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SENATE BILL 857

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE
GASOLINE TAX ACT; CHANGING THE INCIDENCE OF THE GASOLINE TAX;
PROVIDING FOR REIMBURSEMENTS FOR NONTAXABLE SALES AND USES.

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

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971,
Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS. -- As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use
in aircraft propelled by engines other than turbo-prop or jet-
type engines;

B. "department" means the taxation and revenue
department, the secretary of taxation and revenue or any
employee of the department exercising authority lawfully
delegated to that employee by the secretary;

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1 C. "distributor" means [~~any~~] a person, not
2 including the United States of America or any of its agencies
3 except to the extent now or hereafter permitted by the
4 constitution and laws thereof, who [~~receives gasoline in this~~
5 ~~state~~] transports, distributes and sells for resale gasoline
6 purchased from a refinery or pipeline terminal in New Mexico or
7 imports gasoline for resale in New Mexico; "distributor" shall
8 be construed so that a person simultaneously may be both a
9 distributor and a retailer or importer;

10 D. "drip gasoline" means a combustible hydrocarbon
11 liquid formed as a product of condensation from either
12 associated or nonassociated natural or casing head gas and that
13 remains a liquid at room temperature and pressure;

14 E. "ethanol blended fuel" means gasoline containing
15 a minimum of ten percent by volume of denatured ethanol, of at
16 least one hundred ninety-nine proof, exclusive of denaturants;

17 F. "fuel supply tank" means [~~any~~] a tank or other
18 receptacle in which or by which fuel may be carried and
19 supplied to the fuel-furnishing device or apparatus of the
20 propulsion mechanism of a motor vehicle when the tank or
21 receptacle either contains gasoline or gasoline is delivered
22 into it;

23 G. "gallon" means the quantity of liquid necessary
24 to fill a standard United States gallon liquid measure or that
25 same quantity adjusted to a temperature of sixty degrees

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1 fahrenheit at the election of [~~any~~] a distributor, but [~~a~~] the
2 distributor shall report on the same basis for a period of at
3 least one year;

4 H. "gasoline" means [~~any~~] a flammable liquid
5 hydrocarbon used primarily as fuel for the propulsion of motor
6 vehicles, motorboats or aircraft except for diesel engine fuel,
7 kerosene, liquefied petroleum gas, compressed or liquefied
8 natural gas and products specially prepared and sold for use in
9 aircraft propelled by turbo-prop or jet-type engines;

10 I. "government-licensed vehicle" means a motor
11 vehicle lawfully displaying a registration plate, as defined in
12 the Motor Vehicle Code, issued by the United States or any
13 state, identifying the motor vehicle as belonging to the United
14 States or any of its agencies or instrumentalities or an Indian
15 nation, tribe or pueblo or any of its political subdivisions,
16 agencies or instrumentalities;

17 J. "highway" means every road, highway,
18 thoroughfare, street or way, including toll roads, generally
19 open to the use of the public as a matter of right for the
20 purpose of motor vehicle travel regardless of whether it is
21 temporarily closed for the purpose of construction,
22 reconstruction, maintenance or repair;

23 K. "motor vehicle" means [~~any~~] a self-propelled
24 vehicle or device that is either subject to registration under
25 Section 66-3-1 NMSA 1978 or used or that may be used on the

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1 public highways in whole or in part for the purpose of
2 transporting persons or property and includes ~~any~~ a connected
3 trailer or semitrailer;

4 L. "person" means an individual or any other
5 entity, including, to the extent permitted by law, any federal,
6 state or other government or any department, agency,
7 instrumentality or political subdivision of any federal, state
8 or other government;

9 M "rack operator" means the operator of a refinery
10 in this state or the owner of gasoline stored at a pipeline
11 terminal in this state; "rack operator" shall be construed so
12 that a person simultaneously may be a rack operator and a
13 distributor;

14 N. "registered Indian tribal distributor" means an
15 Indian nation, tribe or pueblo recognized by the United States
16 whose reservation or pueblo grant lies wholly or partly in this
17 state, a corporation or other enterprise wholly owned by that
18 Indian nation, tribe or pueblo or a corporation or other
19 enterprise wholly owned by one or ~~more members~~ of that Indian
20 nation, tribe or pueblo that is registered with the department
21 as a distributor pursuant to the Gasoline Tax Act; provided
22 that the department shall register a corporation or other
23 enterprise as an Indian tribal distributor only upon
24 certification by the Indian nation, tribe or pueblo that the
25 corporation or other enterprise is wholly owned by that nation,

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1 tribe or pueblo or wholly owned by one or more of its members;

