

1 HOUSE BILL 487

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; REPLACING THE GASOLINE TAX ACT AND THE  
12 SPECIAL FUELS SUPPLIER TAX ACT WITH THE MOTOR FUEL TAXES ACT TO  
13 IMPOSE TAX ON GASOLINE AND SPECIAL FUELS REMOVED FROM THE RACK  
14 OR TERMINAL; PROVIDING LICENSING REQUIREMENTS; PROVIDING  
15 EXEMPTIONS AND PROCEDURES FOR FILING CREDITS TO REFUNDS;  
16 REQUIRING INFORMATION RETURNS; AMENDING, REPEALING AND ENACTING  
17 SECTIONS OF THE NMSA 1978.

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

20 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
21 through 43 of this act may be cited as the "Motor Fuel Taxes  
22 Act".

23 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
24 Motor Fuel Taxes Act:

25 A. "aviation fuel" means gasoline sold for use in

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1 aircraft propelled by engines other than turbo-prop or jet-type  
2 engines;

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

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

10 D. "blender" means a person who produces blended  
11 motor fuel outside the bulk transfer-terminal system;

12 E. "blending" means the mixing together of liquids  
13 that produces a product that is offered for sale, sold, used,  
14 or capable of use as fuel for a gasoline-powered engine or  
15 diesel-powered engine. "Blending" does not include mixing that  
16 occurs in the process of refining by the original refiner of  
17 crude petroleum or the commingling of products during  
18 transportation in a pipeline;

19 F. "bulk plant" means a motor fuel storage and  
20 distribution facility:

21 (1) that is a terminal that has not been  
22 approved as a terminal by the federal internal revenue service;  
23 and

24 (2) from which motor fuel may be removed at a  
25 rack;

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1           G. "bulk storage" means a container of more than  
2 ten gallons;

3           H. "bulk transfer" means a transfer of motor fuel  
4 from one location to another by pipeline, including:

5                   (1) a pipeline movement of motor fuel from a  
6 refinery or terminal to a terminal;

7                   (2) a book transfer or intank transfer of  
8 motor fuel within a terminal between licensed suppliers before  
9 completion of removal across the rack; and

10                   (3) a two-party exchange between licensed  
11 suppliers or between licensed suppliers and permissive  
12 suppliers;

13           I. "bulk transfer-terminal system" means the motor  
14 fuel distribution system consisting of refineries, pipelines  
15 and terminals approved by the federal internal revenue service.  
16 Motor fuel is in the bulk transfer-terminal system if the motor  
17 fuel is in a refinery, a pipeline or a terminal. Motor fuel is  
18 not in the bulk transfer-terminal system if the motor fuel is  
19 in a motor fuel storage facility, including:

20                   (1) a bulk plant that is not part of a  
21 refinery or terminal;

22                   (2) the motor fuel supply tank of an engine or  
23 a motor vehicle; or

24                   (3) a tank car, railcar, trailer, truck or  
25 other equipment suitable for ground transportation;

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1 J. "bulk user" means a person who maintains storage  
2 facilities for motor fuel and uses all or part of the stored  
3 motor fuel to operate a motor vehicle, vessel or aircraft and  
4 for other uses;

5 K. "dealer" means a person who sells motor fuel at  
6 retail or dispenses motor fuel at a retail location;

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

11 M. "distributor" means a person who makes sales of  
12 motor fuel at wholesale. A distributor's activities may also  
13 include sales of motor fuel at retail;

14 N. "dyed special fuel" means diesel fuel that is  
15 intended for off-highway use and meets the dyeing and marking  
16 requirements of Section 4082 of the Internal Revenue Code  
17 regardless of how diesel fuel is dyed;

18 O. "exporter" means a person that exports motor  
19 fuel from this state. The seller is the exporter of motor fuel  
20 delivered out of this state by or for the seller, and the  
21 purchaser is the exporter of motor fuel delivered out of this  
22 state by or for the purchaser;

23 P. "fuel supply tank" means a receptacle on a motor  
24 vehicle, non-highway equipment or stationary engine from which  
25 motor fuel is supplied for the operation of its engine;

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1           Q. "gallon" means the quantity of liquid necessary  
2 to fill a standard United States gallon liquid measure or that  
3 same quantity adjusted to a temperature of sixty degrees  
4 Fahrenheit at the election of any distributor, but a  
5 distributor shall report on the same basis for a period of at  
6 least one year;

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

13           S. "highway" means every road, highway,  
14 thoroughfare, street or way, including toll roads, generally  
15 open to the use of the public as a matter of right for the  
16 purpose of motor vehicle travel and notwithstanding that the  
17 same may be temporarily closed for the purpose of construction,  
18 reconstruction, maintenance or repair;

19           T. "importer" means a person that imports motor  
20 fuel into this state. A seller is the importer for motor fuel  
21 delivered into this state from outside of this state by or for  
22 the seller, and the purchaser is the importer for motor fuel  
23 delivered into this state from outside of this state by or for  
24 the purchaser;

25           U. "Internal Revenue Code" means the Internal

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1 Revenue Code of 1986, as that code may be amended or its  
2 sections renumbered;

3 V. "license holder" means a person licensed  
4 pursuant to the Motor Fuel Taxes Act;

5 W. "motor fuel" means gasoline or special fuel;

6 X. "motor fuel transporter" means a person who  
7 transports gasoline, diesel fuel, gasoline blended fuel,  
8 aviation fuel or any other motor fuel, except liquefied gas,  
9 compressed natural gas or liquefied natural gas outside the  
10 bulk transfer-terminal system. "Motor fuel transporter" does  
11 not include a person who:

12 (1) is licensed pursuant to the Motor Fuel  
13 Taxes Act as a supplier, permissive supplier or distributor;  
14 and

15 (2) exclusively transports gasoline, diesel  
16 fuel, gasoline blended fuel, aviation fuel or any other motor  
17 fuel to which the person retains ownership while the fuel is  
18 being transported by the person;

19 Y. "motor vehicle" means any self-propelled vehicle  
20 or device that is either subject to registration pursuant to  
21 Section 66-3-1 NMSA 1978 or is used or may be used on the  
22 public highways in whole or in part for the purpose of  
23 transporting persons or property and includes any connected  
24 trailer or semitrailer;

25 Z. "net gallons" means the amount of motor fuel

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1 measured in gallons when adjusted to a temperature of sixty  
2 degrees Fahrenheit and a pressure of fourteen and seven-tenths  
3 pounds per square inch;

4 AA. "permissive supplier" means a person who  
5 elects, but is not required, to have a supplier's license and  
6 who:

7 (1) is registered under Section 4101 of the  
8 Internal Revenue Code for transactions in motor fuel in the  
9 bulk transfer-terminal system; and

10 (2) is a position holder in motor fuel located  
11 only in another state or a person who receives motor fuel only  
12 in another state under a two-party exchange;

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

18 CC. "position holder" means the person who holds  
19 the inventory position in motor fuel in a terminal, as  
20 reflected on the records of the terminal operator. A person  
21 holds the inventory position in motor fuel when that person has  
22 a contract with the terminal operator for the use of storage  
23 facilities and terminaling services for motor fuel at the  
24 terminal. "Position holder" includes a terminal operator who  
25 owns motor fuel in the terminal;

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1 DD. "rack" means a mechanism for delivering motor  
2 fuel from a refinery, terminal or bulk plant into a transport  
3 vehicle, railroad tank car or other means of transfer that is  
4 outside the bulk transfer-terminal system;

5 EE. "refinery" means a facility for the manufacture  
6 or reprocessing of finished or unfinished petroleum products  
7 usable as motor fuel and from which motor fuel may be removed  
8 by pipeline or at a rack;

9 FF. "removal" means a physical transfer other than  
10 by evaporation, loss or destruction. A physical transfer to a  
11 transport vehicle or other means of conveyance outside the bulk  
12 transfer-terminal system is complete on delivery into the means  
13 of conveyance;

14 GG. "sale" means any delivery, exchange, gift or  
15 other disposition;

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

22 II. "state" or "jurisdiction" means a state,  
23 territory or possession of the United States, the District of  
24 Columbia, the commonwealth of Puerto Rico, a foreign country or  
25 a state or province of a foreign country;

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1 JJ. "supplier" means a person that:

2 (1) is subject to the general taxing  
3 jurisdiction of this state; and

4 (2) is registered under Section 4101 of the  
5 Internal Revenue Code, as that section may be amended or  
6 renumbered, for transactions in motor fuel in the bulk  
7 transfer-terminal distribution system, and is:

8 (a) a position holder in motor fuel in a  
9 terminal or refinery in this state and may concurrently also be  
10 a position holder in motor fuel in another state; or

11 (b) a person who receives motor fuel in  
12 this state under a two-party exchange; and

13 (c) may also be a terminal operator,  
14 provided that a terminal operator is not considered to also be  
15 a supplier based solely on the fact that the terminal operator  
16 handles motor fuel consigned to it within a terminal;

17 KK. "terminal" means a motor fuel storage and  
18 distribution facility to which a terminal control number has  
19 been assigned by the internal revenue service, to which motor  
20 fuel is supplied by pipeline and from which motor fuel may be  
21 removed at a rack;

22 LL. "terminal operator" means a person who owns,  
23 operates or otherwise controls a terminal; and

24 MM. "two-party exchange" means a transaction in  
25 which motor fuel is transferred from one licensed supplier or

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1 permissive supplier to another licensed supplier or permissive  
2 supplier under an exchange agreement, including a transfer from  
3 the person who holds the inventory position in taxable motor  
4 fuel in the terminal as reflected on the records of the  
5 terminal operator, and that is:

6 (1) completed before removal of the product  
7 from the terminal by the receiving exchange partner; and

8 (2) recorded on the terminal operator's books  
9 and records with the receiving exchange partner as the supplier  
10 that removes the motor fuel across the terminal rack for  
11 purposes of reporting the transaction to this state.

12 SECTION 3. [NEW MATERIAL] POINT OF IMPOSITION OF MOTOR  
13 FUELS TAXES.--

14 A. A tax is imposed on the removal of motor fuel  
15 from the terminal using the terminal rack other than by bulk  
16 transfer. The supplier or permissive supplier is liable for  
17 and shall collect the tax imposed by this section from the  
18 person who orders the withdrawal at the terminal rack.

19 B. A tax is imposed at the time motor fuel is  
20 imported into this state, other than by a bulk transfer, for  
21 delivery to a destination in this state. The supplier or  
22 permissive supplier is liable for and shall collect the tax  
23 imposed by this section from the person who imports the motor  
24 fuel into this state. If the seller is not a supplier or  
25 permissive supplier, the person who imports the motor fuel into

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1 this state is liable for and shall pay the tax.

2 C. A tax is imposed on the removal of motor fuel  
3 from the bulk transfer-terminal system in this state. The  
4 supplier is liable for and shall collect the tax imposed by  
5 this section from the person who orders the removal from the  
6 bulk transfer-terminal system.

7 D. A tax is imposed on the blending of motor fuel  
8 at the point blended motor fuel is made in this state outside  
9 the bulk transfer-terminal system. The blender is liable for  
10 and shall pay the tax. The number of gallons of blended motor  
11 fuel on which the tax is imposed is equal to the difference  
12 between the number of gallons of blended motor fuel made and  
13 the number of gallons of previously taxed motor fuel used to  
14 make the blended motor fuel.

15 E. The terminal operator in this state is  
16 considered a supplier for the purpose of the tax imposed under  
17 this section unless at the time of removal:

18 (1) the terminal operator has a terminal  
19 operator's license issued for the facility from which the motor  
20 fuel is withdrawn;

21 (2) the terminal operator verifies that the  
22 person who removes the motor fuel has a supplier's license; and

23 (3) the terminal operator does not have a  
24 reason to believe that the supplier's license is not valid.

25 F. In each subsequent sale of motor fuel on which

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1 the tax has been paid, the amount of the tax shall be added to  
2 the selling price so that the tax is paid ultimately by the  
3 person using or consuming the motor fuel. Motor fuel is  
4 considered to be used when it is delivered into a fuel supply  
5 tank.

6 SECTION 4. [NEW MATERIAL] TAX RATES--DENOMINATION AS  
7 "GASOLINE TAX" AND "SPECIAL FUEL EXCISE TAX".--

8 A. The tax rate on gasoline is seventeen cents  
9 (\$.17) for each net gallon or fractional part on which the tax  
10 is imposed pursuant to Section 3 of the Motor Fuel Taxes Act.  
11 The tax imposed on gasoline may be referred to as the "gasoline  
12 tax".

13 B. The tax rate on special fuels is twenty-one  
14 cents (\$.21) for each net gallon or fractional part on which  
15 the tax is imposed pursuant to Section 3 of the Motor Fuel  
16 Taxes Act. The tax imposed on special fuel may be referred to  
17 as the "special fuel excise tax".

18 SECTION 5. [NEW MATERIAL] ADDITIONAL TAX APPLIES TO  
19 INVENTORIES.--

20 A. On the effective date of an increase in the  
21 rates of the taxes imposed by the Motor Fuel Taxes Act, a  
22 distributor or dealer that possesses, for the purpose of sale,  
23 two thousand or more gallons of gasoline or special fuel at  
24 each business location on which the taxes imposed at a previous  
25 rate have been paid shall report to the department the volume

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1 of that gasoline and special fuel and at the time of the report  
2 shall pay a tax on that gasoline and special fuel at a rate  
3 equal to the rate of the tax increase.

4 B. On the effective date of a reduction of the  
5 rates of taxes imposed by the Motor Fuel Taxes Act, a  
6 distributor or dealer that possesses, for the purpose of sale,  
7 two thousand or more gallons of gasoline or special fuel at  
8 each business location on which the taxes imposed at the  
9 previous rate have been paid becomes entitled to a refund in an  
10 amount equal to the difference in the amount of taxes paid on  
11 that gasoline or special fuel at the previous rate and at the  
12 rate in effect on the effective date of the reduction in the  
13 tax rates. The rules of the department shall provide for the  
14 method of claiming a refund pursuant to the Motor Fuel Taxes  
15 Act and may require that the refund for the dealer be paid  
16 through the distributor or supplier from whom the dealer  
17 received the motor fuel.

18 SECTION 6. [NEW MATERIAL] SEPARATE STATEMENT OF TAX  
19 COLLECTED FROM PURCHASER.--

20 A. In each subsequent sale of motor fuel on which  
21 tax has been paid, the tax imposed shall be collected from the  
22 purchaser so that the tax is paid ultimately by the person who  
23 uses the motor fuel. Motor fuel is considered to be used when  
24 it is delivered into a fuel supply tank.

25 B. The tax imposed shall be stated separately from

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1 the sale price of motor fuel and identified as gasoline tax or  
2 special fuel excise tax on the invoice or receipt issued to a  
3 purchaser. The tax shall be separately stated and identified  
4 in the same manner on a shipping document if the shipping  
5 document includes the sale price of the motor fuel.

6 C. Except as provided by Subsection D of this  
7 section, the sale price of motor fuel stated on an invoice,  
8 receipt or shipping document is presumed to be exclusive of the  
9 tax imposed by the Motor Fuel Taxes Act. The seller or  
10 purchaser may overcome the presumption by using the seller's  
11 records to show that the tax was included in the sale price.

12 D. Subsection B of this section does not apply to a  
13 sale of motor fuel by a licensed dealer to a person who  
14 delivers the motor fuel at the dealer's place of business into  
15 a fuel supply tank or into a container having a capacity of not  
16 more than ten gallons.

17 SECTION 7. [NEW MATERIAL] TRANSACTIONS NOT SUBJECT TO  
18 TAX.--

19 A. The taxes imposed by the Motor Fuel Taxes Act do  
20 not apply to:

21 (1) motor fuel sold to the United States or  
22 any agency or instrumentality thereof for the exclusive use of,  
23 and not the resale by, the United States or any agency or  
24 instrumentality thereof. Motor fuel sold to the United States  
25 includes motor fuel delivered into the supply tank of a

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1 government-licensed vehicle;

2 (2) motor fuel sold to the state of New Mexico  
3 or any political subdivision, agency or instrumentality thereof  
4 for the exclusive use of, and not the resale by, the state of  
5 New Mexico or any political subdivision, agency or  
6 instrumentality thereof. Motor fuel sold to the state of New  
7 Mexico includes motor fuel delivered into the supply tank of a  
8 government-licensed vehicle;

9 (3) motor fuel sold to an Indian nation, tribe  
10 or pueblo or any agency or instrumentality thereof for the  
11 exclusive use of, and not the resale by, the Indian nation,  
12 tribe or pueblo or any agency or instrumentality thereof.  
13 Motor fuel sold to an Indian nation, tribe or pueblo includes  
14 motor fuel delivered into the supply tank of a government-  
15 licensed vehicle;

16 (4) motor fuel sold by an Indian nation, tribe  
17 or pueblo to a member of the Indian nation, tribe or pueblo for  
18 the exclusive use by the member. Motor fuel sold to a member  
19 of the Indian nation, tribe or pueblo includes motor fuel  
20 delivered into the supply tank of a government-licensed  
21 vehicle;

22 (5) motor fuel for which proof of export is  
23 available in the form of a terminal-issued destination state  
24 shipping paper or bill of lading and that is either:

25 (a) exported by a supplier who is

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1 licensed in the destination state; or

2 (b) sold by a supplier to a distributor  
3 for immediate export;

4 (6) motor fuel moved by truck or railcar  
5 between licensed suppliers or licensed permissive suppliers and  
6 in which the motor fuel removed from the first terminal comes  
7 to rest in the second terminal, provided that the removal from  
8 the second terminal rack is subject to tax imposed by the Motor  
9 Fuel Taxes Act;

10 (7) motor fuel exported to a foreign country  
11 if the bill of lading indicates the foreign destination and the  
12 motor fuel is actually exported to the foreign country;

13 (8) dyed special fuel sold or delivered by a  
14 supplier to another supplier and dyed special fuel sold or  
15 delivered by a supplier or distributor into the bulk storage  
16 facility of a dyed special fuel bonded user or to a purchaser  
17 who provides a signed statement as provided by Section 9 of the  
18 Motor Fuel Taxes Act;

19 (9) dyed special fuel sold by a supplier or  
20 permissive supplier to a distributor or by a distributor to  
21 another distributor; and

22 (10) dyed special fuel delivered by a license  
23 holder into the fuel supply tanks of railway engines,  
24 motorboats or refrigeration units or other stationary equipment  
25 powered by a separate motor from a separate fuel supply tank.

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1           B. Paragraph (5) of Subsection A of this section  
2 does not apply to motor fuel that is transported and delivered  
3 outside this state in the motor fuel supply tank of a motor  
4 vehicle.

5           C. If an exporter described by Subparagraph (b) of  
6 Paragraph (5) of Subsection A of this section does not have an  
7 exporter's license, the supplier shall collect the tax imposed  
8 by the Motor Fuel Taxes Act.

9           D. Subparagraph (b) of Paragraph (5) of Subsection  
10 A of this section does not apply to a sale by a distributor.

11           **SECTION 8. [NEW MATERIAL] PERSONS REQUIRED TO BE**  
12 **LICENSED.--**

13           A. A person shall obtain the appropriate license  
14 issued by the department before conducting the activities of:

15                   (1) a supplier, who may also act as a  
16 distributor, importer, exporter, blender or motor fuel  
17 transporter without securing a separate license, but who is  
18 subject to all other conditions, requirements and liabilities  
19 imposed on those license holders;

20                   (2) a permissive supplier, who may also act as  
21 a distributor, importer, exporter, blender or motor fuel  
22 transporter without securing a separate license, but who is  
23 subject to all other conditions, requirements and liabilities  
24 imposed on those license holders;

25                   (3) a distributor, who may also act as an

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1 importer, exporter, blender or motor fuel transporter without  
2 securing a separate license, but who is subject to all other  
3 conditions, requirements and liabilities imposed on those  
4 license holders;

5 (4) an importer, who may also act as an  
6 exporter, blender or motor fuel transporter without securing a  
7 separate license, but who is subject to all other conditions,  
8 requirements and liabilities imposed on those license holders;

9 (5) a terminal operator;

10 (6) an exporter;

11 (7) a blender;

12 (8) a motor fuel transporter; and

13 (9) a dyed special fuel bonded user.

14 B. A person shall obtain a license as a dyed  
15 special fuel bonded user to purchase dyed special fuel in  
16 amounts that exceed the limitations prescribed by Subsection C  
17 of Section 9 of the Motor Fuel Taxes Act. The requirements of  
18 this subsection do not affect the right of a purchaser to  
19 purchase not more than the number of gallons of dyed special  
20 fuel prescribed by Subsection C of Section 9 of the Motor Fuel  
21 Taxes Act each month for the purchaser's own use using a signed  
22 statement.

