

MOTOR AND SPECIAL FUEL TAX ACT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to special fuels.

Highlighted Provisions:

This bill:

- ▶ amends the definition of clean fuel to include liquified natural gas;
- ▶ provides that no tax is imposed or collected on liquified natural gas; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-13-102, as last amended by Laws of Utah 2000, Chapter 258

59-13-301, as last amended by Laws of Utah 2008, Chapters 153 and 382

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-13-102** is amended to read:

59-13-102. Definitions.



28 As used in this chapter:

29 (1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the
30 operation of aircraft.

31 (2) "Clean fuel" means:

32 (a) the following special fuels:

33 (i) propane;

34 (ii) compressed natural gas; ~~[or]~~

35 (iii) liquified natural gas; or

36 ~~[(iii)]~~ (iv) electricity; or

37 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal
38 clean Air Act Amendments of 1990, Title II.

39 (3) "Commission" means the State Tax Commission.

40 (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known,
41 offered for sale, or used as a fuel in diesel engines.

42 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be
43 known or sold, when the liquid is used in an internal combustion engine for the generation of
44 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject
45 to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

46 (5) "Distributor" means any person in this state who:

47 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at
48 retail or wholesale;

49 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,
50 distribution, or sale in this state;

51 (c) is engaged in the business of purchasing motor fuel for resale in wholesale
52 quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;
53 or

54 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

55 (i) federally certificated air carriers; and

56 (ii) other persons.

57 (6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec.
58 4082 or United States Environmental Protection Agency or Internal Revenue Service

59 regulations and that is considered destined for nontaxable off-highway use.

60 (7) "Exchange agreement" means an agreement between licensed suppliers where one
61 is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier
62 or the other supplier's customer at the loading rack of the terminal where the delivering supplier
63 holds an inventory position.

64 (8) "Federally certificated air carrier" means a person who holds a certificate issued by
65 the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or
66 scheduled operation, as defined in 14 C.F.R. Sec. 119.3.

67 (9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is
68 generally used in an engine or motor for the generation of power, including aviation fuel, clean
69 fuel, diesel fuel, motor fuel, and special fuel.

70 (10) "Highway" means every way or place, of whatever nature, generally open to the
71 use of the public for the purpose of vehicular travel notwithstanding that the way or place may
72 be temporarily closed for the purpose of construction, maintenance, or repair.

73 (11) "Motor fuel" means fuel that is commonly or commercially known or sold as
74 gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

75 (12) "Motor fuels received" means:

76 (a) motor fuels that have been loaded at the refinery or other place into tank cars,
77 placed in any tank at the refinery from which any withdrawals are made directly into tank
78 trucks, tank wagons, or other types of transportation equipment, containers, or facilities other
79 than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not
80 involving transportation are made directly; or

81 (b) motor fuels that have been imported by any person into the state from any other
82 state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when,
83 and the place where, the interstate transportation of the motor fuel is completed within the state
84 by the person who at the time of the delivery is the owner of the motor fuel.

85 (13) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used,
86 designed, or maintained for transportation of persons or property which:

87 (i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000
88 pounds;

89 (ii) has three or more axles regardless of weight; or

90 (iii) is used in a combination of vehicles when the weight of the combination of
91 vehicles exceeds 26,000 pounds gross vehicle weight.

92 (b) "Qualified motor vehicle" does not include a recreational vehicle not used in
93 connection with any business activity.

94 (14) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which
95 consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a
96 refinery or terminal into a motor vehicle, rail car, or vessel.

97 (15) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel
98 fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel
99 fuel. Removal does not include:

100 (a) loss by evaporation or destruction; or

101 (b) transfers between refineries, racks, or terminals.

102 (16) (a) "Special fuel" means any fuel regardless of name or character that:

103 (i) is usable as fuel to operate or propel a motor vehicle upon the public highways of
104 the state; and

105 (ii) is not taxed under the category of aviation or motor fuel.

106 (b) Special fuel includes:

107 (i) fuels that are not conveniently measurable on a gallonage basis; and

108 (ii) diesel fuel.