2 O. "retailer" means a person who sells gasoline
3 generally in quantities of thirty-five gallons or less and
4 delivers such gasoline into the fuel supply tanks of motor
5 vehicles. "Retailer" shall be construed so that a person
6 simultaneously may be both a retailer and a distributor or
7 wholesaler;

8 P. "secretary" means the secretary of taxation and
9 revenue or the secretary's delegate;

10 Q. "taxpayer" means a person required to pay
11 gasoline tax;

12 R. "unloaded" means removal of gasoline from tank
13 cars, tank trucks, tank wagons or other types of transportation
14 equipment into a nonmobile container at the place at which the
15 unloading takes place; and

16 S. "wholesaler" means a person who is not a
17 distributor and who sells gasoline in quantities of thirty-five
18 gallons or more and does not deliver such gasoline into the
19 fuel supply tanks of motor vehicles. "Wholesaler" shall be
20 construed so that a person simultaneously may be a wholesaler
21 and a retailer."

22 Section 2. Section 7-13-2.1 NMSA 1978 (being Laws 1999,
23 Chapter 190, Section 2) is amended to read:

24 "7-13-2.1. WHEN GASOLINE RECEIVED AND BY WHOM --

25 A. Gasoline that is produced, refined,

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1 manufactured, blended or compounded at a refinery in this state
2 or stored at a pipeline terminal in this state by [~~a person~~]
3 the rack operator is received by [~~that person~~] the rack
4 operator when it is loaded there into tank cars, tank trucks,
5 tank wagons or other types of transportation equipment, or when
6 it is placed there into a tank or other container from which
7 sales or deliveries not involving transportation are made,
8 however,

9 [~~(1) when gasoline is delivered at the~~
10 ~~refinery or pipeline terminal to a person registered as a~~
11 ~~distributor pursuant to the Gasoline Tax Act, then it is~~
12 ~~received there by the distributor to whom it is delivered at~~
13 ~~the time of the delivery;~~

14 [~~(2) when gasoline is delivered at the refinery~~
15 ~~or pipeline terminal to a person not registered as a~~
16 ~~distributor pursuant to the Gasoline Tax Act for the account of~~
17 ~~a person that is registered as a distributor, it is received~~
18 ~~there by the distributor for whose account it is delivered at~~
19 ~~the time of delivery; and~~

20 [~~(3)~~] gasoline is not received when it is
21 shipped from one refinery or pipeline terminal to another
22 refinery or pipeline terminal.

23 B. Gasoline imported into New Mexico by any means
24 other than in the fuel supply tank of a motor vehicle or by
25 pipeline is received at the time and place it is imported into

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1 this state. The person who owns the gasoline at the time of
2 importation receives the gasoline at the time and place of
3 importation [~~unless the gasoline is delivered to a person who~~
4 ~~is registered as a distributor pursuant to the Gasoline Tax~~
5 ~~Act, in which case the distributor is deemed to have received~~
6 ~~the gasoline at the time and place of importation~~].

7 C. Any product other than gasoline that is blended
8 in this state to produce gasoline other than at a refinery or
9 pipeline terminal is received by the person who is the owner of
10 the gasoline at the time and place the blending is completed.

11 D. If gasoline is received within the exterior
12 boundaries of an Indian reservation or pueblo grant and the
13 gasoline tax is not paid with respect to the gasoline by the
14 person receiving the gasoline within the exterior boundaries of
15 the Indian reservation or pueblo grant, the gasoline is also
16 received when the gasoline is transported off the reservation
17 or pueblo grant by any means other than in the fuel supply tank
18 of a motor vehicle. In such a case, the person who owns the
19 gasoline immediately after the time of transportation off the
20 reservation or pueblo grant [~~or, if the gasoline is delivered~~
21 ~~to a person registered as a distributor pursuant to the~~
22 ~~Gasoline Tax Act, the distributor~~] receives the gasoline at the
23 time and place the gasoline is transported off the reservation
24 or pueblo grant. "

25 Section 3. Section 7-13-3.5 NMSA 1978 (being Laws 1997,

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1 Chapter 192, Section 3) is amended to read:

2 "7-13-3.5. BOND REQUIRED OF TAXPAYERS. --

3 A. [~~Except as provided in Subsection H of this~~
4 ~~section~~] Every taxpayer shall file with the department a bond
5 on a form approved by the attorney general with a surety
6 company authorized by the [~~state corporation~~] public regulation
7 commission to transact business in this state as a surety and
8 upon which bond the taxpayer is the principal obligor and the
9 state the obligee. The bond shall be conditioned upon the
10 prompt filing of true reports and the payment by the taxpayer
11 to the department of all taxes levied by the Gasoline Tax Act,
12 together with all applicable penalties and interest thereon.