23 SECTION 9. [NEW MATERIAL] STATEMENT OF PURCHASE OF DYED  
24 SPECIAL FUEL.--

25 A. The first removal of motor fuel from a terminal

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1 in this state is taxable, except the sale of dyed special fuel  
2 may be made without collecting the tax if the purchaser  
3 furnishes to a licensed supplier or distributor a signed  
4 statement that includes an end user number issued by the  
5 department. A person who wants to use a signed statement to  
6 purchase dyed special fuel shall apply to the department for an  
7 end user number to be used in conjunction with a signed  
8 statement. A licensed supplier or distributor shall not make a  
9 tax-exempt sale of any special fuel to a purchaser using a  
10 signed statement unless the purchaser has an end user number  
11 issued by the department pursuant to this section. A taxable  
12 sale or removal of dyed special fuel shall not be made except  
13 as prescribed by Subsection E of this section.

14 B. A sale of dyed special fuel may be made without  
15 collecting the special fuel excise tax if the purchaser  
16 furnishes to a licensed supplier or distributor a signed  
17 statement, including an end user number issued by the  
18 department, that stipulates that:

19 (1) all of the dyed special fuel purchased on  
20 the signed statement will be consumed by the purchaser and will  
21 not be resold; and

22 (2) none of the dyed special fuel purchased on  
23 the signed statement will be delivered or permitted to be  
24 delivered into the fuel supply tank of a motor vehicle operated  
25 on the public highways of this state.

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1           C. A person shall not make a tax-exempt purchase  
2 and a licensed supplier or distributor shall not make a tax-  
3 exempt sale to a purchaser of any dyed special fuel pursuant to  
4 this section using a signed statement for the first sale or  
5 purchase and for any subsequent sale or purchase in a calendar  
6 month for more than ten thousand gallons of dyed special fuel.

7           D. The limitations provided in Subsection C of this  
8 section apply regardless of whether the dyed special fuel is  
9 purchased in a single transaction during that month or in  
10 multiple transactions during that month.

11           E. Any gallons purchased or sold in excess of the  
12 limitations prescribed by Subsection C of this section  
13 constitute a taxable purchase or sale. A purchaser that  
14 exceeds the limitations provided in Subsection C of this  
15 section shall be required to obtain a dyed special fuel bonded  
16 user license.

17           F. The signed statement and end user number from  
18 the purchaser relieves the licensed supplier or distributor  
19 from the burden of proof that the sale of dyed special fuel for  
20 a non-highway purpose was not taxable to the purchaser and  
21 remains in effect unless:

22                   (1) the statement is revoked in writing by the  
23 purchaser or licensed supplier or distributor;

24                   (2) the department notifies the licensed  
25 supplier or distributor in writing that the purchaser may no

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1 longer make tax-exempt purchases; or

2 (3) the licensed supplier or distributor is  
3 put on notice by making taxable sales of dyed special fuel to a  
4 purchaser who has previously furnished a signed statement to  
5 the licensed supplier or distributor.

6 G. For purposes of Paragraph (3) of Subsection F of  
7 this section, a licensed supplier or distributor is not put on  
8 notice when taxable sales of dyed special fuel are made in  
9 accordance with Subsection E of this section.

10 H. The statement shall be signed by the purchaser  
11 or the purchaser's representative.

12 I. For purposes of this section, the purchaser is  
13 considered to have temporarily furnished the signed statement  
14 to the licensed supplier or distributor if the supplier or  
15 distributor verifies that the purchaser has an end user number  
16 issued by the department. The licensed supplier or distributor  
17 shall use the department's website or other materials provided  
18 or produced by the department to verify this information until  
19 the purchaser provides to the supplier or distributor a  
20 completed signed statement.

21 J. The department, by rule, may allow separate  
22 operating divisions of a corporation to give separate signed  
23 statements as if the divisions were different legal entities.

24 K. The department may adopt necessary forms and  
25 rules to administer and enforce this section.

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1           L. A taxable use of any part of dyed special fuel  
2 purchased under a signed statement shall, in addition to  
3 application of any criminal penalty, forfeit the right of the  
4 person to purchase tax-exempt dyed special fuel for a period of  
5 one year from the date of the offense. Any tax, interest and  
6 penalty found to be due through false or erroneous execution or  
7 continuance of a promissory statement by the purchaser, if  
8 assessed to the licensed supplier or distributor, is a debt of  
9 the purchaser to the licensed supplier or distributor until  
10 paid and is recoverable at law in the same manner as the  
11 purchase price of the fuel.

12           M. Properly completed signed statements shall be in  
13 the possession of the licensed supplier or distributor at the  
14 time the sale of dyed special fuel occurs. If the licensed  
15 supplier or distributor is not in possession of the signed  
16 statements within sixty days after the date written notice  
17 requiring possession of them is given to the licensed supplier  
18 or distributor by the department, exempt sales claimed by the  
19 licensed supplier or distributor that require delivery of the  
20 signed statements shall be disallowed. If the licensed  
21 supplier or distributor delivers the signed statements to the  
22 department within the sixty-day period, the department may  
23 verify the reason or basis for the signed statements before  
24 allowing the exempt sales. An exempt sale shall not be granted  
25 on the basis of signed statements delivered to the department

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1 after the sixty-day period.

2 N. On receipt of notice transmitted by an  
3 electronic means of a final judgment entered by a court against  
4 a purchaser of dyed special fuel for failure to pay an amount  
5 owed to a licensed supplier or distributor for the purchase of  
6 dyed special fuel, the department shall revoke the end user  
7 number issued to the purchaser. The department shall provide  
8 the notice described by Paragraph (2) of Subsection F of this  
9 section to the licensed supplier or distributor if the  
10 purchaser's end user number is revoked.

11 O. The department may reinstate an end user number  
12 that is revoked pursuant to Subsection N of this section on  
13 receipt of proof transmitted by an electronic means and  
14 satisfactory to the department that the purchaser whose end  
15 user number was revoked has satisfied the judgment described by  
16 Subsection N of this section, including all costs and other  
17 amounts awarded in the judgment.

18 SECTION 10. [NEW MATERIAL] PERMISSIVE SUPPLIER  
19 REQUIREMENTS ON OUT-OF-STATE REMOVAL.--

20 A. A person may obtain a permissive supplier  
21 license to collect the taxes imposed by the Motor Fuel Taxes  
22 Act for motor fuel that is removed at a terminal in another  
23 state and has this state as the destination state.

24 B. With respect to motor fuel that is removed by  
25 the licensed permissive supplier at a terminal located in

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1 another state and that has this state as the destination state,  
2 a licensed permissive supplier shall:

3 (1) collect the tax due to this state on the  
4 motor fuel;

5 (2) waive any defense that this state lacks  
6 jurisdiction to require the supplier to collect the tax due to  
7 this state on the motor fuel pursuant to the Motor Fuel Taxes  
8 Act;

9 (3) report and pay the taxes due on the motor  
10 fuel in the same manner as if the removal had occurred at a  
11 terminal located in this state;

12 (4) keep records of the removal of the motor  
13 fuel and submit to audits concerning the motor fuel as if the  
14 removal had occurred at a terminal located in this state; and

15 (5) report sales by the permissive supplier to  
16 a person who is not licensed in this state.

17 C. A permissive supplier shall acknowledge in the  
18 supplier's license application that this state imposes the  
19 requirements listed in Subsection B of this section under this  
20 state's general police power and that the permissive supplier  
21 submits to the jurisdiction of this state only for purposes  
22 related to the administration of the Motor Fuel Taxes Act.

23 SECTION 11. [NEW MATERIAL] LICENSE APPLICATION

24 PROCEDURE.--

25 A. To obtain a license required by the Motor Fuel

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1 Taxes Act, an applicant shall file an application using a form  
2 adopted by the department. The application shall contain:

3 (1) the name under which the applicant  
4 transacts or intends to transact business;

5 (2) the applicant's principal office,  
6 residence, place of business in this state or other location of  
7 the applicant;

8 (3) if the applicant is not an individual, the  
9 names of the principal officers of an applicant corporation, or  
10 the names of the members of an applicant partnership, and the  
11 office, street or post office addresses of each; and

12 (4) other information that may be required by  
13 the department.

14 B. An applicant for a license as a supplier,  
15 permissive supplier or terminal operator shall have a federal  
16 certificate of registry issued pursuant to Section 4101 of the  
17 Internal Revenue Code that authorizes the applicant to enter  
18 into federal tax-exempt transactions of motor fuel in the bulk  
19 terminal-transfer system. An applicant that is required to  
20 have a federal certificate of registry shall include the  
21 registration number of the certificate on the application for a  
22 license. An applicant for a license as an importer, exporter  
23 or distributor who has a federal certificate of registry issued  
24 pursuant to Section 4101 of the Internal Revenue Code shall  
25 include the registration number of the certificate on the

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1 application for a license.

2 C. An applicant for a license as an importer or  
3 distributor shall list on the application each state from which  
4 the applicant intends to import motor fuel and, if required by  
5 a listed state, shall be licensed or registered for purposes of  
6 taxing motor fuel in that state. If a listed state requires  
7 the applicant to be licensed or registered, the applicant shall  
8 provide the applicant's license or registration number from  
9 that state.

10 D. An applicant for a license as an exporter shall  
11 designate an agent located in this state for service of process  
12 and provide the agent's name and address. An applicant for a  
13 license as an exporter or distributor shall list on the  
14 application each state to which the applicant intends to export  
15 motor fuel received in this state by means of a transfer that  
16 is outside the bulk terminal-transfer system and shall be  
17 licensed or registered for purposes of taxing motor fuel in  
18 that state. The applicant shall provide the applicant's  
19 license or registration number from that state.

20 E. An applicant for a license as a motor fuel  
21 transporter shall list on the application each state from which  
22 and to which the applicant intends to transport motor fuel and,  
23 if required by a listed state, shall be licensed or registered  
24 for purposes of taxing motor fuel in that state. If a listed  
25 state requires the applicant to be licensed or registered, the

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1 applicant shall provide the applicant's license or registration  
2 number from that state.

3 SECTION 12. [NEW MATERIAL] ISSUANCE AND DISPLAY OF  
4 LICENSE.--If the department approves a license application, the  
5 department shall issue a license to the applicant. A license  
6 shall be posted in a conspicuous place or kept available for  
7 inspection at the principal place of business of the license  
8 holder. A copy of the license shall be kept at each place of  
9 business or other place of storage from which motor fuel is  
10 sold, distributed or used and in each motor vehicle used by the  
11 license holder to transport motor fuel purchased by the license  
12 holder for resale, distribution or use.

13 SECTION 13. [NEW MATERIAL] LICENSES--PERIODS OF  
14 VALIDITY.--

15 A. A license issued to a supplier, permissive  
16 supplier, distributor, importer, terminal supplier, exporter,  
17 blender, motor fuel transporter or dyed special fuel bonded  
18 user is permanent and is valid during the period the license  
19 holder has in force and effect the required bond or security  
20 and furnishes timely reports and supplements as required, or  
21 until the license is surrendered by the holder or canceled by  
22 the department. The department shall cancel a license if a  
23 purchase, sale or use of motor fuel has not been reported by  
24 the license holder during the previous nine months.

25 B. A license issued pursuant to this section is not

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1 transferable.

2 SECTION 14. [NEW MATERIAL] BOND AND OTHER SECURITY FOR  
3 TAXES.--

4 A. The department shall determine the amount of  
5 security required of a supplier, permissive supplier,  
6 distributor, exporter, importer, blender or dyed special fuel  
7 bonded user, taking into consideration the amount of tax that  
8 has or is expected to become due from the person, any past  
9 history of the person as a license holder and its predecessor  
10 and the necessity to protect this state against the failure to  
11 pay the tax as the tax becomes due.

12 B. If it is determined that the posting of security  
13 is necessary to protect this state, the department may require  
14 a license holder to post a bond. A license holder shall post a  
15 bond equal to two times the maximum amount of tax that could  
16 accrue on tax-exempt motor fuel purchased or acquired during a  
17 reporting period. The minimum bond is one thousand dollars  
18 (\$1,000).

19 C. A license holder who has filed a bond or other  
20 security pursuant to this section is entitled, on request, to  
21 have the department return, refund or release the bond or  
22 security if in the judgment of the department the person has  
23 for four consecutive years continuously complied with the  
24 conditions of the bond or other security filed pursuant to this  
25 section. However, if the department determines that the

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1 revenues of this state would be jeopardized by the return,  
2 refund or release of the bond or security, the department may  
3 elect not to return, refund or release the bond or security and  
4 may reimpose a requirement of a bond or other security as the  
5 department determines necessary to protect the revenues of this  
6 state.

7 D. A bond shall be a continuing instrument, shall  
8 constitute a new and separate obligation in the penal sum named  
9 in the bond for each calendar year or portion of a year while  
10 the bond is in force and shall remain in effect until the  
11 surety on the bond is released and discharged.

12 E. Instead of filing a surety bond, an applicant  
13 for a license may substitute the following security:

14 (1) cash in the form of United States currency  
15 in an amount equal to the required bond to be deposited in a  
16 suspense account of the state treasury;

17 (2) an assignment to the department of a  
18 certificate of deposit in any bank or savings and loan  
19 association in this state that is a member of the federal  
20 deposit insurance corporation in an amount at least equal to  
21 the bond amount required; or

22 (3) an irrevocable letter of credit to the  
23 department from any bank or savings and loan association in  
24 this state that is a member of the federal deposit insurance  
25 corporation in an amount of credit at least equal to the bond

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1 amount required.

2 F. If the amount of an existing bond becomes  
3 insufficient or a security becomes unsatisfactory or  
4 unacceptable, the department may require the filing of a new or  
5 additional bond or security.

6 G. A surety bond or other form of security shall  
7 not be released until it is determined by examination or audit  
8 that a tax, penalty or interest liability does not exist. The  
9 cash or securities shall be released within sixty days after  
10 the department determines that liability does not exist.

11 H. The department may use the cash or certificate  
12 of deposit security to satisfy a final determination of  
13 delinquent liability or a judgment secured in any action by  
14 this state to recover taxes, costs, penalties and interest  
15 found to be due to this state by a person in whose behalf the  
16 cash or certificate security was deposited.

17 I. A surety on a bond furnished by a license holder  
18 shall be released and discharged from liability to this state  
19 accruing on the bond on the thirty-first day after the date the  
20 surety files with the department a written request to be  
21 released and discharged. The request does not relieve, release  
22 or discharge the surety from a liability already accrued, or  
23 that accrues before the expiration of the thirty-day period.  
24 The department, promptly on receipt of the request, shall  
25 notify the license holder who furnished the bond, and unless

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1 the license holder, before the expiration date of the existing  
2 security, files with the department a new bond with a surety  
3 company duly authorized to do business under the laws of this  
4 state, or other authorized security, in the amount required in  
5 this section, the department shall cancel the license pursuant  
6 to the Motor Fuel Taxes Act.

7 J. The department shall immediately notify the  
8 issuer of a letter of credit of a final determination of the  
9 license holder's delinquent liability or a judgment secured in  
10 any action by this state to recover taxes, costs, penalties and  
11 interest found to be due this state by a license holder in  
12 whose behalf the letter of credit was issued. The letter of  
13 credit allowed as security for the remittance of taxes pursuant  
14 to the Motor Fuel Taxes Act shall contain a statement that the  
15 issuer agrees to respond to the department's notice of  
16 liability with amounts to satisfy the department's delinquency  
17 claim against the license holder.

18 K. A license holder may request an examination or  
19 audit to obtain release of the security when the license holder  
20 relinquishes the license or when the license holder wants to  
21 substitute one form of security for an existing one.

22 SECTION 15. [NEW MATERIAL] REMITTANCE OF TAX TO SUPPLIER  
23 OR PERMISSIVE SUPPLIER.--

24 A. Each licensed distributor and licensed importer  
25 shall remit to the supplier or permissive supplier, as

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1 applicable, the taxes imposed pursuant to Section 3 of the  
2 Motor Fuel Taxes Act for motor fuel removed at a terminal rack.  
3 A licensed distributor or licensed importer may elect to defer  
4 payment of the tax to the supplier or permissive supplier until  
5 two days before the date the supplier or permissive supplier is  
6 required to remit the tax to this state. The distributor or  
7 importer shall pay the taxes by electronic funds transfer.

8 B. A supplier, a permissive supplier or its  
9 representative that conducts electronic transactions to draft  
10 an account of a licensed distributor or licensed importer for  
11 the payment of taxes due pursuant to the Motor Fuel Taxes Act  
12 shall provide at least two days' notice using an electronic  
13 means of the amount to be drafted from the account of the  
14 licensed distributor or licensed importer and the number of the  
15 account to be drafted from.

16 C. If the supplier or permissive supplier cannot  
17 secure from the licensed distributor or licensed importer  
18 payment of taxes due for motor fuel removed from the terminal  
19 during the previous reporting period and the supplier elects to  
20 take a credit against a subsequent payment of tax on motor fuel  
21 to this state for the taxes not remitted to the supplier or  
22 permissive supplier by the licensed distributor or licensed  
23 importer, the supplier or permissive supplier shall notify the  
24 department of the licensed distributor's or licensed importer's  
25 failure to remit tax in conjunction with the report requesting

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1 a credit.

2 D. The supplier or permissive supplier, after  
3 requesting a credit under this section, shall terminate the  
4 ability of the licensed distributor or licensed importer to  
5 defer the payment of the tax. The supplier or permissive  
6 supplier shall not reinstate the right of the licensed  
7 distributor or licensed importer to defer the payment of the  
8 tax until the first anniversary of the date the supplier or  
9 permissive supplier requested the credit, subject to Subsection  
10 E of this section.

11 E. A supplier or permissive supplier may reinstate  
12 the right of a licensed distributor or licensed importer to  
13 defer the payment of the tax before the date prescribed by  
14 Subsection D of this section if the department determines that:

15 (1) the supplier or permissive supplier  
16 erroneously requested the credit that resulted in the  
17 termination of the licensed distributor's or licensed  
18 importer's right to defer payment; or

19 (2) the licensed distributor or licensed  
20 importer failed to pay the amount of tax due because of  
21 circumstances that may have been outside the distributor's or  
22 importer's control.

23 F. A licensed distributor or licensed importer that  
24 makes timely payments of the taxes imposed pursuant to the  
25 Motor Fuel Taxes Act is entitled to retain an amount equal to

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1 one and seventy-five thousandths percent of the total taxes to  
2 be paid to the supplier or permissive supplier to cover  
3 administrative expenses.

4 G. The license of a distributor, exporter or  
5 importer who fails to pay the full amount of tax due is subject  
6 to cancellation as provided by Section 36 of the Motor Fuel  
7 Taxes Act.

8 SECTION 16. [NEW MATERIAL] RETURNS AND PAYMENT.--

9 A. Except as provided by Subsection B of this  
10 section, each person who is liable for the tax imposed by the  
11 Motor Fuel Taxes Act, a terminal operator and a licensed  
12 distributor shall file a return on or before the twenty-fifth  
13 day of the month following the end of each calendar month.

14 B. A motor fuel transporter and dyed special fuel  
15 bonded user shall file a return on or before the twenty-fifth  
16 day of the month following the end of the calendar quarter.

17 C. The return required by this section shall be  
18 accompanied by a payment for the amount of tax reported due.

19 SECTION 17. [NEW MATERIAL] RECORDS.--

20 A. A supplier and permissive supplier shall keep:

21 (1) a record including the number of gallons  
22 of:

23 (a) all motor fuel inventories on hand  
24 at the first of each month;

25 (b) all motor fuel refined, compounded

1 or blended;

2 (c) all motor fuel purchased or  
3 received, including the name of the seller and the date of each  
4 purchase or receipt;

5 (d) all motor fuel sold, distributed or  
6 used, including the name of the purchaser and the date of the  
7 sale, distribution or use; and

8 (e) all motor fuel lost by fire, theft  
9 or accident; and

10 (2) an itemized statement including by load  
11 the number of gallons of all motor fuel:

12 (a) received during the preceding  
13 calendar month for export and the location of the loading;

14 (b) exported from this state by  
15 destination state or country; and

16 (c) imported during the preceding  
17 calendar month, by state or country of origin.

18 B. A distributor shall keep:

19 (1) a record including the number of gallons  
20 of:

21 (a) all motor fuel inventories on hand  
22 at the first of each month;

23 (b) all motor fuel blended;

24 (c) all motor fuel purchased or  
25 received, including the name of the seller and the date of each

1 purchase or receipt;

2 (d) all motor fuel sold, distributed or  
3 used, including the name of the purchaser and the date of the  
4 sale, distribution or use; and

5 (e) all motor fuel lost by fire, theft  
6 or accident;

7 (2) an itemized statement including by load  
8 the number of gallons of all motor fuel:

9 (a) received during the preceding  
10 calendar month for export and the location of the loading;

11 (b) exported from this state by  
12 destination state or country; and

13 (c) imported during the preceding  
14 calendar month, by state or country of origin; and

15 (3) for motor fuel exported outside this  
16 state, proof of payment of tax to the destination state, in a  
17 form acceptable to the department.

