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AN ACT

RELATING TO TAXATION; DEFINING "BIODIESEL"; CLARIFYING THE
DEFINITION OF "SPECIAL FUEL" TO INCLUDE BLENDED BIODIESEL;
PROVIDING A DEDUCTION FOR RECEIPT OF BIODIESEL FUEL TO RACK
OPERATORS FOR BLENDING AND RESALE; REQUIRING REPORTING OF A
DEDUCTION FROM SPECIAL FUEL RECEIVED IN NEW MEXICO THAT IS
BIODIESEL; DECLARING AN EMERGENCY.

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

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

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

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

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

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

D. "bulk storage user" means a user who operates,

1 owns or maintains bulk storage in this state from which the
2 user places special fuel into the supply tanks of motor
3 vehicles owned or operated by that user;

4 E. "dealer" means any person who sells and
5 delivers special fuel to a user;

6 F. "department" means the taxation and revenue
7 department, the secretary of taxation and revenue or any
8 employee of the department exercising authority lawfully
9 delegated to that employee by the secretary;

10 G. "government-licensed vehicle" means a motor
11 vehicle lawfully displaying a registration plate, as defined
12 in the Motor Vehicle Code issued by:

13 (1) the United States or any state,
14 identifying the motor vehicle as belonging to the United
15 States or any of its agencies or instrumentalities;

16 (2) the state of New Mexico, identifying the
17 vehicle as belonging to the state of New Mexico or any of its
18 political subdivisions, agencies or instrumentalities; or

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

22 H. "gross vehicle weight" means the weight of a
23 motor vehicle or combination motor vehicle without load, plus
24 the weight of any load on the vehicle;

25 I. "highway" means every road, highway,

1 thoroughfare, street or way, including toll roads, generally
2 open to the use of the public as a matter of right for the
3 purpose of motor vehicle travel and notwithstanding that the
4 same may be temporarily closed for the purpose of
5 construction, reconstruction, maintenance or repair;

6 J. "motor vehicle" means any self-propelled
7 vehicle or device that is either subject to registration
8 pursuant to Section 66-3-1 NMSA 1978 or is used or may be
9 used on the public highways in whole or in part for the
10 purpose of transporting persons or property and includes any
11 connected trailer or semitrailer;

12 K. "person" means an individual or any other
13 entity, including, to the extent permitted by law, any
14 federal, state or other government or any department, agency,
15 instrumentality or political subdivision of any federal,
16 state or other government;

17 L. "rack operator" means the operator of a
18 refinery in this state, any person who blends special fuel in
19 this state or the owner of special fuel stored at a pipeline
20 terminal in this state;

21 M. "registrant" means any person who has
22 registered a motor vehicle pursuant to the laws of this state
23 or of another state;

24 N. "retailer" means a person who sells special
25 fuel generally in quantities of less than two hundred fifty

1 gallons and delivers the special fuel into the supply tanks
2 of motor vehicles;

3 O. "sale" means any delivery, exchange, gift or
4 other disposition;

5 P. "secretary" means the secretary of taxation and
6 revenue or the secretary's delegate;

7 Q. "special fuel" means any diesel-engine fuel,
8 biodiesel, blended biodiesel or kerosene used for the
9 generation of power to propel a motor vehicle, except for
10 gasoline, liquefied petroleum gas, compressed or liquefied
11 natural gas and products specially prepared and sold for use
12 in aircraft propelled by turbo-prop or jet engines;

13 R. "special fuel user" means any user who is a
14 registrant, owner or operator of a motor vehicle using
15 special fuel and having a gross vehicle weight in excess of
16 twenty-six thousand pounds;

17 S. "state" or "jurisdiction" means a state,
18 territory or possession of the United States, the District of
19 Columbia, the commonwealth of Puerto Rico, a foreign country
20 or a state or province of a foreign country;

21 T. "supplier" means any person, but not including
22 a rack operator or the United States or any of its agencies
23 except to the extent now or hereafter permitted by the
24 constitution of the United States and laws thereof, who
25 receives special fuel;

1 U. "supply tank" means any tank or other
2 receptacle in which or by which fuel may be carried and
3 supplied to the fuel-furnishing device or apparatus of the
4 propulsion mechanism of a motor vehicle when the tank or
5 receptacle either contains special fuel or special fuel is
6 delivered into it;

7 V. "tax" means the special fuel excise tax imposed
8 pursuant to the Special Fuels Supplier Tax Act, and, with
9 respect to a special fuel user, "tax" includes any special
10 fuel tax paid to another jurisdiction pursuant to a
11 cooperative agreement to which the state is a party pursuant
12 to Section 9-11-12 NMSA 1978;

13 W. "user" means any person other than the
14 United States government or any of its agencies or
15 instrumentalities; the state of New Mexico or any of its
16 political subdivisions, agencies or instrumentalities; or an
17 Indian nation, tribe or pueblo or any agency or
18 instrumentality of an Indian nation, tribe or pueblo, who
19 uses special fuel to propel a motor vehicle on the highways;
20 and

21 X. "wholesaler" means a person who is not a
22 supplier and who sells special fuel in quantities of two
23 hundred fifty gallons or more and does not deliver special
24 fuel into the supply tanks of motor vehicles."