13 B. In lieu of the bond, the taxpayer may elect to
14 file with the department cash or bonds of the United States or
15 New Mexico or of any political subdivision of the state.

16 C. The total amount of the bond, cash or securities
17 required of any taxpayer shall be fixed by the department and
18 may be increased or reduced by the department at any time,
19 subject to the limitations provided in this section.

20 D. In fixing the total amount of the bond, cash or
21 securities required of any taxpayer required to post bond, the
22 department shall require an equivalent in total amount to at
23 least two times the amount of the department's estimate of the
24 taxpayer's monthly gasoline tax, determined in such manner as
25 the secretary may deem proper; provided, however, the total

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1 amount of bond, cash or securities required of a taxpayer shall
2 never be less than one thousand dollars (\$1,000).

3 E. In the event the department decides that the
4 amount of the existing bond, cash or securities is insufficient
5 to insure payment to this state of the amount of the gasoline
6 tax and any penalties and interest for which the taxpayer is or
7 may at any time become liable, [~~then~~] the taxpayer, upon
8 written demand of the department mailed to the last known
9 address of the taxpayer as shown on the records of the
10 department, shall file an additional bond, cash or securities
11 in the manner, form and amount determined by the department to
12 be necessary to secure at all times the payment by the taxpayer
13 of all taxes, penalties and interest due under the Gasoline Tax
14 Act.

15 F. A surety on a bond furnished by a taxpayer as
16 required by this section shall be released and discharged from
17 all liability accruing on the bond after the expiration of
18 ninety days from the date upon which the surety files with the
19 department a written request to be released and discharged;
20 provided, however, that such request shall not operate to
21 release or discharge the surety from any liability already
22 accrued or that shall accrue before the expiration of the
23 ninety-day period, unless a new bond is filed during the
24 ninety-day period, in which case the previous bond may be
25 canceled as of the effective date of the new bond. On receipt

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1 of notice of such request, the department promptly shall notify
2 the taxpayer who furnished the bond that the taxpayer, on or
3 before the expiration of the ninety-day period, shall file with
4 the department a new bond with a surety satisfactory to the
5 department in the amount and form required in this section.

6 G. The taxpayer required to file bond with or
7 provide cash or securities to the department in accordance with
8 this section and who is required by another state law to file
9 another bond with or provide cash or securities to the
10 department may elect to file a combined bond or provide cash or
11 securities applicable to the provisions of both this section
12 and the other law, with the approval of the secretary. The
13 amount of the combined bond, cash or securities shall be
14 determined by the department and the form of the combined bond
15 shall be approved by the attorney general.

16 H. ~~[Every taxpayer who, for the twenty-four month~~
17 ~~period immediately preceding July 1, 1994, has not been a~~
18 ~~delinquent taxpayer pursuant to the Gasoline Tax Act is exempt~~
19 ~~from the requirement pursuant to this section to file a bond.]~~
20 A taxpayer required to file a bond pursuant to the provisions
21 of this section who, for a twenty-four consecutive month period
22 ending after July 1, [1994] 2005, has not been a delinquent
23 taxpayer pursuant to the Gasoline Tax Act may request to be
24 exempt from the requirement to file a bond beginning with the
25 first day of the first month following the end of the twenty-

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1 four month period. If a taxpayer exempted pursuant to this
2 subsection subsequently becomes a delinquent taxpayer under the
3 Gasoline Tax Act, the department may terminate the exemption
4 and require the filing of a bond in accordance with this
5 section. If the department terminates the exemption, the
6 termination shall not be effective any earlier than ten days
7 after the date the department notifies the taxpayer in writing
8 of the termination. "

9 Section 4. Section 7-13-4 NMSA 1978 (being Laws 1991,
10 Chapter 9, Section 32, as amended) is amended to read:

11 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
12 gasoline tax due, the following amounts of gasoline may be
13 deducted from the total amount of gasoline received in New
14 Mexico during the tax period, provided satisfactory proof
15 thereof is furnished to the department:

16 A. gasoline received in New Mexico, but exported
17 from this state by a rack operator [~~distributor or wholesaler~~]
18 other than in the fuel supply tank of a motor vehicle or sold
19 for export by a rack operator [~~or distributor~~]; provided that,
20 in either case:

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

24 (2) proof is submitted that the destination
25 state's gasoline or equivalent fuel tax has been paid or is not

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1 due with respect to the gasoline; or