18 C. An importer shall keep:

19 (1) a record including the number of gallons  
20 of:

21 (a) all motor fuel inventories on hand  
22 at the first of each month;

23 (b) all motor fuel compounded or  
24 blended;

25 (c) all motor fuel purchased or

1 received, including the name of the seller and the date of each  
2 purchase or receipt;

3 (d) all motor fuel sold, distributed or  
4 used, including the name of the purchaser and the date of the  
5 sale, distribution or use; and

6 (e) all motor fuel lost by fire, theft  
7 or accident; and

8 (2) an itemized statement including by load  
9 the number of gallons of all motor fuel:

10 (a) received during the preceding  
11 calendar month for export and the location of the loading;

12 (b) exported from this state, by  
13 destination state or country; and

14 (c) imported during the preceding  
15 calendar month, by state or country of origin.

16 D. An exporter shall keep:

17 (1) a record including the number of gallons  
18 of:

19 (a) all motor fuel inventories on hand  
20 at the first of each month;

21 (b) all motor fuel compounded or  
22 blended;

23 (c) all motor fuel purchased or  
24 received, including the name of the seller and the date of each  
25 purchase or receipt;

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1 (d) all motor fuel sold, distributed or  
2 used, including the name of the purchaser and the date of the  
3 sale or use; and

4 (e) all motor fuel lost by fire, theft  
5 or accident;

6 (2) an itemized statement including by load  
7 the number of gallons of all motor fuel:

8 (a) received during the preceding  
9 calendar month for export and the location of the loading; and

10 (b) exported from this state, by  
11 destination state or country;

12 (3) proof of payment of tax to the destination  
13 state in a form acceptable to the department; and

14 (4) if an exemption pursuant to Subparagraph  
15 (b) of Paragraph (5) of Subsection A of Section 7 of the Motor  
16 Fuel Taxes Act is claimed, proof of payment of tax to the  
17 destination state or proof that the transaction was exempt in  
18 the destination state, in a form acceptable to the department.

19 E. A blender shall keep a record including the  
20 number of gallons of:

21 (1) all motor fuel inventories on hand at the  
22 first of each month;

23 (2) all motor fuel compounded or blended;

24 (3) all motor fuel purchased or received,  
25 including the name of the seller and the date of each purchase

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1 or receipt;

2 (4) all motor fuel sold, distributed or used,  
3 including the name of the purchaser and the date of the sale,  
4 distribution or use; and

5 (5) all motor fuel lost by fire, theft or  
6 accident.

7 F. A terminal operator shall keep:

8 (1) a record including the number of gallons  
9 of:

10 (a) all motor fuel inventories on hand  
11 at the first of each month, including the name and license  
12 number of each owner and the amount of motor fuel held for each  
13 owner;

14 (b) all motor fuel received, including  
15 the name of the seller and the date of each purchase or  
16 receipt;

17 (c) all motor fuel sold, distributed or  
18 used, including the name of the purchaser and the date of the  
19 sale, distribution or use; and

20 (d) all motor fuel lost by fire, theft  
21 or accident; and

22 (2) an itemized statement including by load  
23 the number of gallons of all motor fuel:

24 (a) received during the preceding  
25 calendar month for export and the location of the loading;

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1 (b) exported from this state, by  
2 destination state or country; and

3 (c) imported during the preceding  
4 calendar month, by state or country of origin.

5 G. A motor fuel transporter shall keep a complete  
6 and separate record of each intrastate and interstate  
7 transportation of motor fuel, including:

- 8 (1) the date of transportation;  
9 (2) the name of the consignor and consignee;  
10 (3) the method of transportation;  
11 (4) the quantity and kind of motor fuel  
12 transported;

13 (5) full data concerning the diversion of  
14 shipments, including the number of gallons diverted from  
15 interstate to intrastate and intrastate to interstate commerce;  
16 and

17 (6) the points of origin and destination, the  
18 number of gallons shipped or transported, the date, the  
19 consignee and the consignor, and the kind of motor fuel that  
20 has been diverted.

21 H. A dealer shall keep a record including the  
22 number of gallons of:

- 23 (1) motor fuel inventories on hand at the  
24 first of each month;  
25 (2) all motor fuel purchased or received,



1 including the name of the seller and the date of each purchase  
2 or receipt;

3 (3) all motor fuel sold or used, including the  
4 date of the sale or use; and

5 (4) all motor fuel lost by fire, theft or  
6 accident.

7 I. A dyed special fuel bonded user shall keep a  
8 record including the number of gallons of:

9 (1) dyed and undyed special fuel inventories  
10 on hand at the first of each month;

11 (2) dyed and undyed special fuel purchased or  
12 received, including the name of the seller and the date of each  
13 purchase or receipt;

14 (3) dyed and undyed special fuel delivered  
15 into the fuel supply tanks of motor vehicles;

16 (4) dyed and undyed special fuel used in off-  
17 highway equipment or for other non-highway purposes; and

18 (5) dyed and undyed special fuel lost by fire,  
19 theft or accident.

20 J. The department may require selective schedules  
21 from a supplier, permissive supplier, distributor, importer,  
22 exporter, blender, terminal operator, motor fuel transporter,  
23 dealer and dyed special fuel bonded user for any purchase, sale  
24 or delivery of special fuel if the schedules are not  
25 inconsistent with the requirements of this section.

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1           K. The records required by this section shall be  
2 kept until the fourth anniversary of the date they are created  
3 and are open to inspection at all times by the department and  
4 the attorney general.

5           L. In addition to the records specifically required  
6 by this section, a license holder, dealer or person required to  
7 hold a license shall keep any other record required by the  
8 department.

9           **SECTION 18. [NEW MATERIAL] INFORMATION REQUIRED ON**  
10 **SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN--CREDITS.--**

11           A. The monthly return and supplements of each  
12 supplier and permissive supplier shall contain for the period  
13 covered by the return:

14                   (1) the number of net gallons of motor fuel  
15 received by the supplier or permissive supplier during the  
16 month, sorted by product code, seller, point of origin,  
17 destination state, carrier and receipt date;

18                   (2) the number of net gallons of motor fuel  
19 removed at a terminal rack during the month from the account of  
20 the supplier, sorted by product code, person receiving the  
21 diesel fuel, terminal code and carrier;

22                   (3) the number of net gallons of motor fuel  
23 removed during the month for export, sorted by product code,  
24 person receiving the diesel fuel, terminal code, destination  
25 state and carrier;

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1 (4) the number of net gallons of motor fuel  
2 removed during the month from a terminal located in another  
3 state for conveyance to this state, as indicated on the  
4 shipping document for the diesel fuel, sorted by product code,  
5 person receiving the diesel fuel, terminal code and carrier;

6 (5) the number of net gallons of motor fuel  
7 the supplier or permissive supplier sold during the month in  
8 transactions exempt pursuant to Section 7 of the Motor Fuel  
9 Taxes Act, sorted by product code, carrier, purchaser and  
10 terminal code;

11 (6) the number of net gallons of motor fuel  
12 sold in the bulk transfer-terminal system in this state to any  
13 person not holding a supplier's or permissive supplier's  
14 license; and

15 (7) any other information as required by the  
16 department.

17 B. A supplier or permissive supplier may take a  
18 credit for any taxes that were not remitted in a previous  
19 period to the supplier or permissive supplier by a licensed,  
20 distributor or licensed importer as required by Section 15 of  
21 the Motor Fuel Taxes Act. The supplier or permissive supplier  
22 is eligible to take this credit if the department is notified  
23 of the default within fifteen days after the default occurs.  
24 If a license holder pays to a supplier or permissive supplier  
25 the tax owed, but the payment occurs after the supplier or

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1 permissive supplier has taken a credit on its return, the  
2 supplier or permissive supplier shall remit the payment to the  
3 department with the next monthly return after receipt of the  
4 tax, plus a penalty of ten percent of the amount of unpaid  
5 taxes and interest at the rate provided by Section 7-1-69 NMSA  
6 1978 beginning on the date the credit is taken.

7 SECTION 19. [NEW MATERIAL] DUTIES OF SELLER OF MOTOR  
8 FUEL.--

9 A. A seller who receives or collects tax holds the  
10 amount received or collected in trust for the benefit of this  
11 state and has a fiduciary duty to remit to the department the  
12 amount of tax received or collected.

13 B. A seller shall furnish the purchaser with an  
14 invoice, bill of lading or other documentation as evidence of  
15 the number of gallons received by the purchaser.

16 C. A seller who receives a payment of tax shall not  
17 apply the payment of tax to a debt that the person making the  
18 payment owes for motor fuel purchased from the seller.

19 D. A person required to receive or collect a tax  
20 pursuant to the Motor Fuel Taxes Act is liable for and shall  
21 pay the tax in the manner provided by that act.

22 SECTION 20. [NEW MATERIAL] INFORMATION REQUIRED ON  
23 DISTRIBUTOR'S RETURN.--The monthly return and supplements of  
24 each distributor shall contain for the period covered by the  
25 return:

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1           A. the number of net gallons of motor fuel received  
2 by the distributor during the month, sorted by product code,  
3 seller, point of origin, destination state, carrier and receipt  
4 date;

5           B. the number of net gallons of motor fuel removed  
6 at a terminal rack by the distributor during the month, sorted  
7 by product code, seller, terminal code and carrier;

8           C. the number of net gallons of motor fuel removed  
9 by the distributor during the month for export, sorted by  
10 product code, terminal code, bulk plant address, destination  
11 state and carrier;

12           D. the number of net gallons of motor fuel removed  
13 by the distributor during the month from a terminal located in  
14 another state for conveyance to this state, as indicated on the  
15 shipping document for the motor fuel, sorted by product code,  
16 seller, terminal code, bulk plant address and carrier;

17           E. the number of net gallons of motor fuel the  
18 distributor sold during the month in transactions exempt  
19 pursuant to Section 7 of the Motor Fuel Taxes Act, dyed special  
20 fuel sold to a purchaser under a signed statement or dyed  
21 special fuel sold to a dyed special fuel bonded user, sorted by  
22 product code and by the entity receiving the fuel; and

23           F. any other information as required by the  
24 department.

25           **SECTION 21. [NEW MATERIAL] INFORMATION REQUIRED ON**

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1 IMPORTER'S RETURNS.--The monthly return and supplements of an  
2 importer shall contain for the period covered by the return:

3 A. the number of net gallons of imported motor fuel  
4 acquired from a supplier or permissive supplier who collected  
5 the tax due this state on the motor fuel;

6 B. the number of net gallons of imported motor fuel  
7 acquired from a person who did not collect the tax due to this  
8 state on the motor fuel, listed by product code, source state,  
9 person and terminal;

10 C. the number of net gallons of imported motor fuel  
11 acquired from a bulk plant outside this state, listed by bulk  
12 plant name, address and product code; and

13 D. any other information as required by the  
14 department.

15 SECTION 22. [NEW MATERIAL] INFORMATION REQUIRED ON  
16 TERMINAL OPERATOR'S RETURN.--

17 A. A terminal operator shall file with the  
18 department a monthly information return and supplement showing  
19 the amount of motor fuel received and removed from the terminal  
20 during the month. The return also shall contain the following  
21 summary information:

22 (1) the beginning and ending inventory that  
23 relates to the applicable reporting month;

24 (2) the number of net gallons of motor fuel  
25 received in inventory at the terminal during the month;

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1 (3) the number of net gallons of motor fuel  
2 removed from inventory at the terminal during the month; and

3 (4) any other summary information as required  
4 by the department.

5 B. The department may accept a terminal operator  
6 report provided to and accepted by the internal revenue service  
7 instead of the required state terminal operator report.

8 SECTION 23. [NEW MATERIAL] INFORMATION REQUIRED ON MOTOR  
9 FUEL TRANSPORTER'S RETURN.--The quarterly return and  
10 supplements of a motor fuel transporter shall contain for the  
11 period covered by the return:

12 A. the name, license number and terminal control  
13 number of each person or terminal from whom the transporter  
14 received motor fuel outside this state for delivery in this  
15 state, the gross gallons of motor fuel received, the date the  
16 motor fuel was received, the product code and the name and  
17 license number of the purchaser of the motor fuel;

18 B. the name, license number and terminal control  
19 number of each person or terminal from whom the transporter  
20 received motor fuel in this state for delivery outside this  
21 state, the gross gallons of motor fuel delivered, the date the  
22 motor fuel was delivered, the product code and the destination  
23 state of the motor fuel; and

24 C. any other information as required by the  
25 department.

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1           SECTION 24.   ~~[NEW MATERIAL]~~ INFORMATION REQUIRED ON  
2 EXPORTER'S RETURN AND PAYMENT OF TAX ON IMPORTS.--The monthly  
3 return and supplements of an exporter shall contain for the  
4 period covered by the return:

5           A.   the number of net gallons of motor fuel acquired  
6 from a supplier and exported during the month, including  
7 supplier name, terminal control number and product code;

8           B.   the number of net gallons of motor fuel acquired  
9 from a bulk plant and exported during the month, including bulk  
10 plant name and product code;

11          C.   the number of net gallons of motor fuel acquired  
12 from a source other than a supplier or bulk plant and exported  
13 during the month, including the name of the source from which  
14 the motor fuel was acquired and the name and address of the  
15 person receiving the motor fuel;

16          D.   the destination state of the motor fuel exported  
17 during the month; and

18          E.   any other information as required by the  
19 department.

20           SECTION 25.   ~~[NEW MATERIAL]~~ INFORMATION REQUIRED ON  
21 BLENDER'S RETURN.--The monthly return and supplements of each  
22 blender shall contain for the period covered by the return:

23           A.   the number of net gallons of motor fuel received  
24 by the blender during the month, sorted by product code,  
25 seller, point of origin, carrier and receipt date;

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1           B. the number of net gallons of product blended  
2 with motor fuel during the month, sorted by product code, type  
3 of blending agent if no product code exists, seller and  
4 carrier;

5           C. the number of net gallons of blended motor fuel  
6 sold during the month and the license number or name and  
7 address of the entity receiving the blended motor fuel; and

8           D. any other information as required by the  
9 department.

10           SECTION 26. [NEW MATERIAL] INFORMATION REQUIRED ON DYED  
11 SPECIAL FUEL BONDED USER'S RETURN.--The quarterly return and  
12 supplements of each dyed special fuel bonded user shall contain  
13 for the period covered by the return:

14           A. the number of net gallons of tax-exempt dyed  
15 special fuel received by the dyed special fuel bonded user  
16 during the quarter, sorted by product code and receipt date;

17           B. the number of net gallons of dyed special fuel  
18 used by the dyed special fuel bonded user during the quarter,  
19 sorted by product code; and

20           C. any other information as required by the  
21 department.

22           SECTION 27. [NEW MATERIAL] REFUND OR CREDIT FOR CERTAIN  
23 TAXES PAID.--

24           A. A license holder may take a credit on a return  
25 for the period in which the sale occurred if the license holder

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1 paid tax on the purchase of motor fuel and subsequently resells  
2 the motor fuel without collecting the tax to:

3 (1) the United States or any agency or  
4 instrumentality thereof for the exclusive use of the United  
5 States or any agency or instrumentality thereof;

6 (2) the state of New Mexico or any political  
7 subdivision, agency or instrumentality thereof for the  
8 exclusive use of the state of New Mexico or any political  
9 subdivision, agency or instrumentality thereof;

10 (3) an Indian nation, tribe or pueblo or any  
11 agency or instrumentality thereof for the exclusive use of the  
12 Indian nation, tribe or pueblo or any agency or instrumentality  
13 thereof;

14 (4) a member of an Indian nation, tribe or  
15 pueblo within the sovereign territory of the member's Indian  
16 nation, tribe or pueblo and for the exclusive use by the  
17 member; or

18 (5) an exporter licensed pursuant to the Motor  
19 Fuel Taxes Act if the seller is a licensed supplier or  
20 distributor and the exporter subsequently exports the motor  
21 fuel to another state.

22 B. For truck or railcar movements between licensed  
23 suppliers or licensed permissive suppliers in which the motor  
24 fuel removed from the first terminal comes to rest in the  
25 second terminal and tax was paid on the first removal, the

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1 license holder that receives the motor fuel in the second  
2 terminal may take the credit.

3 C. A license holder may take a credit on a return  
4 for the period in which the purchase occurred, and a person  
5 that does not hold a license pursuant to the Motor Fuel Taxes  
6 Act may file a refund claim with the department if the license  
7 holder or person paid tax on motor fuel and the license holder  
8 or person:

9 (1) is the United States government and the  
10 motor fuel is for its exclusive use; provided that a credit or  
11 refund is not allowed for motor fuel used by a license holder  
12 or person operating under a contract with the United States;

13 (2) an Indian nation, tribe or pueblo for the  
14 exclusive use of the Indian nation, tribe or pueblo; provided  
15 that the resale occurred within the sovereign territory of the  
16 Indian nation, tribe or pueblo; or

17 (3) a member of an Indian nation, tribe or  
18 pueblo for the exclusive use by that member; provided that the  
19 resale occurred within the sovereign territory of the Indian  
20 nation, tribe or pueblo.

21 D. A person that paid tax on the purchase of motor  
22 fuel may claim a credit or seek a refund with the department if  
23 one hundred or more gallons of motor fuel is subsequently  
24 exported or lost by fire, theft or accident. A credit or  
25 refund claimed pursuant to this subsection shall be taken or

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1 filed within the limitations period provided by Section 30 of  
2 the Motor Fuel Taxes Act.

3 E. The right to receive a refund or take a credit  
4 pursuant to this section is not assignable.

5 F. The department may adopt rules specifying  
6 procedures and requirements that shall be followed to claim a  
7 credit or refund under this section.

8 G. A license holder may take a credit on a return  
9 for the tax included in the retail purchase price of motor fuel  
10 for the period in which the purchase occurred when made by one  
11 of the following purchasers; provided that the purchase was  
12 made by acceptance of a credit card not issued by the license  
13 holder, the credit card issuer did not collect the tax from the  
14 purchaser and the license holder reimbursed the credit card  
15 issuer for the amount of tax included in the retail purchase  
16 price:

17 (1) the United States government for its  
18 exclusive use;

19 (2) an Indian nation, tribe or pueblo for the  
20 exclusive use of the Indian nation, tribe or pueblo; provided  
21 that the resale occurred within the sovereign territory of the  
22 Indian nation, tribe or pueblo; or

23 (3) a member of an Indian nation, tribe or  
24 pueblo for the exclusive use by that member; provided that the  
25 resale occurred within the sovereign territory of the Indian

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1 nation, tribe or pueblo.

2 SECTION 28. [NEW MATERIAL] REFUND FOR BAD DEBTS--CREDIT  
3 FOR NONPAYMENT.--

4 A. A licensed distributor may file a refund claim  
5 with the department if:

6 (1) the distributor has paid the taxes imposed  
7 by the Motor Fuel Taxes Act on motor fuel sold on account;

8 (2) the distributor determines that the  
9 account is uncollectible and worthless; and

10 (3) the account is written off as a bad debt  
11 on the accounting books of the distributor.

12 B. A licensed supplier or permissive supplier may  
13 take a credit on the monthly report to be filed with the  
14 department if:

15 (1) on a previous report, the supplier or  
16 permissive supplier paid the taxes imposed by the Motor Fuel  
17 Taxes Act on motor fuel sold on account;

18 (2) the person to whom the supplier or  
19 permissive supplier sold the motor fuel has not remitted the  
20 tax to the supplier or permissive supplier; and

21 (3) at the time of the transaction, the person  
22 to whom the supplier or permissive supplier sold the motor fuel  
23 held a license issued by the department.

24 C. The return on which the refund is claimed or the  
25 credit is taken shall state, if applicable, the license number

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1 of the person whose account has been written off as a bad debt,  
2 or who failed to remit the tax, and any other information  
3 required by the department. The amount of the refund or credit  
4 that may be claimed under Subsection A or B of this section may  
5 equal but shall not exceed the amount of tax paid on the motor  
6 fuel to which the written-off account or unpaid taxes apply.

7 D. If, after a refund is received under Subsection  
8 A of this section or a credit is taken under Subsection B of  
9 this section, the account on which the refund or credit was  
10 based is paid, or if the department otherwise determines that  
11 the refund or credit was not authorized by Subsection A or B of  
12 this section, the unpaid taxes shall be paid by the distributor  
13 receiving the refund or the supplier or permissive supplier  
14 taking the credit, plus a penalty of ten percent of the amount  
15 of the unpaid tax and interest at the rate provided by Section  
16 7-1-69 NMSA 1978 beginning on the day the refund was issued.

17 E. This section does not apply to a sale of motor  
18 fuel that is delivered into the fuel supply tank of a motor  
19 vehicle or motorboat and for which payment is made through the  
20 use and acceptance of a credit card.

