

1 HOUSE BILL 626

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

3 INTRODUCED BY

4 James R.J. Strickler

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR DEDUCTIONS WITH RESPECT TO
12 CERTAIN GALLONS OF GASOLINE AND SPECIAL FUEL RECEIVED PURSUANT
13 TO THE GASOLINE TAX ACT AND SPECIAL FUELS SUPPLIER TAX ACT;
14 PROVIDING FOR A DEDUCTION WITH RESPECT TO CERTAIN GALLONS OF
15 GASOLINE OR SPECIAL FUEL LOADED PURSUANT TO THE PETROLEUM
16 PRODUCTS LOADING FEE ACT.

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

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

21 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
22 gasoline tax due, the following amounts of gasoline may be
23 deducted from the total amount of gasoline received in New
24 Mexico during the tax period, provided satisfactory proof
25 thereof is furnished to the department:

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1 A. gasoline received in New Mexico, but exported
2 from this state by a rack operator, distributor or wholesaler
3 other than in the fuel supply tank of a motor vehicle or sold
4 for export by a rack operator or distributor; provided that, in
5 either case:

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

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

12 (3) the destination state's gasoline or
13 equivalent fuel tax is paid to New Mexico in accordance with
14 the terms of an agreement entered into pursuant to Section
15 9-11-12 NMSA 1978 with the destination state;

16 B. gasoline received in New Mexico sold to the
17 United States or an agency or instrumentality thereof for the
18 exclusive use of the United States or an agency or
19 instrumentality thereof. Gasoline sold to the United States
20 includes gasoline delivered into the supply tank of a
21 government-licensed vehicle of the United States;

22 C. gasoline received in New Mexico sold to an
23 Indian nation, tribe or pueblo or a political subdivision,
24 agency or instrumentality of that Indian nation, tribe or
25 pueblo for the exclusive use of the Indian nation, tribe or

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1 pueblo or a political subdivision, agency or instrumentality
2 thereof. Gasoline sold to an Indian nation, tribe or pueblo
3 includes gasoline delivered into the supply tank of a
4 government-licensed vehicle of the Indian nation, tribe or
5 pueblo;

6 D. gasoline received in New Mexico, dyed in
7 accordance with department regulations and used in a manner
8 other than for propulsion of motor vehicles on the highways of
9 this state or motorboats or activities ancillary to that
10 propulsion;

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

13 (1) the sale occurs on the Indian reservation,
14 pueblo grant or trust land of the distributor's Indian nation,
15 tribe or pueblo;

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

19 (3) the Indian nation, tribe or pueblo has
20 certified to the department that it has in effect an excise,
21 privilege or similar tax on the gasoline; provided that the
22 volume of gasoline deducted pursuant to this subsection shall
23 be the total gallons sold in accordance with the provisions of
24 this subsection multiplied by a fraction the numerator of which
25 is the rate of the tribal tax certified to the department by

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1 the Indian nation, tribe or pueblo and the denominator of which
2 is the rate of the gasoline tax imposed pursuant to the
3 Gasoline Tax Act, but if the fraction exceeds one, it shall be
4 one for purposes of determining the deduction;

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

23 G. gasoline received in New Mexico on which New
24 Mexico gasoline tax was paid by the out-of-state terminal at
25 which the gasoline was loaded, provided that documentation that

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1 the gasoline was to be imported into New Mexico was provided to
2 the terminal operator by the person receiving the fuel; and
3 H. gasoline previously received in New Mexico by
4 another taxpayer pursuant Section 7-13-2.1 NMSA 1978, upon
5 which the gasoline tax has been paid by that other taxpayer."