2 (3) the destination state's gasoline or
3 equivalent fuel tax is paid to New Mexico in accordance with
4 the terms of an agreement entered into pursuant to Section
5 9-11-12 NMSA 1978 with the destination state;

6 B. gasoline received in New Mexico sold to the
7 United States or any agency or instrumentality thereof for the
8 exclusive use of the United States or any agency or
9 instrumentality thereof. Gasoline sold to the United States
10 includes gasoline delivered into the supply tank of a
11 government-licensed vehicle of the United States;

12 C. gasoline received in New Mexico sold to an
13 Indian nation, tribe or pueblo or any political subdivision,
14 agency or instrumentality of that Indian nation, tribe or
15 pueblo for the exclusive use of the Indian nation, tribe or
16 pueblo or any political subdivision, agency or instrumentality
17 thereof. Gasoline sold to an Indian nation, tribe or pueblo
18 includes gasoline delivered into the supply tank of a
19 government-licensed vehicle of the Indian nation, tribe or
20 pueblo;

21 ~~[D. gasoline received in New Mexico dyed in~~
22 ~~accordance with department regulations and used in any manner~~
23 ~~other than for propulsion of motor vehicles on the highways of~~
24 ~~this state or motorboats or activities ancillary to that~~
25 ~~propulsion;~~

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1 ~~E.]~~ D. gasoline received in New Mexico and sold at
2 retail by a registered Indian tribal distributor if:

3 (1) the sale occurs on the Indian reservation,
4 pueblo grant or trust land of the distributor's Indian nation,
5 tribe or pueblo;

6 (2) the gasoline is placed into the fuel
7 supply tank of a motor vehicle on that reservation, pueblo
8 grant or trust land; and

9 (3) the Indian nation, tribe or pueblo has
10 certified to the department that it has in effect an excise,
11 privilege or similar tax on the gasoline; provided that the
12 volume of gasoline deducted pursuant to this subsection shall
13 be the total gallons sold in accordance with the provisions of
14 this subsection multiplied by a fraction the numerator of which
15 is the rate of the tribal tax certified to the department by
16 the Indian nation, tribe or pueblo and the denominator of which
17 is the rate of the gasoline tax imposed pursuant to the
18 Gasoline Tax Act, but if the fraction exceeds one, it shall be
19 one for purposes of determining the deduction; and

20 ~~[F.]~~ E. gasoline received in New Mexico and sold
21 by a registered Indian tribal distributor from a nonmobile
22 storage container located within that distributor's Indian
23 reservation, pueblo grant or trust land for resale outside that
24 distributor's Indian reservation, pueblo grant or trust land;
25 provided the department certifies that the distributor claiming

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1 the deduction sold no less than one million gallons of gasoline
2 from a nonmobile storage container located within that
3 distributor's Indian reservation, pueblo grant or trust land
4 for resale outside that distributor's Indian reservation,
5 pueblo grant or trust land during the period of May through
6 August 1998; and provided further that the amount of gasoline
7 deducted by a registered Indian tribal distributor pursuant to
8 this subsection shall not exceed two million five hundred
9 thousand gallons per month, calculated as a monthly average
10 during the calendar year. Volumes deducted pursuant to
11 Subsection [E] D of this section shall not be deducted pursuant
12 to this subsection. "

13 Section 5. A new section of the Gasoline Tax Act, Section
14 7-13-4.5 NMSA 1978, is enacted to read:

15 "7-13-4.5 [NEW MATERIAL] DISTRIBUTORS AND WHOLESALERS--
16 TAXABLE PRESUMPTION--NONTAXABLE SALES AND USES--
17 REIMBURSEMENT.--

18 A. Gasoline purchased by a distributor or
19 wholesaler from a person who received the gasoline in New
20 Mexico and on which the tax has been paid or is due shall be
21 presumed to be taxable unless the distributor or wholesaler
22 provides proof satisfactory to the department that the gasoline
23 was sold, exported or used for one of the following nontaxable
24 purposes:

- 25 (1) the gasoline was exported from this state

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1 by the distributor or wholesaler other than in the fuel supply
2 tank of a motor vehicle or sold for export by the distributor;
3 provided that, in either case:

4 (a) the person exporting the gasoline is
5 registered in or licensed by the destination state to pay that
6 state's gasoline or equivalent fuel tax;

7 (b) proof is submitted that the
8 destination state's gasoline or equivalent fuel tax has been
9 paid or is not due with respect to the gasoline; or

10 (c) the destination state's gasoline or
11 equivalent fuel tax is paid to new Mexico in accordance with
12 the terms of an agreement entered into pursuant to Section
13 9-11-12 NMSA 1978 with the destination state;