21 F. A refund pursuant to this section shall be  
22 claimed at the time the account is written off as a bad debt,  
23 but may only be claimed before the expiration of the applicable  
24 limitation period as provided by Section 7-1-26 NMSA 1978.

25 G. The department may take action against a person

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1 in relation to whom a distributor, supplier or permissive  
2 supplier has made a refund claim or taken a credit for  
3 collection of the tax owed and for penalty and interest as  
4 provided by Section 7-1-26 NMSA 1978.

5 SECTION 29. [NEW MATERIAL] CLAIMS FOR REFUND.--

6 A. A refund claim shall be filed on a form provided  
7 by the department, be supported by the original invoice issued  
8 by the seller and contain:

9 (1) the stamped or preprinted name and address  
10 of the seller;

11 (2) the name of the purchaser;

12 (3) the date of delivery of the motor fuel;

13 (4) the date of the issuance of the invoice,  
14 if different from the date of motor fuel delivery;

15 (5) the number of gallons of motor fuel  
16 delivered;

17 (6) the amount of tax, either separately  
18 stated from the selling price or stated with a notation that  
19 the selling price includes the tax; and

20 (7) the type of vehicle or equipment into  
21 which the motor fuel is delivered.

22 B. The purchaser shall obtain the original invoice  
23 from the seller of motor fuel not later than the thirtieth day  
24 after the date the motor fuel is delivered to the purchaser.

25 If the delivery of motor fuel is made through an automated

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1 method in which the purchase is automatically applied to the  
2 purchaser's account, one invoice may be issued at the time of  
3 billing that covers multiple purchases made during a thirty-day  
4 billing cycle.

5 C. A distribution log filed with the department to  
6 support the number of gallons of motor fuel removed from a bulk  
7 user's own bulk storage shall contain the name and address of  
8 the bulk user making the delivery stamped or preprinted on the  
9 log and, for each individual delivery from the bulk storage:

- 10 (1) the date of delivery;  
11 (2) the number of gallons of motor fuel  
12 delivered;  
13 (3) the signature of the bulk user; and  
14 (4) the type or description of off-highway  
15 equipment into which the motor fuel was delivered, or the type  
16 of licensed motor vehicle into which the motor fuel was  
17 delivered, including the state highway license plate number or  
18 vehicle identification number and odometer or hubmeter reading.

19 D. A distributor or person who does not hold a  
20 license who files a valid refund claim with the department  
21 shall be paid by a warrant issued by the department. For  
22 purposes of this section, a distributor meets the requirement  
23 of filing a valid refund claim if the distributor designates  
24 the gallons of motor fuel sold or used that are the subject of  
25 the refund claim on the monthly report submitted by the

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1 distributor to the department.

2 E. A person who files a claim for a tax refund on  
3 motor fuel used for a purpose for which a tax refund is not  
4 authorized or who files an invoice supporting a refund claim on  
5 which the date, figures or any material information has been  
6 falsified or altered, forfeits the person's right to the entire  
7 amount of the refund claim filed unless the claimant provides  
8 proof satisfactory to the department that the incorrect refund  
9 claim filed was due to a clerical or mathematical calculation  
10 error.

11 F. After examination of the refund claim, the  
12 department, before issuing a refund warrant, shall deduct from  
13 the amount of the refund the two percent deducted originally by  
14 the license holder on the first sale or distribution of the  
15 motor fuel.

16 SECTION 30. [NEW MATERIAL] WHEN A GASOLINE OR SPECIAL  
17 FUEL EXCISE TAX REFUND OR CREDIT MAY BE FILED.--

18 A. Except as otherwise provided by this section, a  
19 claim for a refund shall be filed with the department before  
20 the first anniversary of the first day of the calendar month  
21 following the purchase, use, delivery or export, or loss by  
22 fire, theft or accident of motor fuel, whichever period expires  
23 latest.

24 B. If the department assesses a supplier or  
25 permissive supplier for a tax-exempt sale that is taxable, and

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1 the supplier or permissive supplier subsequently collects the  
2 tax from the purchaser, the purchaser may file a refund claim  
3 before the first anniversary of the date the supplier's or  
4 permissive supplier's deficiency assessment becomes final if  
5 the purchaser used the motor fuel in an exempt manner.

6 C. A supplier, permissive supplier, distributor,  
7 importer, exporter or blender that determines taxes were  
8 erroneously reported and remitted or that paid more taxes than  
9 were due to this state because of a mistake of fact or law may  
10 take a credit on the monthly tax report on which the error has  
11 occurred and tax payment made to the department. The credit  
12 shall be taken before the expiration of the applicable period  
13 of limitation as provided by Section 7-1-26 NMSA 1978.

14 SECTION 31. [NEW MATERIAL] NOTICE REGARDING DYED SPECIAL  
15 FUEL.--A notice stating "DYED SPECIAL FUEL, NONTAXABLE USE  
16 ONLY, PENALTY FOR TAXABLE USE" shall be:

17 A. provided by a licensed supplier, permissive  
18 supplier or distributor to a person who receives dyed special  
19 fuel;

20 B. provided by a seller of dyed special fuel to the  
21 person's buyers; and

22 C. posted by a seller on a retail pump or bulk  
23 plant at which the person sells dyed special fuel for use by  
24 the person's buyers.

25 SECTION 32. [NEW MATERIAL] DYED SPECIAL FUEL NOTICE

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1 REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING AND INVOICES.--  
2 The form of notice required by Subsections A and B of Section  
3 31 of the Motor Fuel Taxes Act shall be provided when the dyed  
4 special fuel is removed or sold and shall appear on each  
5 shipping document, bill of lading, cargo manifest and invoice  
6 accompanying the sale or removal of the dyed special fuel.

7 SECTION 33. [NEW MATERIAL] UNAUTHORIZED SALE OR USE OF  
8 DYED SPECIAL FUEL.--

9 A. A person shall not sell or hold for sale dyed  
10 special fuel for any use that the person knows or has reason to  
11 know is a taxable use of the special fuel.

12 B. A person shall not use or hold for use dyed  
13 special fuel for a use other than a nontaxable use if the  
14 person knows or has reason to know that the special fuel is  
15 dyed special fuel.

16 SECTION 34. [NEW MATERIAL] ALTERATION OF DYE OR MARKER IN  
17 DYED SPECIAL FUEL PROHIBITED.--A person, with the intent to  
18 evade payment of tax, shall not alter or attempt to alter the  
19 strength or composition of a dye or marker in dyed special  
20 fuel.

21 SECTION 35. [NEW MATERIAL] USE OF DYED SPECIAL FUEL  
22 PROHIBITED.--

23 A. A person shall not operate a motor vehicle on a  
24 public highway in this state with taxable motor fuel that  
25 contains dye in the fuel supply tank of the motor vehicle.

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1           B. This section does not apply to a use of dyed  
2 special fuel that is lawful under the Internal Revenue Code and  
3 implementing regulations, including use in state and local  
4 government vehicles or buses, unless otherwise prohibited by  
5 the Motor Fuel Taxes Act.

6           **SECTION 36. [NEW MATERIAL] CANCELLATION OR REFUSAL OF**  
7 **LICENSE.--**

8           A. The department may cancel or refuse to issue or  
9 reissue a motor fuel license to any person who has violated or  
10 has failed to comply with a provision of the Motor Fuel Taxes  
11 Act or a rule of the department. Before the cancellation or  
12 refusal to issue or reissue a motor fuel license, the license  
13 holder shall be given ten days' notice, except as provided in  
14 Subsection B of this section.

15           B. The department may suspend a person's license  
16 without notice or a hearing for the person's failure to comply  
17 with the Motor Fuel Taxes Act if the person's continued  
18 operation constitutes an immediate and substantial threat to  
19 the collection of taxes imposed by the Motor Fuel Taxes Act and  
20 attributable to the person's operation.

21           C. Unless a more specific provision for review  
22 exists, any person may dispute the cancellation or refusal to  
23 issue or reissue a motor fuel license by filing with the  
24 department a written protest against the action or inaction by  
25 the department. Every protest shall identify the person and

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1 the action or inaction that is in dispute, the grounds for the  
2 protest and the affirmative relief requested. The statement of  
3 grounds for protest shall specify individual grounds upon which  
4 the protest is based and a summary statement of the evidence  
5 expected to be produced supporting each ground asserted, if  
6 any; provided that the person may supplement the statement at  
7 any time prior to a hearing conducted on the protest pursuant  
8 to the provisions of the Administrative Hearings Office Act.  
9 The department may, in appropriate cases, provide for an  
10 informal conference before the administrative hearings office  
11 sets a hearing of the protest.

12 D. Any protest by a person shall be filed within  
13 thirty days of the date of the mailing or verbal notification  
14 of the action proposed to be taken by the department. If a  
15 protest is not filed within the time required for filing a  
16 protest, the department may proceed with the action proposed by  
17 the department.

18 SECTION 37. [NEW MATERIAL] ENFORCEMENT OF LICENSE  
19 CANCELLATION, SUSPENSION OR REFUSAL.--

20 A. The department may examine any books and records  
21 incident to the conduct of the business of a person whose  
22 license has been canceled or suspended on the person's failure  
23 to file the reports required by the Motor Fuel Taxes Act or to  
24 remit all taxes due. If necessary, the department shall issue  
25 an audit deficiency determination for any tax amount due. If

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1 the amount is not paid on or before the fifteenth day after the  
2 deficiency determination becomes final, the bond or other  
3 security required pursuant to the Motor Fuel Taxes Act shall be  
4 forfeited. The demand for payment shall be addressed to both  
5 the surety or sureties and the person who owes the delinquency.

6 B. If the forfeiture of the bond or other security  
7 does not satisfy the delinquency, the department shall certify  
8 the taxes, penalty and interest delinquent to the attorney  
9 general, who may file suit against the person or the person's  
10 surety, or both, to collect the amount due. After being given  
11 notice of an order of cancellation or summary suspension, it is  
12 unlawful for any person to continue to operate the person's  
13 business under a canceled or suspended license. The attorney  
14 general may file suit to enjoin the person from operating under  
15 the canceled or suspended license until the department reissues  
16 a license.

17 C. An appeal from an order of the department  
18 canceling or suspending or refusing the issuance or reissuance  
19 of a license may be taken to a district court of Santa Fe  
20 county by the aggrieved license holder or applicant. The trial  
21 shall be de novo under the same rules as ordinary civil suits,  
22 except that:

23 (1) an appeal shall be perfected and filed  
24 within thirty days after the effective date of the order,  
25 decision or ruling of the department;

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1 (2) the trial of the case shall begin within  
2 ten days after its filing; and

3 (3) the order, decision or ruling of the  
4 department may be suspended or modified by the court pending a  
5 trial on the merits.

6 SECTION 38. [NEW MATERIAL] INSPECTION OF PREMISES AND  
7 RECORDS.--For the purpose of determining the amount of tax  
8 collected and payable to this state, the amount of tax accruing  
9 and due, and whether a tax liability has been incurred pursuant  
10 to the Motor Fuel Taxes Act, the department may:

11 A. inspect any premises where motor fuel, crude  
12 petroleum, natural gas, derivatives or condensates of crude  
13 petroleum, natural gas or their products, methyl alcohol, ethyl  
14 alcohol or other blending agents are produced, made, prepared,  
15 stored, transported, sold or offered for sale or exchange;

16 B. examine the books and records required to be  
17 kept and records incident to the business of any license holder  
18 or person required to be licensed, or any person receiving,  
19 possessing, delivering or selling motor fuel, crude oil,  
20 derivatives or condensates of crude petroleum, natural gas or  
21 their products, or any blending agents;

22 C. examine and either gauge or measure the contents  
23 of all storage tanks, containers and other property or  
24 equipment; and

25 D. take samples of any and all of these products

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1 stored on the premises.

2 SECTION 39. [NEW MATERIAL] AUTHORITY TO STOP AND  
3 EXAMINE.--To enforce the Motor Fuel Taxes Act, the department  
4 or a peace officer may stop a motor vehicle that appears to be  
5 operating with or transporting motor fuel to examine the  
6 shipping document, cargo manifest or invoices required to be  
7 carried, examine a license or copy of a license that may be  
8 required to be carried, take samples from the fuel supply or  
9 cargo tanks and make any other investigation that could  
10 reasonably be made to determine whether the taxes have been  
11 paid or accounted for by a license holder or a person required  
12 to be licensed. The department, a peace officer, an employee  
13 of the attorney general's office or an employee of the New  
14 Mexico department of agriculture may take samples of motor fuel  
15 from a storage tank or container to:

16 A. determine if the fuel contains hazardous waste  
17 or is adulterated; or

18 B. allow the department to determine whether taxes  
19 on the fuel have been paid or accounted for to this state.

20 SECTION 40. [NEW MATERIAL] IMPOUNDMENT AND SEIZURE.--

21 A. If after examination or other investigation, the  
22 department believes that the owner or operator of a motor  
23 vehicle or cargo tank, or a person receiving, possessing,  
24 delivering or selling gasoline or diesel fuel, has not paid all  
25 taxes due, or does not have a valid license entitling that

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1 person to possess or transport tax-exempt motor fuel, the  
2 department or peace officer may impound the fuel, motor  
3 vehicle, cargo tank, storage tank, equipment, paraphernalia or  
4 other tangible personal property used for or incident to the  
5 storage, sale or transportation of that motor fuel. Unless  
6 proof is produced within three working days after the beginning  
7 of impoundment that the owner, operator or other person has  
8 paid the taxes established by the department to be due on the  
9 gasoline or diesel fuel stored, sold, used or transported and  
10 any other taxes due to this state, or that the owner, operator  
11 or other person holds a valid license to possess or transport  
12 tax-exempt motor fuel, the department may demand payment of all  
13 taxes, penalties and interest due to this state, and all costs  
14 of impoundment.

15 B. If the owner or operator does not produce the  
16 required documentation or required license or pay the taxes,  
17 penalties, interest and costs due within three working days  
18 after the beginning of the impoundment, the department may  
19 seize the impounded property to satisfy the tax liability.

20 C. The department may seize:

21 (1) all motor fuel on which taxes are imposed  
22 by the Motor Fuel Taxes Act that is found in the possession,  
23 custody or control of any person for the purpose of being sold,  
24 transported, removed or used by the person in violation of that  
25 act;

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1 (2) all motor fuel that is removed or is  
2 deposited, stored or concealed in any place with intent to  
3 avoid payment of taxes;

4 (3) any automobile, truck, tank truck, boat,  
5 trailer conveyance or other vehicle used in the removal or  
6 transportation of the motor fuel to avoid payment of taxes; and

7 (4) all equipment, paraphernalia, storage  
8 tanks or tangible personal property incident to and used for  
9 avoiding the payment of taxes and found in the place, building  
10 or vehicle where the motor fuel is found.

11 SECTION 41. [NEW MATERIAL] SALE OF SEIZED PROPERTY.--

12 A. The department may sell property seized pursuant  
13 to Section 40 of the Motor Fuel Taxes Act.

14 B. Notice of the time and place of a sale shall be  
15 given to the delinquent person in writing by certified mail at  
16 least twenty days before the date set for the sale. The notice  
17 shall be enclosed in an envelope addressed to the person at the  
18 person's last known address or place of business. It shall be  
19 deposited in the United States mail, postage prepaid. The  
20 notice shall also be published once a week for two consecutive  
21 weeks before the date of the sale in a newspaper of general  
22 circulation published in the county in which the property  
23 seized is to be sold. If there is no newspaper of general  
24 circulation in the county, notice shall be posted in three  
25 public places in the county fourteen days before the date set

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1 for the sale. The notice shall contain a description of the  
2 property to be sold, a statement of the amount due, including  
3 interest, penalties and costs, the name of the delinquent and  
4 the further statement that unless the amount due, interest,  
5 penalties and costs are paid on or before the time fixed in the  
6 notice for the sale, the property, or as much of it as may be  
7 necessary, will be sold at public auction in accordance with  
8 the law and the notice.

9 C. At the sale, the department shall sell the  
10 property and shall deliver to the purchaser a bill of sale for  
11 personal property and a deed for real property sold. The bill  
12 of sale or deed vests the interest or title of the person  
13 liable for the amount in the purchaser. The unsold portion of  
14 any property seized may be left at the place of sale at the  
15 risk of the person liable for the amount.

16 D. The proceeds of a sale shall be allocated  
17 according to the following priorities:

18 (1) the payment of expenses of seizure,  
19 appraisal, custody, advertising, auction and any other expenses  
20 incident to the seizure and sale;

21 (2) the payment of the tax, penalty and  
22 interest; and

23 (3) the repayment of the remaining balance to  
24 the person liable for the amount unless a claim is presented  
25 before the sale by any other person who has an ownership

1 interest evidenced by a financing statement or lien, in which  
2 case the department shall withhold the remaining balance  
3 pending a determination of the rights of the respective  
4 parties.

5 SECTION 42. [NEW MATERIAL] PRESUMPTIONS.--A person  
6 licensed pursuant to the Motor Fuel Taxes Act or required to be  
7 licensed under that act or other user, who fails to keep a  
8 record, issue an invoice or file a return or report required by  
9 that act, is presumed to have sold or used for taxable purposes  
10 all motor fuel shown by an audit by the department to have been  
11 sold to the license holder or other user. Motor fuel  
12 unaccounted for is presumed to have been sold or used for  
13 taxable purposes. If an exporter claims an exemption pursuant  
14 to Subparagraph (b) of Paragraph (5) of Subsection A of Section  
15 7 of the Motor Fuel Taxes Act and fails to produce proof of  
16 payment of tax to the destination state or proof that the  
17 transaction was exempt in the destination state, the exporter  
18 is presumed to have not paid the destination state's tax or  
19 this state's tax on the exported motor fuel, and the department  
20 shall assess the tax imposed on the exported motor fuel against  
21 the exporter. The department may fix or establish the amount  
22 of taxes, penalties and interest due this state from the  
23 records of deliveries or from any records or information  
24 available. If a tax claim, as developed from this procedure,  
25 is not paid, after the opportunity to request a

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1 redetermination, the claim and any audit made by the department  
2 or any report filed by the license holder or other user is  
3 evidence in any suit or judicial proceedings filed by the  
4 attorney general and is prima facie evidence of the correctness  
5 of the claim or audit. A prima facie presumption of the  
6 correctness of the claim may be overcome at the trial by  
7 evidence adduced by the license holder or other user.

8 SECTION 43. [NEW MATERIAL] LICENSE HOLDER STATUS LIST.--

9 A. The department, on or before December 20 of each  
10 year, shall make available to all license holders an  
11 alphabetical list of licensed suppliers, permissive suppliers,  
12 distributors, importers, exporters, blenders and terminal  
13 operators. A supplemental list of additions and deletions  
14 shall be made available to the license holders each month. A  
15 current and effective license or the list furnished by the  
16 department is evidence of the validity of the license until the  
17 department notifies license holders of a change in the status  
18 of a license holder.

19 B. A licensed supplier, permissive supplier or  
20 distributor who sells tax-exempt motor fuel to a person whose  
21 supplier's or permissive supplier's license has been canceled  
22 or revoked pursuant to the Motor Fuel Taxes Act is liable for  
23 any tax due on motor fuel sold after receiving notice of the  
24 cancellation or revocation.

25 C. The department shall notify all license holders

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1 pursuant to the Motor Fuel Taxes Act when a canceled or revoked  
2 license is subsequently reinstated and include in the notice  
3 the effective date of the reinstatement. Sales to the supplier  
4 or permissive supplier after the effective date of the  
5 reinstatement may be made tax exempt.

