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HOUSE BILL 498

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Bobbie K Mallory

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT TO CHANGE THE DEFINITION OF "RECEIVED", TO PROVIDE A DEDUCTION FOR CERTAIN RETAIL SALES OF REGISTERED TRIBAL DISTRIBUTORS AND TO NARROW THE DEDUCTION FOR EXPORTS; AMENDING THE PETROLEUM PRODUCTS LOADING FEE ACT TO ELIMINATE REDUNDANT LANGUAGE AND CORRECT AN ERROR.

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

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS. -- As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

B. "department" means the taxation and revenue

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

4 C. "distributor" means any person, not including
5 the United States of America or any of its agencies except to
6 the extent now or hereafter permitted by the constitution and
7 laws thereof, who receives gasoline in this state.

8 "Distributor" shall be construed so that a person
9 simultaneously may be both a distributor and a retailer or
10 importer;

11 D. "drip gasoline" means a combustible hydrocarbon
12 liquid formed as a product of condensation from either
13 associated or nonassociated natural or casing head gas and
14 that remains a liquid at room temperature and pressure;

15 E. "ethanol blended fuel" means gasoline
16 containing a minimum of ten percent by volume of denatured
17 ethanol, of at least one hundred ninety-nine proof, exclusive
18 of denaturants;

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

25 G. "gallon" means the quantity of liquid necessary

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

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

13 I. "government-licensed vehicle" means a motor
14 vehicle lawfully displaying a registration plate, as defined
15 in the Motor Vehicle Code, issued by the United States or any
16 state, identifying the motor vehicle as belonging to the
17 United States or any of its agencies or instrumentalities or
18 an Indian nation, tribe or pueblo or any of its political
19 subdivisions, agencies or instrumentalities;

20 J. "highway" means every road, highway,
21 thoroughfare, street or way, including toll roads, generally
22 open to the use of the public as a matter of right for the
23 purpose of motor vehicle travel regardless of whether it is
24 temporarily closed for the purpose of construction,
25 reconstruction, maintenance or repair;

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1 K. "motor vehicle" means any self-propelled
2 vehicle or device that is either subject to registration under
3 Section 66-3-1 NMSA 1978 or used or that may be used on the
4 public highways in whole or in part for the purpose of
5 transporting persons or property and includes any connected
6 trailer or semitrailer;

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

12 M "rack operator" means the operator of a
13 refinery in this state or the owner of gasoline stored at a
14 pipeline terminal in this state;

15 [N. ~~"received" means:~~

16 ~~(1)~~

17 ~~(a) gasoline that is produced, refined,~~
18 ~~manufactured, blended or compounded at a refinery in this~~
19 ~~state or stored at a pipeline terminal in this state by any~~
20 ~~person is "received" by such person when it is loaded there~~
21 ~~into tank cars, tank trucks, tank wagons or other types of~~
22 ~~transportation equipment or when it is placed into any tank or~~
23 ~~other container from which sales or deliveries not involving~~
24 ~~transportation are made;~~

25 ~~(b) when, however, such gasoline is~~

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1 ~~delivered at the refinery or pipeline terminal to another~~
2 ~~person registered as a distributor under the Gasoline Tax Act,~~
3 ~~then it is "received" by the distributor to whom it is so~~
4 ~~delivered;~~

5 ~~(c) when such gasoline is delivered at~~
6 ~~the refinery or pipeline terminal to another person not~~
7 ~~registered as a distributor under the Gasoline Tax Act for the~~
8 ~~account of a person that is so registered, it is "received" by~~
9 ~~the distributor for whose account it is delivered; and~~

10 ~~(d) when gasoline is shipped to a~~
11 ~~distributor, or for the account of a distributor, away from~~
12 ~~the refinery or pipeline terminal, it is "received" by the~~
13 ~~distributor where it is unloaded;~~

14 ~~(2) notwithstanding the provisions of~~
15 ~~Paragraph (1) of this subsection, when gasoline is shipped or~~
16 ~~delivered from a refinery or pipeline terminal to another~~
17 ~~refinery or pipeline terminal, such gasoline is not "received"~~
18 ~~by reason of such shipment or delivery;~~

19 ~~(3) any product other than gasoline that is~~
20 ~~blended to produce gasoline other than at a refinery or~~
21 ~~pipeline terminal in this state is "received" by a person who~~
22 ~~is the owner thereof at the time and place the blending is~~
23 ~~completed; and~~

24 ~~(4) except as otherwise provided, gasoline~~
25 ~~is "received" at the time and place it is first unloaded in~~

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1 ~~this state and by the person who is the owner thereof~~
2 ~~immediately preceding the unloading, unless the owner~~
3 ~~immediately after the unloading is a registered distributor,~~
4 ~~in which case such registered distributor is considered as~~
5 ~~having received the gasoline;]~~