6 SECTION 2. Section 7-13A-2 NMSA 1978 (being Laws 1990,
7 Chapter 124, Section 15, as amended) is amended to read:

8 "7-13A-2. DEFINITIONS.--As used in the Petroleum Products
9 Loading Fee Act:

10 A. "department" means the taxation and revenue
11 department, the secretary of taxation and revenue or any
12 employee of the department exercising authority lawfully
13 delegated to that employee by the secretary;

14 B. "distributor" means any person registered or
15 required to be registered as a rack operator or distributor for
16 purposes of the Gasoline Tax Act and any person registered or
17 required to be registered as a rack operator or special fuel
18 supplier for purposes of the Special Fuels Supplier Tax Act;

19 C. "gallon" means the quantity of liquid necessary
20 to fill a standard United States gallon liquid measure, which
21 is approximately 3.785 liters, or that same quantity adjusted
22 to a temperature of sixty degrees Fahrenheit at the election of
23 any distributor, but a distributor shall report on the same
24 basis for a period of at least one year;

25 D. "load" means eight thousand gallons of petroleum

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1 product;

2 E. "loading" means the act of placing or causing to
3 be placed any petroleum product that is produced, refined,
4 manufactured, blended or compounded at a refinery in this state
5 or stored at a pipeline terminal in this state into tank cars,
6 tank trucks, tank wagons or other types of transportation
7 equipment or into any tank or other container from which sales
8 or deliveries not involving transportation are made;

9 F. "person" means an individual or any other legal
10 entity, including any gas, water or electric utility owned or
11 operated by a county, municipality or other political
12 subdivision of the state. "Person" also means, to the extent
13 permitted by law, any federal, state or other government or any
14 department, agency or instrumentality of the state, county,
15 municipality or any political subdivision thereof;

16 G. "petroleum product" means gasoline as defined in
17 the Gasoline Tax Act and special fuel as defined in the Special
18 Fuels Supplier Tax Act; ~~and~~

19 H. "secretary" means, unless the context indicates
20 another meaning, the secretary of taxation and revenue or the
21 secretary's delegate; ~~and~~

22 I. "taxpayer" means a person liable for payment of
23 the petroleum products loading fee; and

24 ~~[F.]~~ J. "unobligated balance of the corrective
25 action fund" means corrective action fund equity less all known

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1 or anticipated liabilities against the fund."

2 SECTION 3. A new section of the Petroleum Products
3 Loading Fee Act is enacted to read:

4 "[NEW MATERIAL] DEDUCTION--PETROLEUM PRODUCTS LOADING
5 FEE.--In computing the petroleum products loading fee due,
6 there may be deducted from the gallons of gasoline or special
7 fuel loaded in New Mexico or imported into New Mexico an amount
8 equal to the number of gallons of the same fuel upon which the
9 petroleum products loading fee was previously paid by another
10 taxpayer."

11 SECTION 4. Section 7-16A-2 NMSA 1978 (being Laws 1992,
12 Chapter 51, Section 2, as amended) is amended to read:

13 "7-16A-2. DEFINITIONS.--As used in the Special Fuels
14 Supplier Tax Act:

15 A. "bulk storage" means the storage of special
16 fuels in any tank or receptacle, other than a supply tank, for
17 the purpose of sale by a dealer or for use by a user or for any
18 other purpose;

19 B. "bulk storage user" means a user who operates,
20 owns or maintains bulk storage in this state from which the
21 user places special fuel into the supply tanks of motor
22 vehicles owned or operated by that user;

23 C. "dealer" means any person who sells and delivers
24 special fuel to a user;

25 D. "department" means the taxation and revenue

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1 department, the secretary of taxation and revenue or any
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

4 E. "government-licensed vehicle" means a motor
5 vehicle lawfully displaying a registration plate, as defined in
6 the Motor Vehicle Code issued by:

7 (1) the United States or any state,
8 identifying the motor vehicle as belonging to the United States
9 or any of its agencies or instrumentalities;

10 (2) the state of New Mexico, identifying the
11 vehicle as belonging to the state of New Mexico or any of its
12 political subdivisions, agencies or instrumentalities; or

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

16 F. "gross vehicle weight" means the weight of a
17 motor vehicle or combination motor vehicle without load, plus
18 the weight of any load on the vehicle;

19 G. "highway" means every road, highway,
20 thoroughfare, street or way, including toll roads, generally
21 open to the use of the public as a matter of right for the
22 purpose of motor vehicle travel and notwithstanding that the
23 same may be temporarily closed for the purpose of construction,
24 reconstruction, maintenance or repair;