1 Chapter 51, Section 10, as amended) is amended to read:

2 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
3 FUEL SUPPLIERS.--In computing the tax due, the following
4 amounts of special fuel may be deducted from the total amount
5 of special fuel received in New Mexico during the tax period,
6 provided that satisfactory proof thereof is furnished to the
7 department:

8 A. special fuel received in New Mexico, but
9 exported from this state by a rack operator, special fuel
10 supplier or dealer, other than in the fuel supply tank of a
11 motor vehicle or sold for export by a rack operator or
12 distributor; provided that, in either case:

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

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

19 (3) the destination state's special fuel or
20 equivalent fuel tax is paid to New Mexico in accordance with
21 the terms of an agreement entered into pursuant to Section
22 9-11-12 NMSA 1978 with the destination state;

23 B. special fuel sold to the United States or any
24 agency or instrumentality thereof for the exclusive use of
25 the United States or any agency or instrumentality thereof.

1 Special fuel sold to the United States includes special fuel
2 delivered into the supply tank of a government-licensed
3 vehicle;

4 C. special fuel sold to the state of New Mexico or
5 any political subdivision, agency or instrumentality thereof
6 for the exclusive use of the state of New Mexico or any
7 political subdivision, agency or instrumentality thereof.

8 Special fuel sold to the state of New Mexico includes special
9 fuel delivered into the supply tank of a government-licensed
10 vehicle;

11 D. special fuel sold to an Indian nation, tribe or
12 pueblo or any agency or instrumentality thereof for the
13 exclusive use of the Indian nation, tribe or pueblo or any
14 agency or instrumentality thereof. Special fuel sold to an
15 Indian nation, tribe or pueblo includes special fuel
16 delivered into the supply tank of a government-licensed
17 vehicle;

18 E. special fuel dyed in accordance with federal
19 regulations;

20 F. special fuel that is number 2 diesel fuel sold
21 for the generation of power to propel a vehicle authorized by
22 contract with the public education department as a school
23 bus; provided that the fuel has a distillation temperature of
24 five hundred degrees Fahrenheit at a ten percent recovery
25 point and six hundred forty degrees Fahrenheit at a ninety

1 percent recovery point;

2 G. special fuel received in New Mexico on which
3 New Mexico special fuel excise tax was paid by the
4 out-of-state terminal at which the special fuel was loaded,
5 provided that documentation that the special fuel was to be
6 imported into New Mexico was provided to the terminal
7 operator by the person receiving the fuel; and

8 H. special fuel received in New Mexico that:

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

14 (2) is biodiesel received or manufactured
15 and delivered to a rack operator that is within the state for
16 blending or resale."

17 SECTION 3. A new section of Chapter 7, Article 16A
18 NMSA 1978 is enacted to read:

19 "REPORTING REQUIREMENTS--SPECIAL FUEL
20 DEDUCTION--BIODIESEL.--

21 A. A taxpayer that deducts an amount of special
22 fuel that is biodiesel from the total amount of special fuel
23 received in New Mexico pursuant to Paragraph (2) of
24 Subsection H of Section 7-16A-10 NMSA 1978 shall report the
25 deducted amount separately with the taxpayer's return in a

1 manner prescribed by the department.

2 B. The department shall calculate the aggregate
3 amount, in dollars, of the difference between the amount of
4 special fuel excise tax that would have been collected in a
5 fiscal year if not for the deduction allowed pursuant to
6 Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978
7 and the amount of special fuel excise tax actually collected.
8 The department shall compile an annual report that includes
9 the aggregate amount, the number of taxpayers that deducted
10 an amount of special fuel pursuant to Paragraph (2) of
11 Subsection H of Section 7-16A-10 NMSA 1978 and any other
12 information necessary to evaluate the deduction. Beginning
13 in 2017 and every five years thereafter, the department shall
14 compile and present the annual reports to the revenue
15 stabilization and tax policy committee and the legislative
16 finance committee with an analysis of the costs and benefits
17 of the deduction to the state."

18 SECTION 4. REPEAL.--That version of Section 7-16A-10
19 NMSA 1978 (being Laws 2009, Chapter 99, Section 3) that is to
20 become effective July 1, 2014 is repealed.

21 SECTION 5. APPLICABILITY.--The provisions of this act
22 apply to special fuel received on or after:

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

1 B. July 1, 2013.

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

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

7 B. July 1, 2013.

8 SECTION 7. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect
10 immediately. _____

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