

1 SENATE BILL 160

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO TAXATION; DEFINING "BIODIESEL"; CLARIFYING THE
12 DEFINITION OF "SPECIAL FUEL" TO INCLUDE BLENDED BIODIESEL;
13 PROVIDING A DEDUCTION FOR RECEIPT OF BIODIESEL FUEL TO RACK
14 OPERATORS FOR BLENDING AND RESALE; DECLARING AN EMERGENCY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-16A-2 NMSA 1978 (being Laws 1992,
18 Chapter 51, Section 2, as amended) is amended to read:

19 "7-16A-2. DEFINITIONS.--As used in the Special Fuels
20 Supplier Tax Act:

21 A. "biodiesel" means a renewable, biodegradable,
22 combustible liquid fuel that is derived from agricultural plant
23 oils or animal fats and that meets the American society for
24 testing and materials specifications for biodiesel fuel, B100
25 or B99 blend stock for distillate fuels;

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1 B. "blended biodiesel" means a diesel engine fuel
2 that contains at least two percent biodiesel;

3 [~~A-~~] C. "bulk storage" means the storage of special
4 fuels in any tank or receptacle, other than a supply tank, for
5 the purpose of sale by a dealer or for use by a user or for any
6 other purpose;

7 [~~B-~~] D. "bulk storage user" means a user who
8 operates, owns or maintains bulk storage in this state from
9 which the user places special fuel into the supply tanks of
10 motor vehicles owned or operated by that user;

11 [~~C-~~] E. "dealer" means any person who sells and
12 delivers special fuel to a user;

13 [~~D-~~] F. "department" means the taxation and revenue
14 department, the secretary of taxation and revenue or any
15 employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

17 [~~E-~~] G. "government-licensed vehicle" means a motor
18 vehicle lawfully displaying a registration plate, as defined in
19 the Motor Vehicle Code issued by:

20 (1) the United States or any state,
21 identifying the motor vehicle as belonging to the United States
22 or any of its agencies or instrumentalities;

23 (2) the state of New Mexico, identifying the
24 vehicle as belonging to the state of New Mexico or any of its
25 political subdivisions, agencies or instrumentalities; or

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1 (3) any state, identifying the motor vehicle
2 as belonging to an Indian nation, tribe or pueblo or an agency
3 or instrumentality thereof;

4 [~~F.~~] H. "gross vehicle weight" means the weight of
5 a motor vehicle or combination motor vehicle without load, plus
6 the weight of any load on the vehicle;

7 [~~G.~~] I. "highway" means every road, highway,
8 thoroughfare, street or way, including toll roads, generally
9 open to the use of the public as a matter of right for the
10 purpose of motor vehicle travel and notwithstanding that the
11 same may be temporarily closed for the purpose of construction,
12 reconstruction, maintenance or repair;

13 [~~H.~~] J. "motor vehicle" means any self-propelled
14 vehicle or device that is either subject to registration
15 pursuant to Section 66-3-1 NMSA 1978 or is used or may be used
16 on the public highways in whole or in part for the purpose of
17 transporting persons or property and includes any connected
18 trailer or semitrailer;

19 [~~I.~~] K. "person" means an individual or any other
20 entity, including, to the extent permitted by law, any federal,
21 state or other government or any department, agency,
22 instrumentality or political subdivision of any federal, state
23 or other government;

24 [~~J.~~] L. "rack operator" means the operator of a
25 refinery in this state, any person who blends special fuel in

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1 this state or the owner of special fuel stored at a pipeline
2 terminal in this state;

3 ~~[K-]~~ M. "registrant" means any person who has
4 registered a motor vehicle pursuant to the laws of this state
5 or of another state;

6 ~~[L-]~~ N. "retailer" means a person who sells special
7 fuel generally in quantities of less than two hundred fifty
8 gallons and delivers the special fuel into the supply tanks of
9 motor vehicles;

10 ~~[M-]~~ O. "sale" means any delivery, exchange, gift
11 or other disposition;

12 ~~[N-]~~ P. "secretary" means the secretary of taxation
13 and revenue or the secretary's delegate;

14 ~~[O-]~~ Q. "special fuel" means any diesel-engine
15 fuel, biodiesel, blended biodiesel or kerosene used for the
16 generation of power to propel a motor vehicle, except for
17 gasoline, liquefied petroleum gas, compressed or liquefied
18 natural gas and products specially prepared and sold for use in
19 aircraft propelled by turbo-prop or jet engines;

20 ~~[P-]~~ R. "special fuel user" means any user who is a
21 registrant, owner or operator of a motor vehicle using special
22 fuel and having a gross vehicle weight in excess of twenty-six
23 thousand pounds;

24 ~~[Q-]~~ S. "state" or "jurisdiction" means a state,
25 territory or possession of the United States, the District of

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1 Columbia, the commonwealth of Puerto Rico, a foreign country or
2 a state or province of a foreign country;

3 [R-] T. "supplier" means any person, but not
4 including a rack operator or the United States or any of its
5 agencies except to the extent now or hereafter permitted by the
6 constitution of the United States and laws thereof, who
7 receives special fuel;

