

1 AN ACT

2 RELATING TO TAXATION; PROVIDING FOR DEDUCTIONS FROM THE NEW
3 MEXICO GASOLINE TAX AND SPECIAL FUEL EXCISE TAX PAID BY
4 OUT-OF-STATE TERMINALS AT WHICH THE GASOLINE OR SPECIAL FUEL
5 TO BE IMPORTED INTO NEW MEXICO WAS LOADED; REQUIRING SURETY
6 BONDS FROM CERTAIN WEIGHT DISTANCE TAX TAXPAYERS AND SPECIAL
7 FUEL USERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 Section 1. Section 7-13-4 NMSA 1978 (being Laws 1991,
11 Chapter 9, Section 32, as amended) is amended to read:

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

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

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

25 (2) proof is submitted that the destination

1 state's gasoline or equivalent fuel tax has been paid or is
2 not due with respect to the gasoline; or

3 (3) the destination state's gasoline or
4 equivalent fuel tax is paid to New Mexico in accordance with
5 the terms of an agreement entered into pursuant to Section
6 9-11-12 NMSA 1978 with the destination state;

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

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

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

1 propulsion;

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

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

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

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

22 F. gasoline received in New Mexico and sold by a
23 registered Indian tribal distributor from a nonmobile storage
24 container located within that distributor's Indian
25 reservation, pueblo grant or trust land for resale outside

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

15 G. gasoline received in New Mexico on which New
16 Mexico gasoline tax was paid by the out-of-state terminal at
17 which the gasoline was loaded, provided that documentation
18 that the gasoline was to be imported into New Mexico was
19 provided to the terminal operator by the person receiving the
20 fuel."

21 Section 2. A new section of the Weight Distance Tax Act
22 is enacted to read:

23 "TAXPAYERS OF WEIGHT DISTANCE TAX--SURETY BOND
24 REQUIRED--EXCEPTIONS.--

25 A. Except as required in Subsection H of this

1 section, every taxpayer with a commercial domicile not
2 located in an International Fuel Tax Agreement jurisdiction
3 shall file with the department a bond on a form approved by
4 the attorney general with a surety company authorized by the
5 public regulation commission to transact business in New
6 Mexico as a surety and upon which bond the taxpayer is the
7 principal obligor and the state the obligee. The bond shall
8 be conditioned upon the prompt filing of true reports and the
9 payment by the taxpayer to the department of all taxes levied
10 by the Weight Distance Tax Act, together with all applicable
11 penalties and interest on the taxes.

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

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

20 D. In fixing the total amount of the bond, cash or
21 securities required of a taxpayer required to post a bond,
22 the department shall require an amount equivalent to the
23 total estimated tax due for two quarters; provided, however,
24 that the total amount of bond, cash or securities required of
25 a taxpayer shall never be less than five hundred dollars

1 (\$500) per motor vehicle on which the weight distance tax is
2 imposed.

3 E. In the event the department determines that the
4 amount of the existing bond, cash or securities is
5 insufficient to ensure payment to New Mexico of the amount of
6 the weight distance tax and penalties and interest for which
7 a taxpayer is or may at any time become liable, the taxpayer,
8 upon written demand from the department mailed to the last
9 known 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
12 to be necessary to secure at all times the payment by the
13 taxpayer of all taxes, penalties and interest due pursuant to
14 the Weight Distance Tax Act.

15 F. A surety on a bond furnished by a taxpayer as
16 required by this section shall be released and discharged
17 from all liability accruing on the bond after the expiration
18 of ninety days from the date upon which the surety files with
19 the department a written request to be released and
20 discharged; provided, however, that the request shall not
21 operate to release or discharge the surety from liability
22 already accrued or that shall accrue before the expiration of
23 the 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

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

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

19 H. A taxpayer who is required to file a bond
20 pursuant to the provisions of this section and who for the
21 eight consecutive quarters preceding the date of request has
22 not been a delinquent taxpayer pursuant to the Weight
23 Distance Tax Act may request to be exempt from the
24 requirement to file a bond beginning with the first day of
25 the first quarter following the end of the eight-quarter

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

9 I. As used in this section, "taxpayer" means a
10 registrant, owner or operator of a motor vehicle on whom the
11 weight distance tax is imposed."

12 Section 3. Section 7-16A-10 NMSA 1978 (being Laws 1992,
13 Chapter 51, Section 10, as amended) is amended to read:

14 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
15 FUEL SUPPLIERS.--In computing the tax due, the following
16 amounts of special fuel may be deducted from the total amount
17 of special fuel received in New Mexico during the tax period,
18 provided that satisfactory proof thereof is furnished to the
19 department:

20 A. special fuel received in New Mexico, but
21 exported from this state by a rack operator, special fuel
22 supplier or dealer, other than in the fuel supply tank of a
23 motor vehicle or sold for export by a rack operator or
24 distributor; provided that, in either case:

25 (1) the person exporting the special fuel is SB 345
Page 8

1 registered in or licensed by the destination state to pay
2 that state's special fuel or equivalent fuel tax;