109 (17) "Supplier," as used in Part 3, Special Fuel, means a person who:

110 (a) imports or acquires immediately upon importation into this state diesel fuel from
111 within or without a state, territory, or possession of the United States or the District of
112 Columbia;

113 (b) produces, manufactures, refines, or blends diesel fuel in this state;

114 (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to
115 which there has been no previous taxable sale or use; or

116 (d) is in a two party exchange where the receiving party is deemed to be the supplier.

117 (18) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of
118 diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel
119 is removed for distribution at a rack.

120 (19) "Two party exchange" means a transaction in which special fuel is transferred

121 between licensed suppliers pursuant to an exchange agreement.

122 (20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing
123 requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental
124 Protection Agency or Internal Revenue Service regulations.

125 (21) "Use," as used in Part 3, Special Fuel, means the consumption of special fuel for
126 the operation or propulsion of a motor vehicle upon the public highways of the state and
127 includes the reception of special fuel into the fuel supply tank of a motor vehicle.

128 (22) "User," as used in Part 3, Special Fuel, means any person who uses special fuel
129 within this state in an engine or motor for the generation of power to operate or propel a motor
130 vehicle upon the public highways of the state.

131 (23) "Ute tribal member" means an enrolled member of the Ute tribe.

132 (24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

133 (25) "Ute trust land" means the lands:

134 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for
135 the benefit of:

136 (i) the Ute tribe;

137 (ii) an individual; or

138 (iii) a group of individuals; or

139 (b) specified as trust land by agreement between the governor and the Ute tribe meeting
140 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

141 Section 2. Section **59-13-301** is amended to read:

142 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**
143 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

144 (1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section
145 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

146 (i) removal of undyed diesel fuel from any refinery;

147 (ii) removal of undyed diesel fuel from any terminal;

148 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or
149 warehousing;

150 (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under
151 this part unless the tax has been collected under this section;

- 152 (v) any untaxed special fuel blended with undyed diesel fuel; or
- 153 (vi) use of untaxed special fuel other than propane or electricity.
- 154 (b) The tax imposed under this section shall only be imposed once upon any special
- 155 fuel.
- 156 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:
- 157 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon
- 158 the public highways of the state, but this exemption applies only in those cases where the
- 159 purchasers or the users of special fuel establish to the satisfaction of the commission that the
- 160 special fuel was used for purposes other than to operate a motor vehicle upon the public
- 161 highways of the state; or
- 162 (ii) is sold to this state or any of its political subdivisions.
- 163 (b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that:
- 164 (i) is sold to the United States government or any of its instrumentalities or to this state
- 165 or any of its political subdivisions;
- 166 (ii) is exported from this state if proof of actual exportation on forms prescribed by the
- 167 commission is made within 180 days after exportation;
- 168 (iii) is used in a vehicle off-highway;
- 169 (iv) is used to operate a power take-off unit of a vehicle;
- 170 (v) is used for off-highway agricultural uses;
- 171 (vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle
- 172 upon the highways of the state; or
- 173 (vii) is used in machinery and equipment not registered and not required to be
- 174 registered for highway use.
- 175 (3) No tax is imposed or collected on special fuel if it is:
- 176 (a) (i) purchased for business use in machinery and equipment not registered and not
- 177 required to be registered for highway use; and
- 178 (ii) used pursuant to the conditions of a state implementation plan approved under Title
- 179 19, Chapter 2, Air Conservation Act; [or]
- 180 (b) propane [or];
- 181 (c) electricity[-]; or
- 182 (d) liquified natural gas.

183 (4) Upon request of a buyer meeting the requirements under Subsection (3), the
184 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

185 (5) The special fuel tax shall be paid by the supplier.

186 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
187 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

188 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases
189 which are delivered into vehicles and for which special fuel tax liability is reported.

190 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
191 commission from taxes and license fees under this part shall be deposited daily with the state
192 treasurer and credited to the Transportation Fund.

193 (b) An appropriation from the Transportation Fund shall be made to the commission to
194 cover expenses incurred in the administration and enforcement of this part and the collection of
195 the special fuel tax.