6 SECTION 44. Section 7-1-2 NMSA 1978 (being Laws 1965,  
7 Chapter 248, Section 2, as amended) is amended to read:

8 "7-1-2. APPLICABILITY.--The Tax Administration Act  
9 applies to and governs:

10 A. the administration and enforcement of the  
11 following taxes or tax acts as they now exist or may hereafter  
12 be amended:

- 13 (1) Income Tax Act;
- 14 (2) Withholding Tax Act;
- 15 (3) Venture Capital Investment Act;
- 16 (4) Gross Receipts and Compensating Tax Act
- 17 and any state gross receipts tax;
- 18 (5) Liquor Excise Tax Act;
- 19 (6) Local Liquor Excise Tax Act;
- 20 (7) any municipal local option gross receipts
- 21 tax;
- 22 (8) any county local option gross receipts
- 23 tax;
- 24 [~~(9) Special Fuels Supplier Tax Act;~~
- 25 ~~(10) Gasoline Tax Act;~~] (9) Motor Fuel Taxes

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1 Act;

2                    [~~(11)~~] (10) petroleum products loading fee,  
3 which fee shall be considered a tax for the purpose of the Tax  
4 Administration Act;

5                    [~~(12)~~] (11) Alternative Fuel Tax Act;

6                    [~~(13)~~] (12) Cigarette Tax Act;

7                    [~~(14)~~] (13) Estate Tax Act;

8                    [~~(15)~~] (14) Railroad Car Company Tax Act;

9                    [~~(16)~~] (15) Investment Credit Act, rural job  
10 tax credit, Laboratory Partnership with Small Business Tax  
11 Credit Act, Technology Jobs and Research and Development Tax  
12 Credit Act, Film Production Tax Credit Act, Affordable Housing  
13 Tax Credit Act and high-wage jobs tax credit;

14                    [~~(17)~~] (16) Corporate Income and Franchise Tax  
15 Act;

16                    [~~(18)~~] (17) Uniform Division of Income for Tax  
17 Purposes Act;

18                    [~~(19)~~] (18) Multistate Tax Compact;

19                    [~~(20)~~] (19) Tobacco Products Tax Act; and

20                    [~~(21)~~] (20) the telecommunications relay  
21 service surcharge imposed by Section 63-9F-11 NMSA 1978, which  
22 surcharge shall be considered a tax for the purposes of the Tax  
23 Administration Act;

24                    B. the administration and enforcement of the  
25 following taxes, surtaxes, advanced payments or tax acts as

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1 they now exist or may hereafter be amended:

- 2 (1) Resources Excise Tax Act;
- 3 (2) Severance Tax Act;
- 4 (3) any severance surtax;
- 5 (4) Oil and Gas Severance Tax Act;
- 6 (5) Oil and Gas Conservation Tax Act;
- 7 (6) Oil and Gas Emergency School Tax Act;
- 8 (7) Oil and Gas Ad Valorem Production Tax Act;
- 9 (8) Natural Gas Processors Tax Act;
- 10 (9) Oil and Gas Production Equipment Ad

11 Valorem Tax Act;

- 12 (10) Copper Production Ad Valorem Tax Act;

13 (11) any advance payment required to be made  
14 by any act specified in this subsection, which advance payment  
15 shall be considered a tax for the purposes of the Tax

16 Administration Act;

- 17 (12) Enhanced Oil Recovery Act;

18 (13) Natural Gas and Crude Oil Production  
19 Incentive Act; and

20 (14) intergovernmental production tax credit  
21 and intergovernmental production equipment tax credit;

22 C. the administration and enforcement of the  
23 following taxes, surcharges, fees or acts as they now exist or  
24 may hereafter be amended:

- 25 (1) Weight Distance Tax Act;

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1 (2) the workers' compensation fee authorized  
2 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
3 tax for purposes of the Tax Administration Act;

4 (3) Uniform Unclaimed Property Act (1995);

5 (4) 911 emergency surcharge and the network  
6 and database surcharge, which surcharges shall be considered  
7 taxes for purposes of the Tax Administration Act;

8 (5) the solid waste assessment fee authorized  
9 by the Solid Waste Act, which fee shall be considered a tax for  
10 purposes of the Tax Administration Act;

11 (6) the water conservation fee imposed by  
12 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
13 for the purposes of the Tax Administration Act; and

14 (7) the gaming tax imposed pursuant to the  
15 Gaming Control Act; and

16 D. the administration and enforcement of all other  
17 laws, with respect to which the department is charged with  
18 responsibilities pursuant to the Tax Administration Act, but  
19 only to the extent that the other laws do not conflict with the  
20 Tax Administration Act."

21 **SECTION 45.** Section 7-1-6.7 NMSA 1978 (being Laws 1994,  
22 Chapter 5, Section 2, as amended) is amended to read:

23 "7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA  
25 1978 shall be made to the state aviation fund in an amount

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1 equal to four and seventy-nine hundredths percent of the  
2 taxable gross receipts attributable to the sale of fuel  
3 specially prepared and sold for use in turboprop or jet-type  
4 engines as determined by the department.

5 B. A distribution pursuant to Section 7-1-6.1 NMSA  
6 1978 shall be made to the state aviation fund in an amount  
7 equal to twenty-six hundredths percent of [~~gasoline~~] the taxes  
8 [~~exclusive of penalties and interest~~] collected pursuant to the  
9 [~~Gasoline Tax~~] Motor Fuel Taxes Act.

10 C. From July 1, 2013 through June 30, 2021, a  
11 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
12 made to the state aviation fund in an amount equal to forty-six  
13 thousandths percent of the net receipts attributable to the  
14 gross receipts tax distributable to the general fund.

15 D. A distribution pursuant to Section 7-1-6.1 NMSA  
16 1978 shall be made to the state aviation fund from the net  
17 receipts attributable to the gross receipts tax distributable  
18 to the general fund in an amount equal to

19 [~~(1) eighty thousand dollars (\$80,000) monthly~~  
20 ~~from July 1, 2007 through June 30, 2008;~~

21 ~~(2) one hundred sixty-seven thousand dollars~~  
22 ~~(\$167,000) monthly from July 1, 2008 through June 30, 2009; and~~

23 ~~(3)] two hundred fifty thousand dollars~~  
24 ~~(\$250,000) [monthly after July 1, 2009]."~~

25 SECTION 46. Section 7-1-6.9 NMSA 1978 (being Laws 1991,

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1 Chapter 9, Section 11, as amended) is amended to read:

2 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO  
3 MUNICIPALITIES AND COUNTIES.--

4 A. A distribution pursuant to Section 7-1-6.1 NMSA  
5 1978 shall be made in an amount equal to ten and thirty-eight  
6 hundredths percent of the net receipts attributable to the  
7 taxes [~~exclusive of penalties and interest~~] imposed by the  
8 [~~Gasoline Tax~~] Motor Fuel Taxes Act.

9 B. [~~Except as provided in Subsection D of this~~  
10 ~~section~~] The amount determined in Subsection A of this section  
11 shall be distributed as follows:

12 (1) ninety percent of the amount shall be paid  
13 to the treasurers of municipalities and H class counties in the  
14 proportion that the taxable motor fuel sales in each of the  
15 municipalities and H class counties bears to the aggregate  
16 taxable motor fuel sales in all of these municipalities and H  
17 class counties; and

18 (2) ten percent of the amount shall be paid to  
19 the treasurers of the counties, including H class counties, in  
20 the proportion that the taxable motor fuel sales outside of  
21 incorporated municipalities in each of the counties bears to  
22 the aggregate taxable motor fuel sales outside of incorporated  
23 municipalities in all of the counties.

24 C. Except as provided in Subsection D of this  
25 section, this distribution shall be paid into a separate road

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1 fund in the municipal treasury or county road fund for  
2 expenditure only for construction, reconstruction, resurfacing  
3 or other improvement or maintenance of public roads, streets,  
4 alleys or bridges, including right-of-way and materials  
5 acquisition. Money distributed pursuant to this section may be  
6 used by a municipality or county to provide matching funds for  
7 projects subject to cooperative agreements entered into with  
8 the [~~state highway and~~] department of transportation  
9 [~~department~~] pursuant to Section 67-3-28 NMSA 1978. Any  
10 municipality or H class county that has created or that creates  
11 a "street improvement fund" to which gasoline tax revenues or  
12 distributions are irrevocably pledged under Sections 3-34-1  
13 through 3-34-4 NMSA 1978 or that has pledged all or a portion  
14 of gasoline tax revenues or distributions to the payment of  
15 bonds shall receive its proportion of the distribution of  
16 revenues under this section impressed with and subject to these  
17 pledges.

18 D. This distribution may be paid into a separate  
19 road fund or the general fund of the municipality or county if  
20 the municipality has a population less than three thousand or  
21 the county has a population less than four thousand."

22 SECTION 47. Section 7-1-6.10 NMSA 1978 (being Laws 1983,  
23 Chapter 211, Section 15, as amended) is amended to read:

24 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

25 A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the state road fund in an amount equal to  
2 the net receipts attributable to the taxes, [~~surcharges~~]  
3 penalties and interest imposed pursuant to the [~~Gasoline Tax~~  
4 ~~Act and to the taxes, surtaxes, fees, penalties and interest~~  
5 ~~imposed pursuant to the Special Fuels Supplier Tax]~~ Motor Fuel  
6 Taxes Act and the Alternative Fuel Tax Act less:

7 (1) the amount distributed to the state  
8 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA  
9 1978;

10 (2) the amount distributed to the motorboat  
11 fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

12 (3) the amount distributed to municipalities  
13 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA  
14 1978;

15 (4) the amount distributed to the county  
16 government road fund pursuant to Section 7-1-6.19 NMSA 1978;

17 (5) the amount distributed to the local  
18 governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

19 (6) the amount distributed to the  
20 municipalities pursuant to Section 7-1-6.27 NMSA 1978; and

21 (7) the amount distributed to the municipal  
22 arterial program of the local governments road fund pursuant to  
23 Section 7-1-6.28 NMSA 1978

24 [~~(8) the amount distributed to a qualified~~  
25 ~~tribe pursuant to a gasoline tax sharing agreement entered into~~

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1 ~~between the secretary of transportation and the qualified tribe~~  
2 ~~pursuant to the provisions of Section 67-3-8.1 NMSA 1978; and~~  
3 ~~(9) the amount distributed to the general fund~~  
4 ~~pursuant to Section 7-1-6.44 NMSA 1978].~~

5 B. A distribution pursuant to Section 7-1-6.1 NMSA  
6 1978 shall be made to the state road fund in an amount equal to  
7 the net receipts attributable to the taxes, interest and  
8 penalties from the Weight Distance Tax Act."

9 SECTION 48. Section 7-1-6.39 NMSA 1978 (being Laws 1995,  
10 Chapter 6, Section 9, as amended) is amended to read:

11 "7-1-6.39. DISTRIBUTION OF SPECIAL FUEL EXCISE TAX TO  
12 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to  
13 Section 7-1-6.1 NMSA 1978 shall be made to the local  
14 governments road fund in an amount equal to nine and fifty-two  
15 hundredths percent of the net receipts attributable to the  
16 taxes [~~exclusive of penalties and interest, from the special~~  
17 ~~fuel excise tax]~~ imposed [~~by the Special Fuels Supplier Tax~~  
18 ~~Act]~~ on special fuel pursuant to the Motor Fuel Taxes Act."

19 SECTION 49. Section 7-1-8.2 NMSA 1978 (being Laws 2009,  
20 Chapter 243, Section 4) is amended to read:

21 "7-1-8.2. INFORMATION REQUIRED TO BE REVEALED.--

22 A. The department shall:

23 (1) furnish returns and return information  
24 required by a provision of the Tax Administration Act to be  
25 made available to the public by the department;

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1 (2) answer all inquiries concerning whether a  
2 person is or is not a registered taxpayer for tax programs that  
3 require registration, but nothing in this subsection shall be  
4 construed to allow the department to answer inquiries  
5 concerning whether a person has filed a tax return;

6 (3) furnish, upon request for inspection by a  
7 member of the public pursuant to:

8 (a) Section 7-1-28 or [~~Section~~] 7-1-29  
9 NMSA 1978, the taxpayer name, abatement, refund or credit  
10 amount, tax program or business tax credit and the date the  
11 abatement, refund or credit was issued; and

12 (b) Section 7-1-21 NMSA 1978, the  
13 installment agreement; and

14 (4) with respect to the [~~tax on gasoline~~  
15 ~~imposed by the~~] gasoline tax [~~Act~~], make available for public  
16 inspection at monthly intervals a report covering the number of  
17 gallons of gasoline and ethanol blended fuels received and  
18 deducted and the amount of tax paid by each person required to  
19 file a gasoline tax return or pay gasoline tax in the state of  
20 New Mexico.

21 B. Nothing in this section shall be construed to  
22 require the release of information that would violate an  
23 agreement between the state and the federal internal revenue  
24 service for sharing of information or any provision or rule of  
25 the federal Internal Revenue Code to which a state is subject."

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1           SECTION 50. Section 7-1-8.10 NMSA 1978 (being Laws 2009,  
2 Chapter 243, Section 12) is amended to read:

3           "7-1-8.10. INFORMATION THAT MAY BE REVEALED TO PRIVATE  
4 PERSONS OTHER THAN THE TAXPAYER.--An employee of the department  
5 may reveal to:

6           A. a transferee, assignee, buyer or lessor of a  
7 liquor license, the amount and basis of an unpaid assessment of  
8 tax for which the transferor, assignor, seller or lessee is  
9 liable;

10           B. a purchaser of a business as provided in  
11 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis  
12 of an unpaid assessment of tax for which the purchaser's seller  
13 is liable;

14           C. a rack operator, importer, blender, distributor  
15 or supplier, the identity of a rack operator, importer,  
16 blender, supplier or distributor and the number of gallons  
17 reported on returns required [~~under the Gasoline Tax Act,~~  
18 ~~Special Fuels Supplier Tax~~] pursuant to the Motor Fuel Taxes  
19 Act or Alternative Fuel Tax Act, but only when it is necessary  
20 to enable the department to carry out its duties under [~~the~~  
21 ~~Gasoline Tax Act, the Special Fuels Supplier Tax Act or the~~  
22 ~~Alternative Fuel Tax Act~~] those acts; and

23           D. a corporation authorized to be formed under the  
24 Educational Assistance Act, upon its written request, the last  
25 known address and the date of that address of every person

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1 certified to the department as an absent obligor of an  
2 educational debt due and owed to the corporation or that the  
3 corporation has lawfully contracted to collect; this  
4 information may only be used by the corporation and its  
5 officers and employees to enforce the educational debt  
6 obligation of the absent obligors."

7 SECTION 51. Section 7-1-13.1 NMSA 1978 (being Laws 1988,  
8 Chapter 99, Section 3, as amended) is amended to read:

9 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

10 A. Payment of the taxes, including any applicable  
11 penalties and interest, described in Paragraph (1), (2), (3) or  
12 (4) of this subsection shall be made on or before the date due  
13 in accordance with Subsection [B] C of this section if the  
14 taxpayer's average tax payment for the group of taxes during  
15 the preceding calendar year equaled or exceeded twenty-five  
16 thousand dollars (\$25,000):

17 (1) Group 1: all taxes due under the  
18 Withholding Tax Act, the Gross Receipts and Compensating Tax  
19 Act, local option gross receipts tax acts, the Interstate  
20 Telecommunications Gross Receipts Tax Act and the Leased  
21 Vehicle Gross Receipts Tax Act;

22 (2) Group 2: all taxes due under the Oil and  
23 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
24 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad  
25 Valorem Production Tax Act;

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1 (3) Group 3: the tax due under the Natural  
2 Gas Processors Tax Act; or

3 (4) Group 4: all taxes and fees due under the  
4 [~~Gasoline Tax Act, the Special Fuels Supplier Tax~~] Motor Fuel  
5 Taxes Act and the Petroleum Products Loading Fee Act.

6 B. For taxpayers who have more than one  
7 identification number issued by the department, the average tax  
8 payment shall be computed by combining the amounts paid under  
9 the several identification numbers.

10 [B-] C. Taxpayers who are required to make payment  
11 in accordance with the provisions of this section shall make  
12 payment by one or more of the following means on or before the  
13 due date so that funds are immediately available to the state  
14 on or before the due date:

15 (1) electronic payment; provided that a result  
16 of the payment is that funds are immediately available to the  
17 state of New Mexico on or before the due date;

18 (2) currency of the United States;

19 (3) check drawn on and payable at any New  
20 Mexico financial institution; provided that the check is  
21 received by the department at the place and time required by  
22 the department at least one banking day prior to the due date;  
23 or

24 (4) check drawn on and payable at any domestic  
25 non-New Mexico financial; institution provided that the check

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1 is received by the department at the time and place required by  
2 the department at least two banking days prior to the due date.

3 ~~[G-]~~ D. If the taxes required to be paid under this  
4 section are not paid in accordance with Subsection ~~[B]~~ C of  
5 this section, the payment is not timely and is subject to the  
6 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

7 ~~[D-]~~ E. For the purposes of this section, "average  
8 tax payment" means the total amount of taxes paid with respect  
9 to a group of taxes listed under Subsection A of this section  
10 during a calendar year divided by the number of months in that  
11 calendar year containing a due date on which the taxpayer was  
12 required to pay one or more taxes in the group."

13 **SECTION 52.** Section 7-1-26 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE  
16 OR REFUND.--

17 A. A person who believes that an amount of tax has  
18 been paid by or withheld from that person in excess of that for  
19 which the person was liable, who has been denied any credit or  
20 rebate claimed or who claims a prior right to property in the  
21 possession of the department pursuant to a levy made under  
22 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim  
23 a refund by directing to the secretary, within the time limited  
24 by the provisions of ~~[Subsections]~~ Subsection D ~~[and E]~~ of this  
25 section, a written claim for refund. Except as provided in

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1 Subsection [~~F~~] H of this section, a refund claim shall include:

2 (1) the taxpayer's name, address and  
3 identification number;

4 (2) the type of tax for which a refund is  
5 being claimed, the credit or rebate denied or the property  
6 levied upon;

7 (3) the sum of money or other property being  
8 claimed;

9 (4) with respect to refund, the period for  
10 which overpayment was made; and

11 (5) a brief statement of the facts and the law  
12 on which the claim is based, which may be referred to as the  
13 "basis for the refund".

14 B. The secretary or the secretary's delegate may  
15 allow the claim in whole or in part or may deny the claim.

16 (1) If the claim is denied in whole or in part  
17 in writing, no claim may be refiled with respect to that which  
18 was denied, but the person, within ninety days after either the  
19 mailing or delivery of the denial of all or any part of the  
20 claim, may elect to pursue one, but not more than one, of the  
21 remedies in Subsection C of this section.

22 (2) If the department has neither granted nor  
23 denied any portion of a claim for refund within one hundred  
24 twenty days of the date the claim was mailed or delivered to  
25 the department, the person may refile it within the time limits

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1 set forth in Subsection D of this section or may within ninety  
2 days elect to pursue one, but only one, of the remedies in  
3 Subsection C of this section. After the expiration of the two  
4 hundred ten days from the date the claim was mailed or  
5 delivered to the department, the department may not approve or  
6 disapprove the claim unless the person has pursued one of the  
7 remedies under Subsection C of this section.

8 C. A person may elect to pursue no more than one of  
9 the remedies in Paragraphs (1) and (2) of this subsection. A  
10 person who timely pursues more than one remedy shall be deemed  
11 to have elected the first remedy invoked. The person may:

12 (1) direct to the secretary, pursuant to the  
13 provisions of Section 7-1-24 NMSA 1978, a written protest that  
14 shall set forth:

15 (a) the circumstances of: 1) an alleged  
16 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a  
17 denial of a prior right to property levied upon by the  
18 department;

19 (b) an allegation that, because of that  
20 overpayment or denial, the state is indebted to the taxpayer  
21 for a specified amount, including any allowed interest, or for  
22 the property;

23 (c) demanding the refund to the taxpayer  
24 of that amount or that property; and

25 (d) reciting the facts of the claim for

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1 refund; or

2 (2) commence a civil action in the district  
3 court for Santa Fe county by filing a complaint setting forth  
4 the circumstance of the claimed overpayment, denied credit or  
5 rebate or denial of a prior right to property levied upon by  
6 the department alleging that on account thereof the state is  
7 indebted to the plaintiff in the amount or property stated,  
8 together with any interest allowable, demanding the refund to  
9 the plaintiff of that amount or property and reciting the facts  
10 of the claim for refund. The plaintiff or the secretary may  
11 appeal from any final decision or order of the district court  
12 to the court of appeals.

13 D. ~~[Except as otherwise provided in Subsection E of~~  
14 ~~this section]~~ No credit or refund of any amount may be allowed  
15 or made to any person unless as the result of a claim made by  
16 that person as provided in this section:

17 (1) within three years of the end of the  
18 calendar year in which:

19 (a) the payment was originally due or  
20 the overpayment resulted from an assessment by the department  
21 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

22 (b) the final determination of value  
23 occurs with respect to any overpayment that resulted from a  
24 disapproval by any agency of the United States or the state of  
25 New Mexico or any court of increase in value of a product

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1 subject to taxation under the Oil and Gas Severance Tax Act,  
2 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
3 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
4 or the Natural Gas Processors Tax Act;

5 (c) property was levied upon pursuant to  
6 the provisions of the Tax Administration Act; or

7 (d) an overpayment of New Mexico tax  
8 resulted from: 1) an internal revenue service audit adjustment  
9 or a federal refund paid due to an adjustment of an audit by  
10 the internal revenue service or an amended federal return; or  
11 2) making a change to a federal return for which federal  
12 approval is required by the Internal Revenue Code;

13 (2) when an amount of a claim for credit under  
14 the provisions of the Investment Credit Act, Laboratory  
15 Partnership with Small Business Tax Credit Act or Technology  
16 Jobs and Research and Development Tax Credit Act or for the  
17 rural job tax credit pursuant to Section 7-2E-1.1 NMSA 1978 or  
18 similar credit has been denied, the taxpayer may claim a refund  
19 of the credit no later than one year after the date of the  
20 denial;

21 (3) when a taxpayer under audit by the  
22 department has signed a waiver of the limitation on assessments  
23 on or after July 1, 1993 pursuant to Subsection F of Section  
24 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
25 the same tax paid for the same period for which the waiver was

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1 given, until a date one year after the later of the date of the  
2 mailing of an assessment issued pursuant to the audit, the date  
3 of the mailing of final audit findings to the taxpayer or the  
4 date a proceeding is begun in court by the department with  
5 respect to the same tax and the same period;

6 (4) if the payment of an amount of tax was not  
7 made within three years of the end of the calendar year in  
8 which the original due date of the tax or date of the  
9 assessment of the department occurred, a claim for refund of  
10 that amount of tax can be made within one year of the date on  
11 which the tax was paid; or

12 (5) when a taxpayer has been assessed a tax on  
13 or after July 1, 1993 under Subsection B, C or D of Section  
14 7-1-18 NMSA 1978 and when the assessment applies to a period  
15 ending at least three years prior to the beginning of the year  
16 in which the assessment was made, the taxpayer may claim a  
17 refund for the same tax for the period of the assessment or for  
18 any period following that period within one year of the date of  
19 the assessment unless a longer period for claiming a refund is  
20 provided in this section.