25 H. "motor vehicle" means any self-propelled vehicle

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1 or device that is either subject to registration pursuant to
2 Section 66-3-1 NMSA 1978 or is used or may be used on the
3 public highways in whole or in part for the purpose of
4 transporting persons or property and includes any connected
5 trailer or semitrailer;

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

11 J. "rack operator" means the operator of a refinery
12 in this state, any person who blends special fuel in this state
13 or the owner of special fuel stored at a pipeline terminal in
14 this state;

15 K. "registrant" means any person who has registered
16 a motor vehicle pursuant to the laws of this state or of
17 another state;

18 L. "retailer" means a person who sells special fuel
19 generally in quantities of less than two hundred fifty gallons
20 and delivers the special fuel into the supply tanks of motor
21 vehicles;

22 M. "sale" means any delivery, exchange, gift or
23 other disposition;

24 N. "secretary" means the secretary of taxation and
25 revenue or the secretary's delegate;

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1 O. "special fuel" means any diesel-engine fuel or
2 kerosene used for the generation of power to propel a motor
3 vehicle, except for gasoline, liquefied petroleum gas,
4 compressed or liquefied natural gas and products specially
5 prepared and sold for use in aircraft propelled by turbo-prop
6 or jet engines;

7 P. "special fuel user" means any user who is a
8 registrant, owner or operator of a motor vehicle using special
9 fuel and having a gross vehicle weight in excess of twenty-six
10 thousand pounds;

11 Q. "state" or "jurisdiction" means a state,
12 territory or possession of the United States, the District of
13 Columbia, the commonwealth of Puerto Rico, a foreign country or
14 a state or province of a foreign country;

15 R. "supplier" means any person, but not including a
16 rack operator or the United States or any of its agencies
17 except to the extent now or hereafter permitted by the
18 constitution of the United States and laws thereof, who
19 receives special fuel;

20 S. "supply tank" means any tank or other receptacle
21 in which or by which fuel may be carried and supplied to the
22 fuel-furnishing device or apparatus of the propulsion mechanism
23 of a motor vehicle when the tank or receptacle either contains
24 special fuel or special fuel is delivered into it;

25 T. "tax" means the special fuel excise tax imposed

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1 pursuant to the Special Fuels Supplier Tax Act, and, with
2 respect to a special fuel user, "tax" includes any special fuel
3 tax paid to another jurisdiction pursuant to a cooperative
4 agreement to which the state is a party pursuant to Section
5 9-11-12 NMSA 1978;

6 U. "taxpayer" means a person liable for the payment
7 of the excise tax imposed pursuant to Section 7-16A-3 NMSA
8 1978;

9 ~~[U.]~~ V. "user" means any person other than the
10 United States government or any of its agencies or
11 instrumentalities; the state of New Mexico or any of its
12 political subdivisions, agencies or instrumentalities; or an
13 Indian nation, tribe or pueblo or any agency or instrumentality
14 of an Indian nation, tribe or pueblo, who uses special fuel to
15 propel a motor vehicle on the highways; and

16 ~~[V.]~~ W. "wholesaler" means a person who is not a
17 supplier and who sells special fuel in quantities of two
18 hundred fifty gallons or more and does not deliver special fuel
19 into the supply tanks of motor vehicles."

20 **SECTION 5.** A new section of the Special Fuels Supplier
21 Tax Act is enacted to read:

22 "[NEW MATERIAL] DEDUCTION--SPECIAL FUEL EXCISE TAX--FUEL
23 PREVIOUSLY RECEIVED.--In computing the tax due, special fuel
24 previously received in New Mexico by another taxpayer pursuant
25 to Section 7-16A-2.1 NMSA 1978 upon which the special fuel

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1 excise tax has been paid by that other taxpayer may be deducted
2 from the total amount of special fuel received in New Mexico
3 during the tax period; provided that satisfactory proof thereof
4 is furnished to the department."

5 SECTION 6. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2013.