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HOUSE BILL 305

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

DANIEL P. SILVA

AN ACT

**RELATING TO TAXATION; AUTHORIZING THE IMPOSITION OF A HIGHWAY
BONDING GASOLINE TAX CONTINGENT UPON A REDUCTION IN THE
FEDERAL EXCISE TAX ON GASOLINE.**

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

**Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,
Chapter 5, Section 2, as amended by Laws 1995, Chapter 6,
Section 1 and also by Laws 1995, Chapter 36, Section 1) is
amended to read:**

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

**A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the state aviation fund in an amount
equal to three and fifty-nine hundredths percent of the gross
receipts attributable to the sale of fuel specially prepared
and sold for use in turboprop or jet-type engines as**

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1 determined by the department.

2 B. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 shall be made to the state aviation fund in an amount
4 equal to twenty-six hundredths of one percent of [~~gasoline~~
5 ~~taxes~~] the net receipts, exclusive of penalties and interest,
6 [~~collected pursuant to the Gasoline Tax Act~~] attributable to
7 the gasoline tax. "

8 Section 2. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
9 Chapter 9, Section 11, as amended) is amended to read:

10 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
11 MUNICIPALITIES AND COUNTIES. --

12 A. A distribution pursuant to Section 7-1-6.1 NMSA
13 1978 shall be made in an amount equal to ten and thirty-eight
14 hundredths percent of the net receipts [~~attributable to the~~
15 ~~taxes~~], exclusive of penalties and interest, [~~imposed by the~~
16 ~~Gasoline Tax Act~~] attributable to the gasoline tax.

17 B. The amount determined in Subsection A of this
18 section shall be distributed as follows:

19 (1) ninety percent of the amount shall be
20 paid to the treasurers of municipalities and H class counties
21 in the proportion that the taxable motor fuel sales in each of
22 the municipalities and H class counties bears to the aggregate
23 taxable motor fuel sales in all of these municipalities and H
24 class counties; and

25 (2) ten percent of the amount shall be paid

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1 to the treasurers of the counties, including H class counties,
2 in the proportion that the taxable motor fuel sales outside of
3 incorporated municipalities in each of the counties bears to
4 the aggregate taxable motor fuel sales outside of incorporated
5 municipalities in all of the counties.

6 C. This distribution shall be paid into the
7 municipal treasury or county general fund for general purposes
8 or for any special purposes designated by the governing body
9 of the municipality or county. Any municipality or H class
10 county that has created or that creates a "street improvement
11 fund" to which gasoline tax revenues or distributions are
12 irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA
13 1978 or that has pledged all or a portion of gasoline tax
14 revenues or distributions to the payment of bonds shall
15 receive its proportion of the distribution of revenues under
16 this section impressed with and subject to these pledges. "

17 Section 3. Section 7-13-3.1 NMSA 1978 (being Laws 1979,
18 Chapter 166, Section 7, as amended) is amended to read:

19 "7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--
20 DATE PAYMENT OF TAX DUE. --

21 A. A gasoline inventory tax is imposed measured by
22 the quantity of gallons of gasoline in the possession of a
23 distributor or wholesaler on the day [in] on which an increase
24 in the excise tax imposed by Section 7-13-3 NMSA 1978 or the
25 initial imposition or increase in the excise tax imposed by

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1 Section 7-13-3.6 NMSA 1978 is effective. The taxable event is
2 the existence of an inventory in the possession of a
3 distributor or wholesaler on the day prior to the day [~~in~~] on
4 which an increase in the excise tax imposed by Section 7-13-3
5 NMSA 1978 or the initial imposition of or increase in the
6 excise tax imposed by Section 7-13-3.6 NMSA 1978 is effective.
7 The rate of the gasoline inventory tax to apply on each gallon
8 of gasoline held in inventory by a distributor or wholesaler,
9 as provided in Section 7-13-3.2 NMSA 1978, shall be the
10 difference between the gasoline [~~excise~~] tax rate or the
11 highway bonding gasoline tax rate, whichever is applicable ,
12 imposed on the day prior to the day [~~in~~] on which the
13 [~~gasoline excise~~] applicable tax is increased or initially
14 imposed subtracted from the [~~gasoline excise~~] applicable tax
15 rate imposed on the day that the [~~gasoline excise~~] applicable
16 tax rate increase or imposition is effective, expressed in
17 cents per gallon.

18 B. The gasoline inventory tax is to be paid to the
19 department on or before the twenty-fifth day of the month
20 following the month in which the taxable event occurs. "

21 Section 4. Section 7-13-3.2 NMSA 1978 (being Laws 1979,
22 Chapter 166, Section 8, as amended) is amended to read:

23 "7-13-3.2. GASOLINE INVENTORIES. --

24 A. On the day prior to the day that the excise tax
25 imposed by Section 7-13-3 NMSA 1978 is increased or the excise

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1 tax imposed by Section 7-13-3.6 NMSA 1978 is initially imposed
2 or increased, each distributor, wholesaler and retailer shall
3 take inventory of the gallons of gasoline on hand.