21 ~~[E. No credit or refund shall be allowed or made to~~  
22 ~~any person claiming a refund of gasoline tax under Section~~  
23 ~~7-13-11 NMSA 1978 unless notice of the destruction of the~~  
24 ~~gasoline was given the department within thirty days of the~~  
25 ~~actual destruction and the claim for refund is made within six~~

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1 ~~months of the date of destruction. No credit or refund shall~~  
2 ~~be allowed or made to any person claiming a refund of gasoline~~  
3 ~~tax under Section 7-13-17 NMSA 1978 unless the refund is~~  
4 ~~claimed within six months of the date of purchase of the~~  
5 ~~gasoline and the gasoline has been used at the time the claim~~  
6 ~~for refund is made.~~

7 ~~F.]~~ E. If as a result of an audit by the department  
8 or a managed audit covering multiple periods an overpayment of  
9 tax is found in any period under the audit, that overpayment  
10 may be credited against an underpayment of the same tax found  
11 in another period under audit pursuant to Section 7-1-29 NMSA  
12 1978, provided that the taxpayer files a claim for refund for  
13 the overpayments identified in the audit.

14 ~~[G.]~~ F. Any refund of tax paid under any tax or tax  
15 act administered under Subsection B of Section 7-1-2 NMSA 1978  
16 may be made, at the discretion of the department, in the form  
17 of credit against future tax payments if future tax liabilities  
18 in an amount at least equal to the credit amount reasonably may  
19 be expected to become due.

20 ~~[H.]~~ G. For the purposes of this section, "oil and  
21 gas tax return" means a return reporting tax due with respect  
22 to oil, natural gas, liquid hydrocarbons, carbon dioxide,  
23 helium or nonhydrocarbon gas pursuant to the Oil and Gas  
24 Severance Tax Act, the Oil and Gas Conservation Tax Act, the  
25 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad

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1 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
2 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

3 ~~[F.]~~ H. The filing of a fully completed original  
4 income tax return, corporate income tax return, corporate  
5 income and franchise tax return, estate tax return or special  
6 fuel excise tax return that shows a balance due the taxpayer or  
7 a fully completed amended income tax return, an amended  
8 corporate income tax return, an amended corporate income and  
9 franchise tax return, an amended estate tax return, an amended  
10 special fuel excise tax return or an amended oil and gas tax  
11 return that shows a lesser tax liability than the original  
12 return constitutes the filing of a claim for refund for the  
13 difference in tax due shown on the original and amended  
14 returns."

15 **SECTION 53.** Section 7-1-28 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 30, as amended) is amended to read:

17 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF  
18 TAX.--

19 A. In response to a written protest against an  
20 assessment, submitted in accordance with the provisions of  
21 Section 7-1-24 NMSA 1978, but before any court acquires  
22 jurisdiction of the matter, or when a "notice of assessment of  
23 taxes" is incorrect, the secretary or the secretary's delegate  
24 may abate any part of an assessment determined by the secretary  
25 or the secretary's delegate to have been incorrectly,

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1 erroneously or illegally made. An abatement in the amount of  
2 twenty thousand dollars (\$20,000) or more shall be made with  
3 the prior approval of the attorney general; except that the  
4 secretary or the secretary's delegate may make abatements with  
5 respect to the Oil and Gas Severance Tax Act, the Oil and Gas  
6 Conservation Tax Act, the Oil and Gas Emergency School Tax Act,  
7 the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas  
8 Processors Tax Act or the Oil and Gas Production Equipment Ad  
9 Valorem Tax Act [~~abatements of gasoline tax made under Section~~  
10 ~~7-13-17 NMSA 1978~~] and abatements of cigarette tax made under  
11 the Cigarette Tax Act without the prior approval of the  
12 attorney general regardless of the amount.

13 B. Pursuant to the final order of the district  
14 court, the court of appeals, the supreme court of New Mexico or  
15 any federal court, from which order, appeal or review is not  
16 successfully taken by the department, adjudging that any person  
17 is not required to pay any portion of tax assessed to that  
18 person, the secretary or the secretary's delegate shall cause  
19 that amount of the assessment to be abated.

20 C. Pursuant to a compromise of taxes agreed to by  
21 the secretary and according to the terms of the closing  
22 agreement formalizing the compromise, the secretary or the  
23 secretary's delegate shall cause the abatement of the  
24 appropriate amount of any assessment of tax.

25 D. The secretary or the secretary's delegate shall

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1 cause the abatement of the amount of an assessment of tax that  
2 is equal to the amount of fee paid to or retained by an out-of-  
3 state attorney or collection agency from a judgment or the  
4 amount collected by the attorney or collection agency pursuant  
5 to Section 7-1-58 NMSA 1978.

6 E. Records of abatements made in excess of ten  
7 thousand dollars (\$10,000) shall be available for inspection by  
8 the public. The department shall keep such records for a  
9 minimum of three years from the date of the abatement.

10 F. In response to a timely protest pursuant to  
11 Section 7-1-24 NMSA 1978 of an assessment by the department and  
12 notwithstanding any other provision of the Tax Administration  
13 Act, the secretary or the secretary's delegate may abate that  
14 portion of an assessment of tax, including applicable penalties  
15 and interest, representing the amount of tax previously paid by  
16 another person on behalf of the taxpayer on the same  
17 transaction; provided that the requirements of equitable  
18 recoupment are met. For purposes of this subsection, the  
19 protest pursuant to Section 7-1-24 NMSA 1978 of the  
20 department's assessment may be made by the taxpayer to whom the  
21 assessment was issued or by the other person who claims to have  
22 previously paid the tax on behalf of the taxpayer."

23 SECTION 54. Section 7-1-29 NMSA 1978 (being Laws 1965,  
24 Chapter 248, Section 31, as amended) is amended to read:

25 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

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1           A. In response to a claim for refund, credit or  
2 rebate made as provided in Section 7-1-26 NMSA 1978, but before  
3 a court acquires jurisdiction of the matter, the secretary or  
4 the secretary's delegate may authorize payment to a person in  
5 the amount of the [~~creditor~~] credit or rebate claimed or refund  
6 an overpayment of tax determined by the secretary or the  
7 secretary's delegate to have been erroneously made by the  
8 person, together with allowable interest. A payment of a  
9 credit rebate claimed or a refund of tax and interest  
10 erroneously paid amounting to twenty thousand dollars (\$20,000)  
11 or more shall be made with the prior approval of the attorney  
12 general, except that the secretary or the secretary's delegate  
13 may make refunds with respect to the Oil and Gas Severance Tax  
14 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
15 Emergency School Tax Act, the Oil and Gas Ad Valorem Production  
16 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas  
17 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA  
18 1978 and the Cigarette Tax Act without the prior approval of  
19 the attorney general regardless of the amount.

20           B. Pursuant to the final order of the district  
21 court, the court of appeals, the supreme court of New Mexico or  
22 a federal court, from which order, appeal or review is not  
23 successfully taken, adjudging that a person has properly  
24 claimed a credit or rebate or made an overpayment of tax, the  
25 secretary shall authorize the payment to the person of the

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1 amount thereof.

2 C. In the discretion of the secretary, any amount  
3 of credit or rebate to be paid or tax to be refunded may be  
4 offset against any amount of tax for which the person due to  
5 receive the credit, rebate payment or refund is liable. The  
6 secretary or the secretary's delegate shall give notice to the  
7 taxpayer that the credit, rebate payment or refund will be made  
8 in this manner, and the taxpayer shall be entitled to interest  
9 pursuant to Section 7-1-68 NMSA 1978 until the tax liability is  
10 credited with the credit, rebate or refund amount.

11 D. In an audit by the department or a managed audit  
12 covering multiple reporting periods in which both underpayments  
13 and overpayments of a tax have been made in different reporting  
14 periods, the department shall credit the tax overpayments  
15 against the underpayments, provided that the taxpayer files a  
16 claim for refund of the overpayments. An overpayment shall be  
17 applied as a credit first to the earliest underpayment and then  
18 to succeeding underpayments. An underpayment of tax to which  
19 an overpayment is credited pursuant to this section shall be  
20 deemed paid in the period in which the overpayment was made or  
21 the period to which the overpayment was credited against an  
22 underpayment, whichever is later. If the overpayments credited  
23 pursuant to this section exceed the underpayments of a tax, the  
24 amount of the net overpayment for the periods covered in the  
25 audit shall be refunded to the taxpayer.

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1           E. When a taxpayer makes a payment identified to a  
2 particular return or assessment, and the department determines  
3 that the payment exceeds the amount due pursuant to that return  
4 or assessment, the secretary may apply the excess to the  
5 taxpayer's other liabilities pursuant to the tax acts to which  
6 the return or assessment applies, without requiring the  
7 taxpayer to file a claim for a refund. The liability to which  
8 an overpayment is applied pursuant to this section shall be  
9 deemed paid in the period in which the overpayment was made or  
10 the period to which the overpayment was applied, whichever is  
11 later.

12           F. If the department determines, upon review of an  
13 original or amended income tax return, corporate income and  
14 franchise tax return, estate tax return, special fuels excise  
15 tax return or oil and gas tax return, that there has been an  
16 overpayment of tax for the taxable period to which the return  
17 or amended return relates in excess of the amount due to be  
18 refunded to the taxpayer pursuant to the provisions of  
19 [~~Subsection I of~~] Section 7-1-26 NMSA 1978, the department may  
20 refund that excess amount to the taxpayer without requiring the  
21 taxpayer to file a refund claim.

22           G. Records of refunds and credits made in excess of  
23 ten thousand dollars (\$10,000) shall be available for  
24 inspection by the public. The department shall keep such  
25 records for a minimum of three years from the date of the

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1 refund or credit.

2 H. In response to a timely refund claim pursuant to  
3 Section 7-1-26 NMSA 1978 and notwithstanding any other  
4 provision of the Tax Administration Act, the secretary or the  
5 secretary's delegate may refund or credit a portion of an  
6 assessment of tax paid, including applicable penalties and  
7 interest representing the amount of tax previously paid by  
8 another person on behalf of the taxpayer on the same  
9 transaction, provided that the requirements of equitable  
10 recoupment are met. For purposes of this subsection, the  
11 refund claim may be filed by the taxpayer to whom the  
12 assessment was issued or by another person who claims to have  
13 previously paid the tax on behalf of the taxpayer. Prior to  
14 granting the refund or credit, the secretary may require a  
15 waiver of all rights to claim a refund or credit of the tax  
16 previously paid by another person paying a tax on behalf of the  
17 taxpayer."

18 SECTION 55. Section 7-1-69.1 NMSA 1978 (being Laws 2005,  
19 Chapter 109, Section 1, as amended) is amended to read:

20 "7-1-69.1. CIVIL PENALTY FOR FAILURE TO FILE AN  
21 INFORMATION RETURN.--A taxpayer, wholesaler, retailer or rack  
22 operator who fails to file an information return on time  
23 pursuant to the [~~Gasoline Tax Act or the Special Fuels Supplier~~  
24 ~~Tax~~] Motor Fuel Taxes Act shall pay a penalty of fifty dollars  
25 (\$50.00) for each late report. This penalty shall be in

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1 addition to other applicable penalties."

2 SECTION 56. Section 7-1B-1 NMSA 1978 (being Laws 2015,  
3 Chapter 73, Section 1) is amended to read:

4 "7-1B-1. SHORT TITLE.--~~[Sections 1 through 9 of this act]~~  
5 Chapter 7, Article 1B NMSA 1978 may be cited as the  
6 "Administrative Hearings Office Act"."

7 SECTION 57. Section 7-1B-6 NMSA 1978 (being Laws 2015,  
8 Chapter 73, Section 6) is amended to read:

9 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

10 A. The chief hearing officer shall:

11 (1) adopt and promulgate a hearing officer  
12 code of conduct; and

13 (2) periodically evaluate each hearing  
14 officer's performance for competency, efficiency and  
15 professional demeanor in accord with relevant legal standards  
16 and the hearing officer code of conduct.

17 B. The chief hearing officer shall ensure that each  
18 hearing officer has decisional independence; however, the chief  
19 hearing officer may:

20 (1) consult with a hearing officer about a  
21 genuine question of law; and

22 (2) review with a hearing officer any issue on  
23 appeal addressed by a court of this state.

24 C. The administrative hearings office shall:

25 (1) hear all tax protests pursuant to the

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1 provisions of the Tax Administration Act;

2 (2) hear property tax protests pursuant to the  
3 provisions of the Property Tax Code;

4 (3) hear all certificate-denial protests  
5 pursuant to the provisions of Section 13-1-22 NMSA 1978;

6 (4) conduct all adjudicatory hearings pursuant  
7 to the Motor Vehicle Code;

8 (5) conduct all driver's license revocation  
9 hearings pursuant to the provisions of the Implied Consent Act;

10 (6) conduct all hearings regarding the  
11 cancellation or refusal to issue or reissue a motor fuel  
12 license pursuant to the Motor Fuel Taxes Act;

13 [~~(6)~~] (7) make and preserve a complete record  
14 of all proceedings; and

15 [~~(7)~~] (8) maintain confidentiality regarding  
16 taxpayer information as required by the provisions of Section  
17 7-1-8 NMSA 1978.

18 D. In hearings conducted pursuant to the Tax  
19 Administration Act, Section 13-1-22 NMSA 1978 and the Motor  
20 Vehicle Code:

21 (1) the Rules of Evidence do not apply. The  
22 hearing officer may require reasonable substantiation of  
23 statements or records tendered, the accuracy or truth of which  
24 is in reasonable doubt, to rule on the admissibility of  
25 evidence. A taxpayer or the taxation and revenue department

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1 may request a written ruling on a contested question of  
2 evidence in a matter in which the taxpayer has filed a written  
3 protest and for which that protest is pending. The  
4 administrative hearings office shall issue a copy of its  
5 written ruling to the taxation and revenue department at the  
6 time the ruling is issued to the taxpayer;

7 (2) the Rules of Civil Procedure for the  
8 District Courts do not apply. The hearing officer shall  
9 conduct a hearing to allow the ample and fair presentation of  
10 complaints and defenses. The hearing officer shall hear  
11 arguments, permit discovery, entertain and dispose of motions,  
12 require written expositions of the case as the circumstances  
13 justify and render a decision in accordance with the law and  
14 the evidence presented and admitted. A taxpayer or the  
15 taxation and revenue department may request a written ruling on  
16 a contested question of procedure in a matter in which the  
17 taxpayer has filed a written protest and for which that protest  
18 is pending. The administrative hearings office shall issue a  
19 copy of its written ruling to the taxation and revenue  
20 department at the time the ruling is issued to the taxpayer;  
21 and

22 (3) the hearing officer may administer oaths  
23 and issue subpoenas for the attendance of witnesses and the  
24 production of relevant books and papers, and for hearings  
25 conducted for a license suspension pursuant to Section 66-5-30

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1 NMSA 1978, the hearing officer may require a reexamination of  
2 the licensee."

3 SECTION 58. A new section of the Administrative Hearings  
4 Office Act is enacted to read:

5 "[NEW MATERIAL] CANCELLATION OR REFUSAL TO ISSUE OR  
6 REISSUE MOTOR FUEL LICENSE.--

7 A. A person may dispute the cancellation or refusal  
8 to issue or reissue a motor fuel license pursuant to the Motor  
9 Fuel Taxes Act. Upon timely receipt of a protest, the chief  
10 hearing officer shall promptly designate a hearing officer to  
11 conduct a hearing and shall set a date for the hearing. On  
12 that date, the hearing officer shall hear the protest.

13 B. A person may appear at a hearing set pursuant to  
14 the provisions of Subsection A of this section for the person's  
15 self or be represented by a bona fide employee or an attorney.  
16 A hearing shall not be open to the public except upon request  
17 of the person. A hearing officer may postpone or continue a  
18 hearing.

19 C. At the beginning of the hearing, the hearing  
20 officer shall inform the person of the person's right to  
21 representation. Within thirty days after the hearing, the  
22 hearing officer shall inform the protestant in writing of the  
23 decision and of the protestant's right to, and the requirements  
24 for perfection of, an appeal from the decision to the district  
25 court and of the consequences of a failure to appeal. The

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1 written decision shall embody an order granting or denying the  
2 relief requested or granting such part of the relief requested,  
3 as appropriate.

4 D. If the protestant or the secretary of taxation  
5 and revenue is dissatisfied with the decision and order of the  
6 hearing officer, the party may appeal pursuant to the  
7 provisions of Section 39-3-1.1 NMSA 1978.

8 E. No court of this state has jurisdiction to  
9 entertain a proceeding by any person in which the person calls  
10 into question the application to that person of any provision  
11 of the Motor Fuel Taxes Act, except as a consequence of the  
12 appeal by that person to the district court from the action and  
13 order of the hearing officer as provided for in this section.

14 F. Nothing in this section shall be construed to  
15 authorize a criminal proceeding or to authorize an  
16 administrative protest of the issuance of a subpoena or  
17 summons."

18 SECTION 59. Section 7-2-18.21 NMSA 1978 (being Laws 2007,  
19 Chapter 204, Section 7) is amended to read:

20 "7-2-18.21. CREDIT--BLENDED BIODIESEL FUEL.--

21 A. A taxpayer who is liable for payment of the  
22 special fuel excise tax [~~pursuant to Subsections A through D of~~  
23 ~~Section 7-16A-2.1 NMSA 1978]~~ and who files a New Mexico income  
24 tax return is eligible to claim a credit against income tax  
25 liability for each gallon of blended biodiesel fuel on which

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1 that person paid the special fuel excise tax in the taxable  
2 year, or would have paid the special fuel excise tax in the  
3 taxable year but for the [~~deductions~~] exemptions and credits  
4 allowed pursuant to [~~Subsections B through F of Section~~  
5 ~~7-16A-10 NMSA 1978~~] the Motor Fuel Taxes Act or the treaty  
6 exemption for north Atlantic treaty organization use. The  
7 credit shall be in the following amounts for the following  
8 periods:

9 (1) from January 1, 2007 until December 31,  
10 2010, at a rate of three cents (\$.03) per gallon;

11 (2) from January 1, 2011 until December 31,  
12 2011, at a rate of two cents (\$.02) per gallon; and

13 (3) from January 1, 2012 until December 31,  
14 2012, at a rate of one cent (\$.01) per gallon.

15 B. The tax credit provided by this section may not  
16 be claimed with respect to the same blended biodiesel fuel for  
17 which a credit has been claimed pursuant to the Corporate  
18 Income and Franchise Tax Act or for which a credit or refund  
19 has been claimed pursuant to Section 7-16A-13 NMSA 1978.

20 C. A taxpayer who otherwise qualifies for and  
21 claims a credit pursuant to this section for blended biodiesel  
22 fuel on which special fuel excise tax has been paid by a  
23 partnership or other business association of which the taxpayer  
24 is a member may claim a credit only in proportion to the  
25 taxpayer's interest in the partnership or business association.

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1 The total credit claimed in the aggregate by all members of the  
2 partnership or business association shall not exceed the amount  
3 of credit allowed pursuant to Subsection A of this section.

4 D. ~~[A husband and wife]~~ Married individuals who  
5 file separate returns for a taxable year in which they could  
6 have filed a joint return may each claim only one-half of the  
7 credit that would have been allowed on a joint return.

8 E. The tax credit provided by this section may only  
9 be applied against the income tax liability of the person who  
10 paid the special fuel excise tax on the blended biodiesel fuel  
11 with respect to which the credit is provided, or who would have  
12 paid the special fuel excise tax but for the deductions allowed  
13 pursuant to Subsections B through F of Section 7-16A-10 NMSA  
14 1978 or the treaty exemption for north Atlantic treaty  
15 organization use. If the credit exceeds the person's income  
16 tax liability for the taxable year in which the credit is  
17 granted, the credit may be carried forward for five years.