14 (2) the gasoline was sold to the United States
15 or an agency or instrumentality thereof for the exclusive use
16 of the United States or an agency or instrumentality thereof.
17 Gasoline sold to the United States includes gasoline delivered
18 into the fuel supply tank of a government-licensed vehicle of
19 the United States;

20 (3) the gasoline was dyed in accordance with
21 department regulations and used in a manner other than for
22 propulsion of motor vehicles on the highways of this state or
23 motorboats or activities ancillary to that propulsion; and

24 (4) the distributor is not a registered Indian
25 tribal distributor and the gasoline was sold at retail in New

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1 Mexico and:

2 (a) the sale occurred on an Indian
3 reservation, pueblo grant or trust land;

4 (b) the gasoline was placed into the
5 fuel supply tank of a motor vehicle on that reservation, pueblo
6 grant or trust land;

7 (c) the Indian nation, tribe or pueblo
8 has certified to the department that it has in effect an
9 excise, privilege or similar tax on gasoline; provided that the
10 gallons of gasoline for which a tax refund may be claimed
11 pursuant to this paragraph shall be the total gallons sold in
12 accordance with the provisions of this paragraph multiplied by
13 a fraction, the numerator of which is the rate of the tribal
14 tax certified to the department by the Indian nation, tribe or
15 pueblo and the denominator of which is the rate of the gasoline
16 tax imposed pursuant to the Gasoline Tax Act, but, if the
17 fraction exceeds one, the fraction shall be deemed to be one
18 for purposes of determining the refund; and

19 (d) the person is subject to and in
20 compliance with the tax on gasoline imposed by the Indian
21 nation, tribe or pueblo where the sale occurred.

22 B. Upon a showing satisfactory to the department
23 that a distributor or wholesaler purchased gasoline on which
24 the excise tax pursuant to the Gasoline Tax Act was paid and
25 the gasoline was subsequently sold, exported or used for a

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1 nontaxable purpose pursuant to Subsection A of this section,
2 the distributor or wholesaler may apply to the department for a
3 reimbursement in an amount equal to the tax paid on that
4 gasoline.

5 C. A distributor who is eligible to apply for a
6 reimbursement pursuant to Subsection B of this section shall
7 apply on a form and in the manner determined by the department.
8 The department shall determine what documentation is necessary
9 to establish satisfactory proof that the gasoline was sold,
10 exported or used for a nontaxable purpose. "

11 Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971,
12 Chapter 207, Section 5, as amended) is amended to read:

13 "7-13-5. TAX RETURNS--PAYMENT OF TAX. -- [~~Distributors~~]
14 Taxpayers shall file gasoline tax returns in form and content
15 as prescribed by the secretary on or before the twenty-fifth
16 day of the month following the month in which gasoline is
17 received in New Mexico. Such returns shall be accompanied by
18 payment of the amount of gasoline tax due. "

19 Section 7. Section 7-13-12 NMSA 1978 (being Laws 1971,
20 Chapter 207, Section 11, as amended) is amended to read:

21 "7-13-12. MANIFEST OR BILL OF LADING REQUIRED WHEN
22 TRANSPORTING GASOLINE. --Every person transporting gasoline from
23 a refinery or pipeline terminal in this state, importing
24 gasoline into this state or exporting gasoline from this state,
25 other than by pipeline or in the fuel supply tanks of motor

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1 vehicles, shall carry a manifest or bill of lading in form and
2 content as prescribed by or acceptable to the department. The
3 manifest or bill of lading shall be signed by the consignor and
4 by every person accepting the gasoline or any part of it, with
5 a notation as to the amount accepted. If a manifest or bill of
6 lading is not required to be carried by the terms of this
7 section, any person transporting gasoline without such a
8 manifest or bill of lading shall, upon demand, furnish proof
9 acceptable to the department that the gasoline so transported
10 was legally acquired by a registered distributor [~~who assumed~~
11 ~~liability~~] from a person who is liable for payment of the tax
12 imposed by the Gasoline Tax Act. "

13 Section 8. TEMPORARY PROVISION. --The provisions of the
14 Gasoline Tax Act in effect prior to the effective date of this
15 act shall apply to gasoline received, as that term was then
16 defined in the Gasoline Tax Act, prior to the effective date of
17 this act.

18 Section 9. REPEAL. --Section 7-13-4.4 NMSA 1978 (being
19 Laws 2000, Chapter 50, Section 1) is repealed.

20 Section 10. EFFECTIVE DATE. --The effective date of the
21 provisions of this act is January 1, 2004.