directs how state and local taxes will be imposed and collected for fuel in Florida. Sales of motor fuel, diesel fuel, and aviation fuel are taxed under this chapter. On January 1, 2009, the overall Florida tax rates on motor fuel and diesel fuel increased by \$0.008. Florida law requires annual adjustments to the state fuel tax rates and the State Comprehensive Enhanced Transportation System (SCETS) tax rate, based on the National Consumer Price Index. The applicable taxes for 2009 are:⁵

- Motor fuel state tax increased from 15.6 cents per gallon to 16.1 cents per gallon.
- Diesel fuel state tax increased from 15.6 cents per gallon to 16.1 cents per gallon
- Diesel fuel SCETS and local option tax rates increased from 13.4 cents per gallon to 13.7 cents per gallon statewide.
- Aviation fuel state tax remained at 6.9 cents per gallon.
- Terminal suppliers must collect a state fuel tax of \$0.161 at the loading rack and a minimal local option tax of \$0.106 on each gallon of gasoline sold to licensed wholesalers.
- Wholesales must remit to DOR the local option tax on gasoline sold to retail dealers or end-users above the minimum \$0.106 collected by terminal suppliers.

In FY 2007-08, according to statistics from DOR, there were a total of 10,079,132,913.61 taxable gallons of fuel in Florida.⁶ Of that total, 8,440,146,629.33 gallons were motor fuel, and 1,638,986,284.28 gallons were diesel fuel.

Florida law allows, after obtaining written consent of the executive director of the department, the reimbursement for the Florida excise tax on motor fuels to be reimbursed no later than the last business day before the taxes are due to be remitted to DOR. Consent by the department is conditioned upon a wholesaler having a license currently in good standing and is subject to a bond required pursuant to s. 206.05(1), F.S.⁷

⁴ IRS ExSTARS website at <http://www.irs.gov/businesses/small/article/0,,id=177193,00.html> (last visited 3/2/2009), and IRS "Motor Fuel Excise Tax EDI Guide", at <http://www.irs.gov/pub/irs-pdf/p3536.pdf> (last visited 3/2/2009).

⁵ "Fuel Taxes Adjusted Beginning January 1, 2009" TIP 08B05-0, issued Nov 28, 2008, at <https://taxlaw.state.fl.us/wordfiles/MSF%20TIP%2008B05-01.pdf> (last visited 3/2/2009).

⁶ Fuel Tax Statistics for FY 08, at http://dor.myflorida.com/dor/taxes/fuel_tax.html (last visited 3/2/2009).

⁷ Section 206.43(5), F.S.

Fuel Supply Contracts:

The typical fuel supply contract details the quantities of fuel involved, the pricing mechanism, payment of taxes, the relevant fuel performance guarantees, and the contract's duration. Generally, the contract terms require payment of the state and federal tax when fuel is picked up at the rack or 3 to 5 days from that date.

III. Effect of Proposed Changes:

Section 1 creates s. 686.701, F.S., relating to contracts which require reimbursement of federal excise taxes. This section allows a party who is required by a fuel supply contract to reimburse another party for federal fuel excise taxes imposed by 26 U.S.C. s. 4081, to exercise an option to make the reimbursement 1 business day before the day on which the tax is due to the IRS. The exercise of the option does not relieve a party of an obligation to make reimbursement but alters the timing of that payment permanently.

The reimbursing party must provide notice in writing to the reimbursed party of the intent to exercise the option provided by the new section. This notice shall state the effective date of the exercise of the option, but the effective date cannot be earlier than either 30 days after the notice or the beginning of the reimbursed party's next federal excise tax quarter, whichever is later. The reimbursed part may require a security for the amount due, in proportion that the amount due is to the contract as a whole, and may request funds to be delivered by electronic transfer.

This applies to all contracts entered into or renewed after July 1, 2009, and all continuing contracts with no fixed expiration in effect on July 1, 2009; this does not apply to contracts of fixed expiration entered into prior to July 1, 2009.

Section 2 provides an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 10 of the Florida Constitution, deals with prohibited laws and states "no bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed."

Florida courts may consider the application of this statutorily permitted alteration of private continuing contracts, and may find that it violates the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parties to private fuel supply contracts will be effected differently depending on whether they are the reimbursing or the reimbursed party. Parties exercising the option will be able to retain their funds for a longer period of time prior to reimbursement; this would allow Florida retailers to keep this money longer. Parties subject to the option who are to be reimbursed will be required to wait to receive the funds until the day before they are due to the IRS.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Commerce Committee on March 17, 2008:

The committee substitute moves the proposed statute from the sales tax chapter (ch. 212, F.S.) to ch. 686, F.S., which deals with sales, distribution, and franchise relationships; and deletes a reference in the bill to a federal law that has been repealed.

B. Amendments:

None.