18 F. A taxpayer claiming a credit pursuant to this  
19 section shall provide documentation of eligibility in form and  
20 content as determined by the department.

21 G. For the purposes of this section:

22 (1) "biodiesel" means renewable,  
23 biodegradable, monoalkyl ester combustible liquid fuel that is  
24 derived from agricultural plant oils or animal fats and that  
25 meets American society for testing and materials D 6751

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1 standard specification for biodiesel B100 blend stock for  
2 distillate fuels;

3 (2) "blended biodiesel fuel" means a diesel  
4 fuel that contains at least two percent biodiesel; and

5 (3) "diesel fuel" means any diesel-engine fuel  
6 used for the generation of power to propel a motor vehicle."

7 SECTION 60. Section 7-2A-23 NMSA 1978 (being Laws 2007,  
8 Chapter 204, Section 8) is amended to read:

9 "7-2A-23. CREDIT--BLENDED BIODIESEL FUEL.--

10 A. A taxpayer that is liable for payment of the  
11 special fuel excise tax [~~pursuant to Subsections A through D of~~  
12 ~~Section 7-16A-2.1 NMSA 1978~~] and that files a New Mexico  
13 corporate income tax return is eligible to claim a credit  
14 against corporate income tax liability for each gallon of  
15 blended biodiesel fuel on which that person paid the special  
16 fuel excise tax in the taxable year or who would have paid the  
17 special fuel excise tax in the taxable year but for the  
18 [~~deductions~~] exemptions and credits allowed pursuant to  
19 [~~Subsections B through F of Section 7-16A-10 NMSA 1978~~] the  
20 Motor Fuel Taxes Act or the treaty exemption for north Atlantic  
21 treaty organization use. The credit shall be in the following  
22 amounts for the following periods:

23 (1) from January 1, 2007 until December 31,  
24 2010, at a rate of three cents (\$.03) per gallon;

25 (2) from January 1, 2011 until December 31,

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1 2011, at a rate of two cents (\$.02) per gallon; and

2 (3) from January 1, 2012 until December 31,  
3 2012, at a rate of one cent (\$.01) per gallon.

4 B. The tax credit provided by this section may not  
5 be claimed with respect to the same blended biodiesel fuel for  
6 which a credit has been claimed pursuant to the Income Tax Act  
7 or for which a credit or refund has been claimed pursuant to  
8 Section 7-16A-13 NMSA 1978.

9 C. A taxpayer that otherwise qualifies for and  
10 claims a credit pursuant to this section for blended biodiesel  
11 fuel on which special fuel excise tax has been paid by a  
12 partnership or other business association of which the taxpayer  
13 is a member may claim a credit only in proportion to the  
14 taxpayer's interest in the partnership or business association.  
15 The total credit claimed in the aggregate by all members of the  
16 partnership or business association shall not exceed the amount  
17 of credit allowed pursuant to Subsection A of this section.

18 D. The tax credit provided by this section may only  
19 be applied against the corporate income tax liability of the  
20 person that paid the special fuel excise tax on the blended  
21 biodiesel fuel with respect to which the credit is provided or  
22 that would have paid the special fuel excise tax but for the  
23 deductions allowed pursuant to Subsections B through F of  
24 Section 7-16A-10 NMSA 1978 or the treaty exemption for north  
25 Atlantic treaty organization use. If the credit exceeds the

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1 person's corporate income tax liability for the taxable year in  
2 which the credit is granted, the credit may be carried forward  
3 for five years.

4 E. A taxpayer claiming a credit pursuant to this  
5 section shall provide documentation of eligibility in form and  
6 content as determined by the department.

7 F. For the purposes of this section:

8 (1) "biodiesel" means renewable,  
9 biodegradable, monoalkyl ester combustible liquid fuel that is  
10 derived from agricultural plant oils or animal fats and that  
11 meets American society for testing and materials D 6751  
12 standard specification for biodiesel B100 blend stock for  
13 distillate fuels;

14 (2) "blended biodiesel fuel" means a diesel  
15 fuel that contains at least two percent biodiesel; and

16 (3) "diesel fuel" means any diesel-engine fuel  
17 used for the generation of power to propel a motor vehicle."

18 SECTION 61. Section 7-9-26 NMSA 1978 (being Laws 1969,  
19 Chapter 144, Section 19, as amended) is amended to read:

20 "7-9-26. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--  
21 FUEL.--Exempted from the gross receipts and compensating tax  
22 are the receipts from selling and the use of gasoline, special  
23 fuel or alternative fuel on which the tax imposed by [~~Section~~  
24 ~~7-13-3, 7-16-3 or 7-16A-3 NMSA 1978~~] the Motor Fuel Taxes Act  
25 or the Alternative Fuel Tax Act has been paid and not

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1 refunded."

2 SECTION 62. Section 7-9-79.2 NMSA 1978 (being Laws 2007,  
3 Chapter 204, Section 9) is amended to read:

4 "7-9-79.2. GROSS RECEIPTS TAX--COMPENSATING TAX--  
5 BIODIESEL BLENDING FACILITY TAX CREDIT.--

6 A. A taxpayer who is a rack operator as defined in  
7 the [~~Special Fuels Supplier Tax~~] Motor Fuel Taxes Act and who  
8 installs biodiesel blending equipment in property owned by the  
9 taxpayer for the purpose of establishing or expanding a  
10 facility to produce blended biodiesel fuel is eligible to claim  
11 a credit against gross receipts tax or compensating tax. The  
12 credit shall be an amount equal to thirty percent of the  
13 purchase cost of the equipment plus thirty percent of the cost  
14 of installing that equipment. The credit provided by this  
15 section may be referred to as the "biodiesel blending facility  
16 tax credit".

17 B. The biodiesel blending facility tax credit shall  
18 not exceed fifty thousand dollars (\$50,000) with respect to  
19 equipment installed at any one facility.

20 C. Upon application from a taxpayer wishing to  
21 claim the biodiesel blending facility tax credit, the energy,  
22 minerals and natural resources department shall determine if  
23 the equipment for which the tax credit will be claimed meets  
24 the requirements of this section and if purchase and  
25 installation costs reported by the taxpayer are legitimate.

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1 Upon these determinations being made in favor of the taxpayer,  
2 the energy, minerals and natural resources department shall  
3 issue a dated certificate of eligibility containing this  
4 information and an estimate of the amount of the biodiesel  
5 blending facility tax credit for which the taxpayer is  
6 eligible.

7 D. To claim the biodiesel blending facility tax  
8 credit, the taxpayer shall provide to the taxation and revenue  
9 department the certificate of eligibility from the energy,  
10 minerals and natural resources department. Upon receipt of the  
11 certificate, the taxation and revenue department shall approve  
12 the claim for the credit if the total cumulative amount of  
13 approved claims for the credit for all taxpayers for the  
14 calendar year does not exceed one million dollars (\$1,000,000).  
15 The department shall maintain a record of the cumulative amount  
16 of claims for the credit that have been approved and when it  
17 determines that this cumulative amount has reached one million  
18 dollars (\$1,000,000), it shall cease approving any additional  
19 claims for the biodiesel blending facility tax credit.

20 E. If a taxpayer who has received the biodiesel  
21 blending facility tax credit ceases biodiesel blending without  
22 completing at least one hundred eighty days of availability of  
23 the facility within the first three hundred sixty-five days  
24 after the issuance of the certificate of eligibility from the  
25 energy, minerals and natural resources department, any amount

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1 of approved credit not applied against the taxpayer's gross  
2 receipts tax or compensating tax liability shall be  
3 extinguished. The taxpayer must amend the taxpayer's return,  
4 self-assess the tax owed and return any biodiesel blending  
5 facility tax credit received within four hundred twenty-five  
6 days of the date of issuance of the certificate of eligibility.

7 F. The tax credit provided by this section may only  
8 be applied against the taxpayer's gross receipts tax liability  
9 or compensating tax liability. If the credit exceeds the  
10 taxpayer's tax liability in the reporting period for which it  
11 is granted, the credit may be carried forward for four years  
12 from the date of the certificate of eligibility.

13 G. For the purposes of this section:

14 (1) "biodiesel" means renewable,  
15 biodegradable, monoalkyl ester combustible liquid fuel that is  
16 derived from agricultural plant oils or animal fats and that  
17 meets American society for testing and materials D 6751  
18 standard specification for biodiesel B100 blend stock for  
19 distillate fuels;

20 (2) "biodiesel blending equipment" means  
21 equipment necessary for the process of blending biodiesel with  
22 diesel fuel to produce blended biodiesel fuel;

23 (3) "blended biodiesel fuel" means a diesel  
24 fuel that contains at least two percent biodiesel; and

25 (4) "diesel fuel" means any diesel-engine fuel

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1 used for the generation of power to propel a motor vehicle."

2 SECTION 63. Section 7-13A-2 NMSA 1978 (being Laws 1990,  
3 Chapter 124, Section 15, as amended) is amended to read:

4 "7-13A-2. DEFINITIONS.--As used in the Petroleum Products  
5 Loading Fee Act:

6 A. "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 ~~[B. "distributor" means any person registered or~~  
11 ~~required to be registered as a rack operator or distributor for~~  
12 ~~purposes of the Gasoline Tax Act and any person registered or~~  
13 ~~required to be registered as a rack operator or special fuel~~  
14 ~~supplier for purposes of the Special Fuels Supplier Tax Act;~~

15 ~~G.]~~ B. "gallon" means the quantity of liquid  
16 necessary to fill a standard United States gallon liquid  
17 measure, which is approximately 3.785 liters, or that same  
18 quantity adjusted to a temperature of sixty degrees Fahrenheit  
19 at the election of ~~[any distributor]~~ the taxpayer, but ~~[a~~  
20 ~~distributor]~~ the taxpayer shall report on the same basis for a  
21 period of at least one year;

22 ~~[D.]~~ C. "load" means eight thousand gallons of  
23 petroleum product;

24 ~~[E.]~~ D. "loading" means the act of placing or  
25 causing to be placed any petroleum product that is produced,

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1 refined, manufactured, blended or compounded at a refinery in  
2 this state or stored at a pipeline terminal in this state into  
3 tank cars, tank trucks, tank wagons or other types of  
4 transportation equipment or into any tank or other container  
5 from which sales or deliveries not involving transportation are  
6 made;

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

14 ~~[G.]~~ F. "petroleum product" means gasoline as  
15 defined in the Gasoline Tax Act and special fuel as defined in  
16 the Special Fuels Supplier Tax Act; ~~and~~

17 ~~[H.]~~ G. "secretary" means, unless the context  
18 indicates another meaning, the secretary of taxation and  
19 revenue or the secretary's delegate;

20 H. "taxpayer" means a person subject to the taxes  
21 imposed by the Motor Fuel Taxes Act; and

22 I. "unobligated balance of the corrective action  
23 fund" means corrective action fund equity less all known or  
24 anticipated liabilities against the fund."

25 SECTION 64. Section 7-13A-3 NMSA 1978 (being Laws 1990,

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1 Chapter 124, Section 16, as amended) is amended to read:

2 "7-13A-3. IMPOSITION AND RATE OF FEE--DENOMINATION AS  
3 "PETROLEUM PRODUCTS LOADING FEE".--

4 A. ~~[For the privilege of loading gasoline or~~  
5 ~~special fuel from a rack at a refinery or pipeline terminal in~~  
6 ~~this state into a cargo tank]~~ In addition to the taxes imposed  
7 pursuant to the Motor Fuel Taxes Act, there is imposed on  
8 taxpayers subject to those taxes, a fee ~~[on the distributor]~~ at  
9 a rate provided in Subsection ~~[G]~~ B of this section on:

10 (1) each gallon of gasoline or special fuel  
11 loaded in New Mexico on which the petroleum products loading  
12 fee has not been previously paid; and

13 ~~[B. For the privilege of importing gasoline or~~  
14 ~~special fuel into this state for resale or consumption in this~~  
15 ~~state, there is imposed a fee determined as provided in~~  
16 ~~Subsection C of this section on]~~ (2) each load of gasoline or  
17 special fuel imported into New Mexico for resale or consumption  
18 on which the petroleum products loading fee has not been  
19 previously paid. For the purposes of this ~~[section]~~ paragraph,  
20 "load" means eight thousand gallons of gasoline or special  
21 fuel. To determine how many loads a person is to report under  
22 the provisions of this section, the person shall divide by  
23 eight thousand the total gallons of gasoline and special fuel  
24 reported for the purposes of ~~[Section 7-13-3 NMSA 1978 as~~  
25 ~~adjusted under the provisions of Section 7-13-4 NMSA 1978 and~~

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1 ~~the total gallons of special fuels received in New Mexico less~~  
2 ~~any gallons exempted under Section 7-13A-4 NMSA 1978]~~ the Motor  
3 Fuel Taxes Act. Loads shall be calculated to the nearest one-  
4 hundredth of a load.

5 [G.] B. The fee imposed by this section is and may  
6 be referred to as the "petroleum products loading fee" and  
7 shall be one hundred fifty dollars (\$150) per load or whichever  
8 of the following applies:

9 (1) in the event the secretary of environment  
10 certifies that the unobligated balance of the corrective action  
11 fund at the end of the prior fiscal year equals or exceeds  
12 eighteen million dollars (\$18,000,000), the fee shall be set at  
13 forty dollars (\$40.00) per load;

14 (2) in the event the secretary of environment  
15 certifies that the unobligated balance of the corrective action  
16 fund at the end of the prior fiscal year exceeds twelve million  
17 dollars (\$12,000,000) but is less than eighteen million dollars  
18 (\$18,000,000), the fee shall be set at eighty dollars (\$80.00)  
19 per load;

20 (3) in the event the secretary of environment  
21 certifies that the unobligated balance of the corrective action  
22 fund at the end of the prior fiscal year exceeds six million  
23 dollars (\$6,000,000) but is less than twelve million dollars  
24 (\$12,000,000), the fee shall be set at one hundred twenty  
25 dollars (\$120) per load; and

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1 (4) in the event the secretary of environment  
2 certifies that the unobligated balance of the corrective action  
3 fund at the end of the prior fiscal year is less than six  
4 million dollars (\$6,000,000), the fee shall be set at one  
5 hundred fifty dollars (\$150) per load.

6 ~~[D-]~~ C. The amount of the petroleum products  
7 loading fee set pursuant to Paragraph (1), (2), (3) or (4) of  
8 Subsection ~~[G]~~ B of this section shall be imposed on the first  
9 day of the month following expiration of ninety days after the  
10 end of the fiscal year for which the certification was made.

11 ~~[E-]~~ D. As used in this section, "unobligated  
12 balance of the corrective action fund" means corrective action  
13 fund equity less all known or anticipated liabilities against  
14 the fund."

15 **SECTION 65.** Section 7-13A-7 NMSA 1978 (being Laws 2015  
16 (1st S.S.), Chapter 2, Section 20) is amended to read:

17 "7-13A-7. CLAIM FOR REFUND OF PETROLEUM PRODUCTS LOADING  
18 FEE ON PRODUCTS PREVIOUSLY LOADED FROM A SOURCE OTHER THAN A  
19 REFINER OR PIPELINE TERMINAL.--

20 A. Upon the submission of proof satisfactory to the  
21 department, a ~~[distributor]~~ taxpayer may claim, and the  
22 department may allow, a claim for refund of the petroleum  
23 products loading fee paid on petroleum products previously  
24 loaded in New Mexico from a source other than a refiner or  
25 pipeline terminal in this state and placed in a terminal from

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1 which it will be loaded into tank cars, tank trucks, tank  
2 wagons or other types of transportation equipment.

3 B. No person may submit claims for refund pursuant  
4 to this section more frequently than quarterly. No claim for  
5 refund may be submitted or allowed on less than one hundred  
6 gallons.

7 C. The department may prescribe the documents  
8 necessary to support a claim for refund pursuant to the  
9 provisions of this section."

10 SECTION 66. Section 7-29A-5 NMSA 1978 (being Laws 1992,  
11 Chapter 38, Section 5) is amended to read:

12 "7-29A-5. SECRETARY OF TAXATION AND REVENUE APPROVAL--  
13 REFUND.--

14 A. The person responsible for paying the oil and  
15 gas severance tax on production from the enhanced recovery  
16 project shall not qualify to receive the recovered oil tax rate  
17 unless that person:

18 (1) applies to the secretary of taxation and  
19 revenue in the form and manner prescribed by the secretary for  
20 approval to pay the oil and gas severance tax on crude oil  
21 severed and saved from the enhanced recovery project at the  
22 recovered oil tax rate;

23 (2) includes the certifications from the  
24 division of approval and designation of the affected areas of  
25 the enhanced recovery project and of a positive production

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1 response from the enhanced recovery project; and

2 (3) provides all relevant material that the  
3 secretary of taxation and revenue considers necessary to  
4 administer the applicable provisions of the Enhanced Oil  
5 Recovery Act.

6 B. An approval of the secretary of taxation and  
7 revenue in accordance with Subsection A of this section shall  
8 be applicable to crude oil severed and sold from the enhanced  
9 recovery project on and after the first day of the month  
10 following the month in which the division certifies that a  
11 positive production response with respect to the enhanced  
12 recovery project has occurred. If the oil and gas severance  
13 tax is paid at a rate imposed in Paragraph (2) of Subsection A  
14 of Section 7-29-4 NMSA 1978 on crude oil severed and saved from  
15 the enhanced recovery project after the month in which the  
16 division certifies that a positive production response with  
17 respect to the enhanced recovery project has occurred, a claim  
18 for refund may be filed in accordance with Section 7-1-26 NMSA  
19 1978 for the excess in tax over the amount due using the  
20 recovered oil tax rate. Notwithstanding the provisions of  
21 Subsection [~~E~~] G of Section 7-1-26 NMSA 1978, any such refund  
22 granted shall be made in the form of a credit against future  
23 oil and gas severance tax liabilities."

24 SECTION 67. Section 7-29B-6 NMSA 1978 (being Laws 1995,  
25 Chapter 15, Section 6, as amended) is amended to read:

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1 "7-29B-6. QUALIFICATION FOR PRODUCTION RESTORATION  
2 INCENTIVE TAX EXEMPTION AND WELL WORKOVER AND STRIPPER WELL  
3 PROPERTY INCENTIVE TAX RATE--SECRETARY OF TAXATION AND REVENUE  
4 APPROVAL--REFUND.--

5 A. The person responsible for paying the oil and  
6 gas severance tax on natural gas or oil produced from a  
7 production restoration project shall qualify to receive a ten-  
8 year production restoration incentive tax exemption upon:

9 (1) application to the department in the form  
10 and manner prescribed by the department for approval for the  
11 ten-year production restoration incentive tax exemption;

12 (2) submission of the certification of  
13 approval from the division and designation of the natural gas  
14 or oil well as a production restoration project; and

15 (3) submission of any other relevant material  
16 that the secretary of taxation and revenue deems necessary to  
17 administer the applicable provisions of the Natural Gas and  
18 Crude Oil Production Incentive Act.

19 B. The person responsible for payment of the oil  
20 and gas severance tax on natural gas or oil produced from a  
21 well workover project shall qualify for the well workover  
22 incentive tax rate on all the natural gas or oil produced by  
23 that project upon:

24 (1) application to the department in the form  
25 and manner prescribed by the department for approval to apply

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1 the well workover incentive tax rate to the natural gas or oil  
2 produced from a well workover project;

3 (2) submission of the certification from the  
4 division of approval and designation of the natural gas or oil  
5 well as a well workover project; and

6 (3) any other relevant material that the  
7 department considers necessary to administer the applicable  
8 provisions of the Natural Gas and Crude Oil Production  
9 Incentive Act.

10 C. The person responsible for paying the oil and  
11 gas severance tax and the oil and gas emergency school tax on  
12 natural gas and crude oil produced from a stripper well  
13 property shall qualify to receive the stripper well property  
14 incentive tax rate for the fiscal year following certification  
15 by the division in the form and manner agreed to by the  
16 division and the department designating the property as a  
17 stripper well property. The division shall certify stripper  
18 well properties for calendar year 1998 no later than June 30,  
19 1999 and no later than June 1 of each succeeding year for the  
20 preceding calendar year.

21 D. The production restoration incentive tax  
22 exemption shall apply to natural gas or oil produced from a  
23 production restoration project beginning the first day of the  
24 month following the date the division certifies that production  
25 has been restored and ending the last day of the tenth year of

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1 production following that date. The well workover incentive  
2 tax rate applies to the natural gas or oil produced from a well  
3 workover project beginning the first day of the month following  
4 the date the division certifies that the well workover project  
5 has been completed. The stripper well property incentive tax  
6 rates apply to the natural gas or oil produced from a stripper  
7 well property in the twelve months beginning May 1 prior to  
8 July 1 of the fiscal year to which the certification of the  
9 property as a stripper well property applies.