196 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
197 may be used by the commission as a dedicated credit to cover the costs of electronic
198 credentialing as provided in Section 41-1a-303.

199 (8) The commission may either collect no tax on special fuel exported from the state
200 or, upon application, refund the tax paid.

201 (9) (a) The United States government or any of its instrumentalities, this state, or a
202 political subdivision of this state that has purchased special fuel from a supplier or from a retail
203 dealer of special fuel and has paid the tax on the special fuel as provided in this section is
204 entitled to a refund of the tax and may file with the commission for a quarterly refund in a
205 manner prescribed by the commission.

206 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
207 commission shall make rules governing the application and refund provided for in Subsection
208 (9)(a).

209 (10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses
210 under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid
211 as provided in Subsection (9) and this Subsection (10).

212 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
213 commission shall make rules governing the application and refund for off-highway and

214 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

215 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural
216 uses shall be made in accordance with the tax return procedures under Section 59-13-202.

217 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is
218 reduced to the extent provided in Subsection (11)(b) if:

219 (i) the Navajo Nation imposes a tax on the special fuel;

220 (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the
221 person required to pay the tax is an enrolled member of the Navajo Nation; and

222 (iii) the commission and the Navajo Nation execute and maintain an agreement as
223 provided in this Subsection (11) for the administration of the reduction of tax.

224 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this
225 section:

226 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that
227 difference is greater than \$0; and

228 (B) a person may not require the state to provide a refund, a credit, or similar tax relief
229 if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

230 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference
231 between:

232 (A) the amount of tax imposed on the special fuel by this section; less

233 (B) the tax imposed and collected by the Navajo Nation on the special fuel.

234 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on
235 the special fuel does not include any interest or penalties a taxpayer may be required to pay to
236 the Navajo Nation.

237 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
238 commission shall make rules governing the procedures for administering the reduction of tax
239 provided under this Subsection (11).

240 (e) The agreement required under Subsection (11)(a):

241 (i) may not:

242 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

243 (B) provide a reduction of taxes greater than or different from the reduction described
244 in this Subsection (11); or

- 245 (C) affect the power of the state to establish rates of taxation;
- 246 (ii) shall:
- 247 (A) be in writing;
- 248 (B) be signed by:
- 249 (I) the chair of the commission or the chair's designee; and
- 250 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;
- 251 (C) be conditioned on obtaining any approval required by federal law;
- 252 (D) state the effective date of the agreement; and
- 253 (E) state any accommodation the Navajo Nation makes related to the construction and
- 254 maintenance of state highways and other infrastructure within the Utah portion of the Navajo
- 255 Nation; and
- 256 (iii) may:
- 257 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the
- 258 Navajo Nation information that is:
- 259 (I) contained in a document filed with the commission; and
- 260 (II) related to the tax imposed under this section;
- 261 (B) provide for maintaining records by the commission or the Navajo Nation; or
- 262 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers
- 263 located or doing business within the Utah portion of the Navajo Nation.
- 264 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax
- 265 imposed on special fuel, any change in the amount of the reduction of taxes under this
- 266 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the
- 267 calendar quarter after a 60-day period beginning on the date the commission receives notice:
- 268 (A) from the Navajo Nation; and
- 269 (B) meeting the requirements of Subsection (11)(f)(ii).
- 270 (ii) The notice described in Subsection (11)(f)(i) shall state:
- 271 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
- 272 special fuel;
- 273 (B) the effective date of the rate change of the tax described in Subsection
- 274 (11)(f)(ii)(A); and
- 275 (C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

276 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
277 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
278 30-day period beginning on the day the agreement terminates.

279 (h) If there is a conflict between this Subsection (11) and the agreement required by
280 Subsection (11)(a), this Subsection (11) governs.

281 (12) Beginning on January 1, 2009, a tax imposed under this section on compressed
282 natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be
283 increased or decreased proportionately with any increase or decrease in the rate in Subsection
284 59-13-201(1)(a).

Legislative Review Note
as of 2-19-10 11:30 AM

Office of Legislative Research and General Counsel

H.B. 394 - Motor and Special Fuel Tax Act Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