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

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

10 B. special fuel sold to the United States or any
11 agency or instrumentality thereof for the exclusive use of
12 the United States or any agency or instrumentality thereof.
13 Special fuel sold to the United States includes special fuel
14 delivered into the supply tank of a government-licensed
15 vehicle;

16 C. special fuel sold to the state of New Mexico or
17 any political subdivision, agency or instrumentality thereof
18 for the exclusive use of the state of New Mexico or any
19 political subdivision, agency or instrumentality thereof.
20 Special fuel sold to the state of New Mexico includes special
21 fuel delivered into the supply tank of a government-licensed
22 vehicle;

23 D. special fuel sold to an Indian nation, tribe or
24 pueblo or any agency or instrumentality thereof for the
25 exclusive use of the Indian nation, tribe or pueblo or any

1 agency or instrumentality thereof. Special fuel sold to an
2 Indian nation, tribe or pueblo includes special fuel
3 delivered into the supply tank of a government-licensed
4 vehicle;

5 E. special fuel dyed in accordance with federal
6 regulations;

7 F. special fuel that is number 2 diesel fuel sold
8 for the generation of power to propel a vehicle authorized by
9 contract with the public education department as a school
10 bus; provided that the fuel has a distillation temperature of
11 five hundred degrees Fahrenheit at a ten percent recovery
12 point and six hundred forty degrees Fahrenheit at a ninety
13 percent recovery point; and

14 G. special fuel received in New Mexico on which
15 New Mexico special fuel excise tax was paid by the
16 out-of-state terminal at which the special fuel was loaded,
17 provided that documentation that the special fuel was to be
18 imported into New Mexico was provided to the terminal
19 operator by the person receiving the fuel."

20 Section 4. A new section of the Special Fuels Supplier
21 Tax Act is enacted to read:

22 "SPECIAL FUEL USERS--SURETY BOND REQUIRED--EXCEPTIONS.--

23 A. Except as required in Subsection H of this
24 section, every special fuel user with a commercial domicile
25 not located in an International Fuel Tax Agreement

1 jurisdiction shall file with the department a bond on a form
2 approved by the attorney general with a surety company
3 authorized by the public regulation commission to transact
4 business in New Mexico as a surety and upon which bond the
5 special fuel user is the principal obligor and the state the
6 obligee. The bond shall be conditioned upon the prompt
7 filing of true reports and the payment by the special fuel
8 user to the department of all taxes levied by the Special
9 Fuels Supplier Tax Act, together with all applicable
10 penalties and interest on the taxes.

11 B. In lieu of the bond, the special fuel user may
12 elect to file with the department cash or bonds of the United
13 States or New Mexico or of any political subdivision of the
14 state.

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

20 D. In fixing the total amount of the bond, cash or
21 securities required of a special fuel user required to post a
22 bond, the department shall require an amount equivalent to
23 the total estimated tax due for two quarters; provided,
24 however, that the total amount of bond, cash or securities
25 required of a special fuel user shall never be less than five

1 hundred dollars (\$500).

2 E. In the event the department determines that the
3 amount of the existing bond, cash or securities is
4 insufficient to ensure payment to New Mexico of the amount of
5 the special fuel excise tax and penalties and interest for
6 which a special fuel user is or may at any time become
7 liable, the special fuel user, upon written demand from the
8 department mailed to the last known address of the special
9 fuel user as shown on the records of the department, shall
10 file an additional bond, cash or securities in the manner,
11 form and amount determined by the department to be necessary
12 to secure at all times the payment by the special fuel user
13 of all taxes, penalties and interest due pursuant to the
14 Special Fuels Supplier Tax Act.

15 F. A surety on a bond furnished by a special fuel
16 user as required by this section shall be released and
17 discharged from all liability accruing on the bond after the
18 expiration of ninety days from the date upon which the surety
19 files with the department a written request to be released
20 and discharged; provided, however, that the request shall not
21 operate to release or discharge the surety from liability
22 already accrued or that shall accrue before the expiration of
23 the 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

1 receipt of notice of the request to cancel the bond due to
2 filing of a new bond, the department shall promptly notify
3 the special fuel user who furnished the bond that the special
4 fuel user, on or before the expiration of the ninety-day
5 period, shall file with the department a new bond with a
6 surety satisfactory to the department in the amount and form
7 required in this section.

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

19 H. A special fuel user who is required to file a
20 bond pursuant to the provisions of this section and who for
21 the eight consecutive quarters preceding the date of request
22 has not been delinquent filing reports or paying special fuel
23 excise taxes pursuant to the Special Fuels Supplier Tax Act
24 may request to be exempt from the requirement to file a bond
25 beginning with the first day of the first quarter following

1 the end of the eight-quarter period. If a special fuel user
2 exempted pursuant to this subsection subsequently becomes
3 delinquent, the department may terminate the exemption and
4 require the filing of a bond in accordance with this section.
5 If the department terminates the exemption, the termination
6 shall not be effective any earlier than ten days after the
7 date the department notifies the special fuel user in writing
8 of the termination."

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25