10 E. The person responsible for payment of the oil  
11 and gas severance tax on natural gas or oil production from an  
12 approved well workover project may file a claim for credit  
13 against current tax liability or for refund in accordance with  
14 Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount  
15 due using the well workover incentive tax rate.

16 Notwithstanding the provisions of Subsection ~~[E]~~ G of Section  
17 7-1-26 NMSA 1978, any such refund granted shall be made in the  
18 form of a credit against any future oil and gas severance tax  
19 liabilities incurred by the taxpayer.

20 F. Well workover projects certified prior to July  
21 1, 1999 shall be deemed to be approved and certified in  
22 accordance with the provisions of this 1999 act and natural gas  
23 or oil produced from those projects shall be eligible for the  
24 well workover incentive tax rate effective beginning July 1,  
25 1999.

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1 G. The secretary of taxation and revenue may adopt  
2 and promulgate rules to enforce the provisions of this  
3 section."

4 SECTION 68. Section 57-19-27 NMSA 1978 (being Laws 1993,  
5 Chapter 98, Section 3, as amended) is amended to read:

6 "57-19-27. DEFINITIONS.--As used in the Petroleum  
7 Products Standards Act:

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

13 B. "board" means the board of regents of New Mexico  
14 state university;

15 C. "dealer" means a dealer as defined by the  
16 [~~Special Fuels Supplier Tax~~] Motor Fuel Taxes Act;

17 D. "department" means the New Mexico department of  
18 agriculture;

19 E. "diesel fuel" means any diesel-engine fuel used  
20 for the generation of power to propel a motor vehicle;

21 F. "director" means the director of the New Mexico  
22 department of agriculture;

23 G. "distributor" means a distributor as defined by  
24 the [~~Gasoline Tax~~] Motor Fuel Taxes Act;

25 H. "lubricating oil" means any oil used to



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1 lubricate transmissions, gears or axles;

2 I. "motor fuel" means any liquid product used for  
3 the generation of power in an internal combustion engine,  
4 excluding liquified petroleum gases and aviation fuels;

5 J. "motor oil" means oil for use in lubricating  
6 internal combustion engines;

7 K. "person" means any natural person, firm,  
8 partnership, association or corporation;

9 L. "petroleum product" means motor fuel, kerosene,  
10 lubricating oil, motor oil, anti-freeze or brake fluid; and

11 M. "retailer" means any person who sells motor fuel  
12 and delivers the motor fuel into the supply tanks of motor  
13 vehicles."

14 SECTION 69. Section 65-1-2 NMSA 1978 (being Laws 1978,  
15 Chapter 19, Section 1, as amended) is amended to read:

16 "65-1-2. DEFINITIONS.--As used in the Motor  
17 Transportation Act:

18 A. "combination" means any connected assemblage of  
19 a motor vehicle and one or more semitrailers, trailers or  
20 semitrailers converted to trailers by means of a converter  
21 gear;

22 B. "combination gross vehicle weight" means the sum  
23 total of the gross vehicle weights of all units of a  
24 combination;

25 C. "commercial motor carrier vehicle" means a self-

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1 propelled or towed vehicle, other than special mobile  
2 equipment, used on public highways in commerce to transport  
3 passengers or property when the vehicle:

4 (1) is operated interstate and has a gross  
5 vehicle weight rating or gross combination weight rating, or  
6 gross vehicle weight or gross combination weight, of four  
7 thousand five hundred thirty-six kilograms, or ten thousand one  
8 pounds or more; or is operated only in intrastate commerce and  
9 has a gross vehicle weight rating or gross combination weight  
10 rating, or gross vehicle weight or gross combination weight, of  
11 twenty-six thousand one or more pounds;

12 (2) is designed or used to transport more than  
13 eight passengers, including the driver, and is used to  
14 transport passengers for compensation;

15 (3) is designed or used to transport more than  
16 fifteen passengers, including the driver, and is not used to  
17 transport passengers for compensation; or

18 (4) is used to transport hazardous materials  
19 of the type or quantity requiring placarding under rules  
20 prescribed by applicable federal or state law;

21 D. "converter gear" means any assemblage of one or  
22 more axles with a fifth wheel mounted thereon, designed for use  
23 in a combination to support the front end of a semitrailer but  
24 not permanently attached thereto. A "converter gear" shall not  
25 be considered a vehicle as that term is used in Chapter 66 NMSA

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1 1978, but its weight shall be included in declared gross  
2 weight;

3 E. "declared gross weight" means maximum gross  
4 vehicle weight or combination gross vehicle weight at which a  
5 vehicle or combination will be operated during the registration  
6 period as declared by the registrant for registration and fee  
7 purposes. The vehicle or combination shall have only one  
8 "declared gross weight" for all operating considerations;

9 F. "department", without modification, means the  
10 department of public safety, the secretary of public safety or  
11 any employee of the department exercising authority lawfully  
12 delegated to that employee by the secretary;

13 G. "director" means the secretary;

14 H. "division" means the New Mexico state police  
15 division of the department;

16 I. "evidence of registration" means documentation  
17 issued by the taxation and revenue department identifying a  
18 motor carrier vehicle as being registered with New Mexico or  
19 documentation issued by another state pursuant to the terms of  
20 a multistate agreement on registration of vehicles to which  
21 this state is a party identifying a motor carrier vehicle as  
22 being registered with that state; provided that evidence of  
23 payment of the weight distance tax and permits obtained under  
24 either the [~~Special Fuels Supplier Tax~~] Motor Fuel Taxes Act or  
25 Trip Tax Act are not "evidence of registration";

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1           J. "field enforcement" or "in the field" means  
2 patrolling of the highway, stopping of commercial motor carrier  
3 vehicles or establishing ports of entry and roadblocks for the  
4 purpose of checking motor carriers and includes similar  
5 activities;

6           K. "freight trailer" means any trailer, semitrailer  
7 or pole trailer drawn by a truck tractor or road tractor and  
8 any trailer, semitrailer or pole trailer drawn by a truck that  
9 has a gross vehicle weight of more than twenty-six thousand  
10 pounds, but the term does not include house trailers, trailers  
11 of less than one-ton carrying capacity used to transport  
12 animals or fertilizer trailers of less than three thousand five  
13 hundred pounds empty weight;

14           L. "gross vehicle weight" means the weight of a  
15 vehicle without load plus the weight of any load thereon;

16           M. "motor carrier" means any person that owns,  
17 controls, operates or manages any motor vehicle with gross  
18 vehicle weight of twelve thousand pounds or more that is used  
19 to transport persons or property on the public highways of this  
20 state;

21           N. "motor vehicle" means any vehicle or device that  
22 is propelled by an internal combustion engine or electric motor  
23 power that is used or may be used on the public highways for  
24 the purpose of transporting persons or property and includes  
25 any connected trailer or semitrailer;

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1           O. "one-way rental fleet" means two or more  
2 vehicles each having a gross vehicle weight of under twenty-six  
3 thousand one pounds and rented to the public without a driver;

4           P. "person" means any individual, estate, trust,  
5 receiver, cooperative association, club, corporation, company,  
6 firm, partnership, joint venture, syndicate or other  
7 association; "person" also means, to the extent permitted by  
8 law, any federal, state or other governmental unit or  
9 subdivision or an agency, department or instrumentality;  
10 "person" also includes an officer or employee of a corporation,  
11 a member or employee of a partnership or any individual who, as  
12 such, is under a duty to perform any act in respect of which a  
13 violation occurs;

14           Q. "properly registered" means bearing the lawfully  
15 issued and currently valid evidence of registration of this or  
16 another jurisdiction, regardless of the owner's residence,  
17 except in those cases where the evidence has been procured by  
18 misrepresentation or fraud;

19           R. "public highway" means every way or place  
20 generally open to the use of the public as a matter of right  
21 for the purpose of vehicular travel, even though it may be  
22 temporarily closed or restricted for the purpose of  
23 construction, maintenance, repair or reconstruction;

24           S. "secretary" means the secretary of public safety  
25 and, except for the purposes of Section 65-1-33 NMSA 1978, also

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1 includes a deputy secretary and any division director delegated  
2 by the secretary;

3 T. "state" or "jurisdiction" means a state,  
4 territory or possession of the United States, the District of  
5 Columbia, the commonwealth of Puerto Rico, a foreign country or  
6 a state or province of a foreign country; and

7 U. "utility trailer" means any trailer, semitrailer  
8 or pole trailer and includes house trailers that exceed neither  
9 eight feet in width nor forty feet in length, but does not  
10 include freight trailers, trailers of less than one-ton  
11 carrying capacity used to transport animals or fertilizer  
12 trailers of less than three thousand five hundred pounds empty  
13 weight."

14 SECTION 70. Section 65-1-28 NMSA 1978 (being Laws 1987,  
15 Chapter 128, Section 1, as amended) is amended to read:

16 "65-1-28. PAYMENT BY CREDIT CARD--OPTIONAL SERVICES--  
17 FEES--APPROPRIATIONS.--

18 A. Notwithstanding any other provision of law, the  
19 department is authorized to enter into agreements with  
20 financial institutions and credit card companies under which  
21 the department may accept payment by credit card from motor  
22 carriers of the taxes, fees or other charges due pursuant to  
23 the Motor Transportation Act, Motor Vehicle Code, Trip Tax Act,  
24 [~~Special Fuels Tax~~] Motor Fuel Taxes Act with regard to the  
25 special fuel excise tax or Weight Distance Tax Act. Any fee

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1 payable to the financial institution or credit card company for  
2 a payment by credit card authorized under this section may be  
3 deducted from the proceeds of the taxes, fees or other charges  
4 paid on a pro-rata basis prior to any other distribution of the  
5 proceeds required by law. The necessary portion of the  
6 proceeds of the taxes, fees and other charges collected under  
7 this subsection is [~~hereby~~] appropriated for the purpose of  
8 paying the fee payable to the financial institution or credit  
9 card company.

10 B. The secretary is authorized to establish by  
11 regulation fees to cover the expense of providing additional  
12 services for the convenience of the motoring public. Any  
13 service established for which a fee is adopted under this  
14 section shall be optional, with the fee not being charged to  
15 any person not taking advantage of the service. Amounts  
16 collected pursuant to this subsection are appropriated to the  
17 department for the purpose of defraying the expense of  
18 providing the service."

19 SECTION 71. Section 65-1-28.1 NMSA 1978 (being Laws 1992,  
20 Chapter 106, Section 12) is amended to read:

21 "65-1-28.1. SPECIAL METHODS OF PAYMENT.--The department  
22 may require the motor carriers specified in this section to  
23 make payment of taxes, fees and other charges due under the  
24 Motor Transportation Act, Motor Vehicle Code, Trip Tax Act,  
25 [~~Special Fuels Tax~~] Motor Fuel Taxes Act or Weight Distance Tax

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1 Act by credit card, certified check or other method of  
2 guaranteed payment. The provisions of this section apply to  
3 any motor carrier whose check in payment of any amount due  
4 under any act administered by the department has been  
5 dishonored upon presentment on two or more occasions within the  
6 previous two years."

7 SECTION 72. Section 66-1-4.21 NMSA 1978 (being Laws 1998  
8 (1st S.S.), Chapter 10, Section 9) is amended to read:

9 "66-1-4.21. ADDITIONAL DEFINITIONS.--As used in the Motor  
10 Vehicle Code:

11 A. "evidence of registration" means any  
12 documentation issued by the department identifying a motor  
13 carrier vehicle as being registered with New Mexico or  
14 documentation issued by another state pursuant to the terms of  
15 a multistate agreement on registration of vehicles to which  
16 this state is a party identifying a motor carrier vehicle as  
17 being registered with that state; provided that evidence of  
18 payment of the weight distance tax and permits obtained under  
19 either the [~~Special Fuels Supplier Tax~~] Motor Fuel Taxes Act or  
20 Trip Tax Act are not "evidence of registration";

21 B. "fleet" means one or more motor carrier  
22 vehicles, either commercial or noncommercial but not mixed,  
23 that are operated in this and at least one other jurisdiction;

24 C. "motor carrier" means any person or firm that  
25 owns, controls, operates or manages any motor vehicle with

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1 gross vehicle weight of twelve thousand pounds or more that is  
2 used to transport persons or property on the public highways of  
3 this state;

4 D. "one-way rental fleet" means two or more  
5 vehicles each having a gross vehicle weight of under twenty-six  
6 thousand one pounds and rented to the public without a driver;

7 E. "preceding year" means a period of twelve  
8 consecutive months fixed by the department, which period is  
9 within the sixteen months immediately preceding the  
10 commencement of the registration or license year for which  
11 proportional registration is sought. The department, in fixing  
12 that period, shall make it conform to the terms, conditions and  
13 requirements of any applicable agreement or arrangement for the  
14 proportional registration of vehicles;

15 F. "properly registered" means bearing the lawfully  
16 issued and currently valid evidence of registration of this or  
17 another jurisdiction, regardless of the owner's residence,  
18 except in those cases where the evidence has been procured by  
19 misrepresentation or fraud; and

20 G. "public highway" means every way or place  
21 generally open to the use of the public as a matter of right  
22 for the purpose of vehicular travel, even though it may be  
23 temporarily closed or restricted for the purpose of  
24 construction, maintenance, repair or reconstruction."

25 SECTION 73. Section 66-3-1.3 NMSA 1978 (being Laws 1983,

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1 Chapter 142, Section 3, as amended) is amended to read:

2 "66-3-1.3. UNREGISTERED FOREIGN COMMERCIAL MOTOR CARRIER  
3 VEHICLE OPERATIONS.--

4 A. As used in this section:

5 (1) "foreign commercial motor carrier vehicle"  
6 means a commercial motor carrier vehicle as defined in  
7 Subsection C of Section 65-1-2 NMSA 1978 that is titled and  
8 licensed in a jurisdiction other than New Mexico;

9 (2) "registrant" means the person accepting  
10 financial responsibility for payment of all fees and taxes that  
11 become due as a result of vehicle operations. Financial  
12 responsibility is assigned to the person named on the  
13 registration application;

14 (3) "short-term" means for a period of more  
15 than forty-eight hours and less than one hundred eighty days;

16 (4) "short-term registration" means meeting  
17 all registration, licensing, posting of security and taxation  
18 requirements as provided in this section; and

19 (5) "unregistered" means a foreign commercial  
20 motor carrier vehicle not registered with the department under  
21 the provisions of Section ~~[65-1-12]~~ 66-3-1.1 NMSA 1978 and  
22 Subsection B of Section 66-3-5 NMSA 1978 ~~[and, if applicable,~~  
23 ~~the tax-excluded user permit provisions of Section 7-16-6 NMSA~~  
24 ~~1978]~~.

25 B. The owner of a foreign commercial motor carrier

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1 vehicle that is to be operated within the state on a short-term  
2 basis shall comply with the short-term registration provisions  
3 as provided in this section before operating the vehicle upon  
4 the highways of New Mexico. If an owner or operator of a  
5 foreign commercial motor carrier vehicle does not comply with  
6 the short-term registration provisions as provided in this  
7 section, the owner or operator shall:

8 (1) stop at a port of entry and pay all  
9 applicable fees and taxes on a trip basis in accordance with  
10 normal fee and tax schedules applicable to unregistered  
11 vehicles; or

12 (2) register with the department in accordance  
13 with all registration and permit requirements as specified by  
14 this section.

15 C. Any owner or operator electing to register a  
16 foreign commercial motor carrier vehicle with the department on  
17 a short-term basis shall meet the following requirements before  
18 operating that vehicle upon the highways of New Mexico:

19 (1) file with the department a short-term  
20 registration application that provides the following  
21 information for each commercial motor carrier vehicle to be  
22 operated under this section:

- 23 (a) base state;  
24 (b) unit number;  
25 (c) year and make of vehicle;

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- 1 (d) vehicle serial number;  
2 (e) declared gross weight;  
3 (f) type of fuel;  
4 (g) name and complete address of the  
5 registrant;  
6 (h) individual vehicle highway miles and  
7 miles per gallon for each vehicle registered under this  
8 section; and  
9 (i) proof of financial responsibility as  
10 required in the Motor Transportation Act;  
11 (2) remit with the application the  
12 registration fees as specified in Subsection B of Section  
13 66-6-4 NMSA 1978; and  
14 (3) file with the application a cash security  
15 in the amount of three times the estimated use fee and special  
16 [~~fuels~~] fuel excise tax due at the current tax rates.  
17 D. Upon receipt of [~~an~~] the application, fees and  
18 security pursuant to Subsection C of this section, the  
19 department shall issue to the applicant a short-term  
20 registration plate and registration document for each foreign  
21 commercial motor carrier vehicle. The registration plate shall  
22 display the expiration date of the short-term registration  
23 period and shall be affixed to the front passenger windshield  
24 of the foreign commercial motor carrier vehicle, and the  
25 registration document shall be carried in the vehicle during

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1 the period of operation in New Mexico. The department shall  
2 provide to the applicant weight distance and special [~~fuels~~  
3 fuel excise tax reporting forms on which the applicant shall  
4 report and pursuant to which the applicant shall pay weight  
5 distance and special [~~fuels~~] fuel excise taxes upon actual  
6 miles operated and gallons consumed, at the rates and in the  
7 manner established by the Weight Distance Tax Act and the  
8 [~~Special Fuels Tax~~] Motor Fuel Taxes Act. The department may  
9 assign the one-way haul-use fee rate pursuant to Section  
10 7-15A-6 NMSA 1978, provided that the conditions of that section  
11 are met by the applicant.

12 E. The failure of any owner to comply with the  
13 requirements of this section is a misdemeanor, and the  
14 department or its authorized agent may detain any vehicle until  
15 all fees and taxes are paid and all requirements of this  
16 section are met.

17 F. Within twenty days after the conclusion of the  
18 short-term registration period, the registrant shall file with  
19 the department the required tax report along with payment of  
20 all weight distance tax and special [~~fuels~~] fuel excise tax  
21 due. Upon verification of accurate reporting and payment, the  
22 department shall refund the security previously filed by the  
23 registrant.

24 G. In the event the registrant fails to submit the  
25 required tax report within twenty days as specified in

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1 Subsection F of this section, the registrant shall forfeit the  
2 full amount of security required under this section.

3 H. Any foreign commercial motor carrier vehicle to  
4 be operated in excess of one hundred eighty days shall comply  
5 with all registration requirements for commercial motor carrier  
6 vehicles titled and licensed in New Mexico."

7 SECTION 74. TEMPORARY PROVISION.--The provisions of the  
8 Gasoline Tax Act and the Special Fuels Supplier Tax Act in  
9 effective prior to the effective date of this act shall apply  
10 to gasoline and special fuel received, as that term is used in  
11 those acts, prior to the effective date of this act.

12 SECTION 75. REPEAL.--Sections 7-1-6.44, 7-13-1 through  
13 7-13-3.2, 7-13-3.5, 7-13-4, 7-13-4.4 through 7-13-8, 7-13-10  
14 through 7-13-12, 7-13-17, 7-13-18, 7-16A-1 through 7-16A-6,  
15 7-16A-9 through 7-16A-16, 7-16A-19 through 7-16A-21 and  
16 67-3-8.1 NMSA 1978 (being Laws 2003, Chapter 150, Section 2,  
17 Laws 1971, Chapter 207, Sections 1 and 2, Laws 1999, Chapter  
18 190, Section 2, Laws 1971, Chapter 207, Section 3, Laws 1979,  
19 Chapter 166, Sections 7 and 8, Laws 1997, Chapter 192, Section  
20 3, Laws 1991, Chapter 9, Section 32, Laws 2000, Chapter 50,  
21 Section 1, Laws 1971, Chapter 207, Sections 5 and 6, Laws 2005,  
22 Chapter 109, Sections 4 and 5, Laws 1971, Chapter 207, Sections  
23 7 and 8, Laws 1977, Chapter 342, Section 5, Laws 1971, Chapter  
24 207, Sections 10 and 11, Laws 1998, Chapter 44, Sections 2 and  
25 3, Laws 1992, Chapter 51, Sections 1 and 2, Laws 1997, Chapter

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1 192, Section 6, Laws 1992, Chapter 51, Sections 3 through 5,  
2 Laws 1997, Chapter 192, Section 14, Laws 1992, Chapter 51,  
3 Sections 6 and 9, Laws 2005, Chapter 109, Sections 12 through  
4 14, Laws 2013, Chapter 109, Section 3, Laws 1992, Chapter 51,  
5 Sections 10 through 13, Laws 2001, Chapter 43, Section 2, Laws  
6 1992, Chapter 51, Sections 14 and 15, Laws 2007, Chapter 110,  
7 Section 4, Laws 1992, Chapter 51, Sections 16, 19 and 20, Laws  
8 2005, Chapter 109, Section 15, Laws 1995, Chapter 16, Section  
9 15 and Laws 2003, Chapter 150, Section 3, as amended) are  
10 repealed.

11 SECTION 76. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2018.