6 N. "registered Indian tribal distributor" means an
7 Indian nation, tribe or pueblo recognized by the United States
8 whose reservation or pueblo grant lies wholly or partly in
9 this state, a corporation or other enterprise wholly owned by
10 that Indian nation, tribe or pueblo or a corporation or other
11 enterprise wholly owned by one or more members of that Indian
12 nation, tribe or pueblo that is registered with the department
13 as a distributor pursuant to the Gasoline Tax Act; provided
14 that the department shall register a corporation or enterprise
15 as an Indian tribal distributor only upon certification by the
16 Indian nation, tribe or pueblo that the corporation or other
17 enterprise is wholly owned by that nation, tribe or pueblo or
18 wholly owned by one or more of its members;

19 0. "retailer" means a person who sells gasoline
20 generally in quantities of thirty-five gallons or less and
21 delivers such gasoline into the fuel supply tanks of motor
22 vehicles. "Retailer" shall be construed so that a person
23 simultaneously may be both a retailer and a distributor or
24 wholesaler;

25 P. "secretary" means the secretary of taxation and

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1 revenue or the secretary's delegate;

2 Q. "taxpayer" means a person required to pay
3 gasoline tax;

4 R. "unloaded" means removal of gasoline from tank
5 cars, tank trucks, tank wagons or other types of
6 transportation equipment into a nonmobile container at the
7 place at which the unloading takes place; and

8 S. "wholesaler" means a person who is not a
9 distributor and who sells gasoline in quantities of thirty-
10 five gallons or more and does not deliver such gasoline into
11 the fuel supply tanks of motor vehicles. "Wholesaler" shall
12 be construed so that a person simultaneously may be a
13 wholesaler and a retailer. "

14 Section 2. A new section of the Gasoline Tax Act,
15 Section 7-13-2.1 NMSA 1978, is enacted to read:

16 "7-13-2.1. [NEW MATERIAL] WHEN GASOLINE RECEIVED AND BY
17 WHOM --

18 A. Except as provided otherwise in this
19 subsection, gasoline that is produced, refined, manufactured,
20 blended or compounded at a refinery in this state or stored at
21 a pipeline terminal in this state by a person is received by
22 that person when it is loaded there into tank cars, tank
23 trucks, tank wagons or other types of transportation equipment
24 or when it is placed into a tank or other container in this
25 state from which sales or deliveries not involving

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1 transportation are made. Gasoline is not received when it is
2 shipped from one refinery or pipeline terminal to another
3 refinery or pipeline terminal. Gasoline delivered at the
4 refinery or pipeline terminal to a person:

5 (1) registered as a distributor pursuant to
6 the Gasoline Tax Act is received there by the distributor at
7 the time of delivery; or

8 (2) not registered as a distributor pursuant
9 to the Gasoline Tax Act for the account of a person who is
10 registered as a distributor is received there by the
11 distributor for whose account it is delivered at the time of
12 delivery.

13 B. Gasoline imported into New Mexico by any means
14 other than in the fuel supply tank of a motor vehicle or by
15 pipeline is received at the time and place it is imported into
16 this state. The person who owns the gasoline at the time of
17 importation or, if the gasoline is delivered to a person who
18 is registered as a distributor pursuant to the Gasoline Tax
19 Act, the distributor receives the gasoline at the time and
20 place of importation.

21 C. Any product other than gasoline that is blended
22 in this state to produce gasoline other than at a refinery or
23 pipeline terminal is received by the person who is the owner
24 of the gasoline at the time and place the blending is
25 completed.

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1 D. If gasoline is received within the exterior
2 boundaries of an Indian reservation or pueblo grant and the
3 gasoline tax is not paid with respect to the gasoline by the
4 person receiving the gasoline within the exterior boundaries
5 of the Indian reservation or pueblo grant, the gasoline is
6 also received when the gasoline is transported off the
7 reservation or pueblo grant by any means other than in the
8 fuel supply tank of a motor vehicle. In such a case, the
9 person who owns the gasoline immediately after the time of
10 transportation off the reservation or pueblo grant or, if the
11 gasoline is delivered to a person registered as a distributor
12 pursuant to the Gasoline Tax Act, the distributor receives the
13 gasoline at the time and place the gasoline is transported off
14 the reservation or pueblo grant. "

15 Section 3. Section 7-13-4 NMSA 1978 (being Laws 1991,
16 Chapter 9, Section 32, as amended) is amended to read:

17 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
18 gasoline tax due, the following amounts of gasoline may be
19 deducted from the total amount of gasoline received in New
20 Mexico during the tax period, provided satisfactory proof
21 thereof is furnished to the department:

22 A. gasoline received in New Mexico, but exported
23 from this state for consumption outside this state by a rack
24 operator, distributor or wholesaler other than in the fuel
25 supply tank of a motor vehicle or sold for export by a rack

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1 operator or distributor; provided that, in either case:

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

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

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

12 B. gasoline received in New Mexico sold to the
13 United States or any agency or instrumentality thereof for the
14 exclusive use of the United States or any agency or
15 instrumentality thereof. Gasoline sold to the United States
16 includes gasoline delivered into the supply tank of a
17 government-licensed vehicle of the United States;

18 C. gasoline received in New Mexico sold to an
19 Indian nation, tribe or pueblo or any political subdivision,
20 agency or instrumentality of that Indian nation, tribe or
21 pueblo for the exclusive use of the Indian nation, tribe or
22 pueblo or any political subdivision, agency or instrumentality
23 thereof. Gasoline sold to an Indian nation, tribe or pueblo
24 includes gasoline delivered into the supply tank of a
25 government-licensed vehicle of the Indian nation, tribe or

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1 pueblo; [~~and~~]

2 D. gasoline received in New Mexico, dyed in
3 accordance with department regulations and used in any manner
4 other than for propulsion of motor vehicles on the highways of
5 this state or motorboats or activities ancillary to that
6 propulsion; and

7 E. gasoline received in New Mexico and sold at
8 retail by a registered Indian tribal distributor if the sale
9 occurs on the reservation or pueblo grant of the distributor's
10 nation, tribe or pueblo and the gasoline is placed into the
11 fuel supply tank of a motor vehicle on that reservation or
12 pueblo grant. "

13 Section 4. Section 7-13A-3 NMSA 1978 (being Laws 1990,
14 Chapter 124, Section 16, as amended) is amended to read:

15 "7-13A-3. IMPOSITION AND RATE OF FEE--DENOMINATION AS
16 "PETROLEUM PRODUCTS LOADING FEE".--

17 A. For the privilege of loading gasoline or
18 special fuel from a rack at a refinery or pipeline terminal in
19 this state into a cargo tank, there is imposed a fee on the
20 distributor at a rate provided in Subsection [~~E~~] D of this
21 section on each gallon of gasoline or special fuel loaded in
22 New Mexico on which the petroleum products loading fee has not
23 been previously paid.

24 B. For the privilege of importing gasoline or
25 special fuel into this state for resale or consumption in this

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1 state there is imposed a fee determined as provided in
2 Subsection [C] D of this section on each load of gasoline or
3 special fuel imported into New Mexico for resale or
4 consumption on which the petroleum products loading fee has
5 not been previously paid. [~~For the purposes of this section,~~
6 "~~load~~" ~~means eight thousand gallons of gasoline or special~~
7 ~~fuel.~~]

8 C. To determine how many loads a person is to
9 report [~~under~~] pursuant to the provisions of this section, the
10 person shall divide by eight thousand the total gallons of
11 gasoline reported for the purposes of Section 7-13-3 NMSA 1978
12 as adjusted [~~under~~] pursuant to the provisions of Section
13 7-13-4 NMSA 1978 and the total gallons of special fuels
14 received in New Mexico less any gallons [~~exempted under~~
15 ~~Section 7-13A-4 NMSA 1978~~] deducted pursuant to Section
16 7-16A-10 NMSA 1978. Loads shall be calculated to the nearest
17 one-hundredth of a load.

18 [~~C.~~] D. The fee imposed by this section is and may
19 be referred to as the "petroleum products loading fee" and
20 shall be one hundred fifty dollars (\$150) per load or
21 whichever of the following applies:

22 (1) in the event the secretary of environment
23 certifies that the unobligated balance of the corrective
24 action fund at the end of the prior fiscal year equals or
25 exceeds eighteen million dollars (\$18,000,000), the fee shall

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1 be set at forty dollars (\$40.00) per load;

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

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

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

19 ~~[D.]~~ E. The amount of the petroleum products
20 loading fee set pursuant to Paragraph (1), (2), (3) or (4) of
21 Subsection ~~[E.]~~ D of this section shall be imposed on the first
22 day of the month following expiration of ninety days after the
23 end of the fiscal year for which the certification was made.

24 ~~[E.]~~ F. As used in this section, "unobligated
25 balance of the corrective action fund" means corrective action

1 fund equity less all known or anticipated liabilities against
2 the fund. "

3 Section 5. REPEAL. -- Section 7-13A-4 NMSA 1978 (being
4 Laws 1991, Chapter 9, Section 34) is repealed.

5 Section 6. EFFECTIVE DATE. -- The effective date of the
6 provisions of this act is July 1, 1999.

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