8 [S-] U. "supply tank" means any tank or other
9 receptacle in which or by which fuel may be carried and
10 supplied to the fuel-furnishing device or apparatus of the
11 propulsion mechanism of a motor vehicle when the tank or
12 receptacle either contains special fuel or special fuel is
13 delivered into it;

14 [F-] V. "tax" means the special fuel excise tax
15 imposed pursuant to the Special Fuels Supplier Tax Act, and,
16 with respect to a special fuel user, "tax" includes any special
17 fuel tax paid to another jurisdiction pursuant to a cooperative
18 agreement to which the state is a party pursuant to Section
19 9-11-12 NMSA 1978;

20 [H-] W. "user" means any person other than the
21 United States government or any of its agencies or
22 instrumentalities; the state of New Mexico or any of its
23 political subdivisions, agencies or instrumentalities; or an
24 Indian nation, tribe or pueblo or any agency or instrumentality
25 of an Indian nation, tribe or pueblo, who uses special fuel to

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1 propel a motor vehicle on the highways; and

2 [V-] X. "wholesaler" means a person who is not a
3 supplier and who sells special fuel in quantities of two
4 hundred fifty gallons or more and does not deliver special fuel
5 into the supply tanks of motor vehicles."

6 SECTION 2. Section 7-16A-10 NMSA 1978 (being Laws 1992,
7 Chapter 51, Section 10, as amended) is amended to read:

8 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
9 FUEL SUPPLIERS.--In computing the tax due, the following
10 amounts of special fuel may be deducted from the total amount
11 of special fuel received in New Mexico during the tax period,
12 provided that satisfactory proof thereof is furnished to the
13 department:

14 A. special fuel received in New Mexico, but
15 exported from this state by a rack operator, special fuel
16 supplier or dealer, other than in the fuel supply tank of a
17 motor vehicle or sold for export by a rack operator or
18 distributor; provided that, in either case:

19 (1) the person exporting the special fuel is
20 registered in or licensed by the destination state to pay that
21 state's special fuel or equivalent fuel tax;

22 (2) proof is submitted that the destination
23 state's special fuel or equivalent fuel tax has been paid or is
24 not due with respect to the special fuel; or

25 (3) the destination state's special fuel or

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1 equivalent fuel tax is paid to New Mexico in accordance with
2 the terms of an agreement entered into pursuant to Section
3 9-11-12 NMSA 1978 with the destination state;

4 B. special fuel sold to the United States or any
5 agency or instrumentality thereof for the exclusive use of the
6 United States or any agency or instrumentality thereof.

7 Special fuel sold to the United States includes special fuel
8 delivered into the supply tank of a government-licensed
9 vehicle;

10 C. special fuel sold to the state of New Mexico or
11 any political subdivision, agency or instrumentality thereof
12 for the exclusive use of the state of New Mexico or any
13 political subdivision, agency or instrumentality thereof.

14 Special fuel sold to the state of New Mexico includes special
15 fuel delivered into the supply tank of a government-licensed
16 vehicle;

17 D. special fuel sold to an Indian nation, tribe or
18 pueblo or any agency or instrumentality thereof for the
19 exclusive use of the Indian nation, tribe or pueblo or any
20 agency or instrumentality thereof. Special fuel sold to an
21 Indian nation, tribe or pueblo includes special fuel delivered
22 into the supply tank of a government-licensed vehicle;

23 E. special fuel dyed in accordance with federal
24 regulations;

25 F. special fuel that is number 2 diesel fuel sold

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1 for the generation of power to propel a vehicle authorized by
2 contract with the public education department as a school bus;
3 provided that the fuel has a distillation temperature of five
4 hundred degrees Fahrenheit at a ten percent recovery point and
5 six hundred forty degrees Fahrenheit at a ninety percent
6 recovery point;

7 G. special fuel received in New Mexico on which New
8 Mexico special fuel excise tax was paid by the out-of-state
9 terminal at which the special fuel was loaded, provided that
10 documentation that the special fuel was to be imported into New
11 Mexico was provided to the terminal operator by the person
12 receiving the fuel; and

13 H. special fuel received in New Mexico that:

14 (1) prior to July 1, 2014, consists of at
15 least ninety-nine percent vegetable oil or animal fat; provided
16 that the use is restricted to an auxiliary fuel system that is
17 subject to a certificate of conformity pursuant to the federal
18 Clean Air Act; or

19 (2) is biodiesel received or manufactured and
20 delivered to a rack operator that is within the state for
21 blending or resale."

22 SECTION 3. REPEAL.--That version of Section 7-16A-10 NMSA
23 1978 (being Laws 2009, Chapter 99, Section 3) that is to become
24 effective July 1, 2014 is repealed.

25 SECTION 4. APPLICABILITY.--The provisions of this act

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1 apply to special fuel received on or after:

2 A. May 1, 2013, provided that prior to May 1, 2013,
3 the provisions of this act are enacted into law; or

4 B. July 1, 2013.

5 SECTION 5. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is:

7 A. May 1, 2013, provided that prior to May 1, 2013,
8 the provisions of this act are enacted into law; or

9 B. July 1, 2013.

10 SECTION 6. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.