

Discussion Draft

10-16-2012

Combined Edits

AN ACT

RELATING TO TAXATION; CLARIFYING THE DEFINITION OF SPECIAL FUEL TO INCLUDE BLENDED BIODIESEL AND PROVIDING THAT BIODIESEL BLEND STOCK IS NOT RECEIVED IN NEW MEXICO BY THE RACK OPERATOR; DECLARING AN EMERGENCY

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

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

7-16A-2. Definitions.

As used in the Special Fuels Supplier Tax Act:

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

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

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

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

DE. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

EF. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [66-1-1 NMSA 1978] issued by:

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

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

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

FG. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

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

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

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

~~JK~~. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

~~KL~~. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

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

~~MN~~. "sale" means any delivery, exchange, gift or other disposition;

~~NO~~. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

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

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

~~QR~~. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of

Puerto Rico, a foreign country or a state or province of a foreign country;

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

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

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

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

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

SECTION 2. Section 7-16A-2.1 NMSA 1978 (being Laws 1997, ch. 192, Section 6) is amended to read:

7-16A-2.1. When special fuel received or used; who is required to pay tax.

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made.

A rack operator who receives special fuel is required to pay special fuel excise tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal. Biodiesel imported into New

Mexico or manufactured in New Mexico and delivered to a rack operator for use as a biodiesel blend stock for special fuel for biodiesel fuels is not considered received in New Mexico;

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any

other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, however, that person receives the special fuel and is required to pay the special fuel excise tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the special fuel excise tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the special fuel excise tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the special fuel excise tax, unless the special fuel excise tax has been paid by a previous owner.

E. Special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a

motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.

SECTION 3. APPLICABILITY.--this act applies to special fuels received on or after January 1, 2013.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2013.

SECTION 6. EMERGENCY CLAUSE.--Necessary for the public peace, welfare and safety that the provisions of this act take effect immediately.