4 B. Distributors and wholesalers shall report total
5 gallons of gasoline in inventory on the day prior to the day
6 that an increase in the gasoline tax rate or the initial
7 imposition of or an increase in the highway bonding gasoline
8 tax rate is effective and pay any tax due imposed by Section
9 7-13-3.1 NMSA 1978.

10 C. Retailers shall maintain a record of the total
11 gallons of gasoline in inventory on the day prior to the day
12 that an increase in the gasoline tax rate or the initial
13 imposition of or an increase in the highway bonding gasoline
14 tax rate is effective and shall not increase the price of the
15 gasoline sold until the inventory is disposed of in the
16 ordinary course of business. "

17 Section 5. A new section of the Gasoline Tax Act,
18 Section 7-13-3.6 NMSA 1978, is enacted to read:

19 "7-13-3.6. [NEW MATERIAL] IMPOSITION AND RATE OF HIGHWAY
20 BONDING GASOLINE TAX--CONTINGENCY. --

21 A. In the event that, pursuant to federal law, the
22 federal excise tax imposed on gasoline is reduced from the
23 rate imposed on January 1, 1998, there shall be imposed for
24 the privilege of receiving gasoline in this state an excise
25 tax at a rate per gallon of gasoline received in New Mexico

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1 equal to that reduction in the federal excise tax on gasoline.

2 B. The tax authorized to be imposed pursuant to
3 Subsection A of this section shall become effective only upon
4 July 1 or January 1, whichever date occurs first, after the
5 expiration of at least three months from the date the
6 reduction in the rate of the federal excise tax on gasoline is
7 effective.

8 C. The tax imposed in Subsection A of this section
9 may be referred to as the "highway bonding gasoline tax".

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

12 "7-13-5. TAX RETURNS--PAYMENT OF TAX. --Distributors
13 shall file gasoline tax and highway bonding gasoline tax
14 returns in form and content as prescribed by the secretary on
15 or before the twenty-fifth day of the month following the
16 month in which gasoline is received in New Mexico. Such
17 returns shall be accompanied by payment of the amount of
18 gasoline tax or highway bonding gasoline tax due. "

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

21 "7-13-13. PERMIT TO PURCHASE DYED GASOLINE AND APPLY FOR
22 REFUND OF [GASOLINE] TAX ON GASOLINE NOT USED IN MOTOR BOATS
23 OR IN MOTOR VEHICLES OPERATED ON HIGHWAYS OF THIS STATE. --

24 A. Each person who wishes to purchase gasoline
25 dyed in accordance with the provisions of Section 7-13-15 NMSA

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1 1978 and to claim a refund of gasoline tax and highway bonding
2 gasoline tax paid on such gasoline under the provisions of
3 Section 7-13-14 NMSA 1978 shall apply for and obtain a permit
4 to do so from the department. The application for the permit
5 shall be in form and content as prescribed by the department.

6 B. The secretary may, upon notice and after
7 hearing, suspend the gasoline tax and highway bonding gasoline
8 tax refund permit of any person who makes any false statement
9 on an application for a permit or on a claim for refund made
10 under Section 7-13-14 NMSA 1978 who uses gasoline dyed in
11 accordance with Section 7-13-15 NMSA 1978 in a motor boat or
12 in a vehicle licensed to operate on the highways of this state
13 or who violates any other provision of the Gasoline Tax Act.
14 Such suspension may be, in the discretion of the secretary,
15 for a period of up to one year. "

16 Section 8. Section 7-13-14 NMSA 1978 (being Laws 1971,
17 Chapter 207, Section 13, as amended) is amended to read:

18 "7-13-14. CLAIM FOR REFUND OF [GASOLINE] TAX PAID ON
19 GASOLINE NOT USED IN MOTOR BOATS OR IN MOTOR VEHICLES LICENSED
20 TO OPERATE ON HIGHWAYS OF THIS STATE. -- Upon submission of
21 proof satisfactory to the department, the department shall
22 allow a claim for refund of gasoline tax and highway bonding
23 gasoline tax paid on dyed gasoline purchased and used within
24 six months prior to the filing of the claim by holders of
25 permits issued under Section 7-13-13 NMSA 1978. The

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1 individual purchases of such gasoline, other than that to be
2 used as aviation fuel, must have been made in quantities of
3 fifty gallons or more. Purchasers of aviation fuel may
4 accumulate invoices to reach the minimum required for filing a
5 claim for refund. No claim for refund may be presented on
6 less than one hundred gallons so purchased. The secretary
7 may, by regulation, prescribe the documents necessary to
8 support a claim for refund and the invoice and sales procedure
9 to be followed by sellers and purchasers of gasoline not
10 intended to be used in motor boats or in motor vehicles
11 licensed to operate on the highways of this state by the motor
12 vehicle division of the department. "

13 Section 9. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is the July 1 or January 1 that occurs
15 first after the expiration of three months after the secretary
16 of taxation and revenue certifies that the federal excise tax
17 on gasoline has been reduced from the rate imposed on January
18 1, 1998.