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SENATE BILL 874

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT; CREATING A
TAX SHARING ALTERNATIVE FOR CERTAIN DISTRIBUTORS; PROVIDING FOR
TAX SHARING AGREEMENTS.

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

Section 1. Section 7-13-4 NMSA 1978 (being Laws 1991,
Chapter 9, Section 32, as amended) is amended to read:

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

A. gasoline received in New Mexico, but exported
from this state by a rack operator, distributor or wholesaler
other than in the fuel supply tank of a motor vehicle or sold

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1 for export by a rack operator or distributor; provided that, in
2 either case:

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

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

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

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

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

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1 tank of a government-licensed vehicle of the Indian nation,
2 tribe or pueblo;

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

8 E. gasoline received in New Mexico and sold at
9 retail by a registered Indian tribal distributor if:

10 (1) the sale occurs on the Indian reservation,
11 pueblo grant or trust land of the distributor's Indian nation,
12 tribe or pueblo;

13 (2) the gasoline is placed into the fuel
14 supply tank of a motor vehicle on that reservation, pueblo
15 grant or trust land; and

16 (3) the Indian nation, tribe or pueblo has
17 certified to the department that it has in effect an excise,
18 privilege or similar tax on the gasoline; provided that the
19 volume of gasoline deducted pursuant to this subsection shall
20 be the total gallons sold in accordance with the provisions of
21 this subsection multiplied by a fraction the numerator of which
22 is the rate of the tribal tax certified to the department by
23 the Indian nation, tribe or pueblo and the denominator of which
24 is the rate of the gasoline tax imposed pursuant to the
25 Gasoline Tax Act, but if the fraction exceeds one, it shall be

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1 one for purposes of determining the deduction; and

2 F. gasoline received in New Mexico and sold by a
3 registered Indian tribal distributor from a nonmobile storage
4 container located within that distributor's Indian reservation,
5 pueblo grant or trust land for resale outside that
6 distributor's Indian reservation, pueblo grant or trust land;
7 provided that the department certifies that the distributor
8 claiming the deduction sold no less than one million gallons of
9 gasoline from a nonmobile storage container located within that
10 distributor's Indian reservation, pueblo grant or trust land
11 for resale outside that distributor's Indian reservation,
12 pueblo grant or trust land during the period of May through
13 August 1998; and provided further that the amount of gasoline
14 deducted by a registered Indian tribal distributor pursuant to
15 this subsection shall not exceed two million five hundred
16 thousand gallons per month, calculated as a monthly average
17 during the calendar year. Volumes deducted pursuant to
18 Subsection E of this section shall not be deducted pursuant to
19 this subsection. An Indian nation, tribe or pueblo that is a
20 registered Indian tribal distributor and that may claim the
21 deduction set forth in this subsection may enter into a tax
22 sharing agreement with the department pursuant to Section
23 9-11-12.3 NMSA 1978 in lieu of claiming the deduction pursuant
24 to this subsection."

25 Section 2. A new section of the Taxation and Revenue

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1 Department Act, Section 9-11-12.3 NMSA 1978, is enacted to
2 read:

3 "9-11-12.3. [NEW MATERIAL] GASOLINE TAX SHARING
4 AGREEMENT-- CERTAIN REGISTERED INDIAN TRIBAL DISTRIBUTORS. --

5 A. The secretary may enter into a tax sharing
6 agreement with a tribe that is a registered Indian tribal
7 distributor and that qualifies for a deduction pursuant to
8 Subsection F of Section 7-13-4 NMSA 1978 to receive forty
9 percent of the gasoline tax revenue paid on two million five
10 hundred thousand gallons of gasoline each month in exchange for
11 that tribe's agreement that the registered Indian tribal
12 distributor shall not:

13 (1) distribute gasoline for resale outside of
14 the boundaries of that registered Indian tribal distributor's
15 Indian reservation, pueblo grant or trust land located in New
16 Mexico; and

17 (2) claim all or part of the deduction
18 authorized in Subsection F of Section 7-13-4 NMSA 1978.

19 B. The term of a gasoline tax sharing agreement
20 entered into pursuant to this section shall be for a period of
21 ten years.

22 C. An agreement entered into pursuant to this
23 section shall be construed solely as an agreement between the
24 two party governments and shall not alter or affect the
25 government-to-government relations between this state and any

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1 other tribe.

2 D. Nothing in this section or in an agreement
3 entered into pursuant to this section shall be construed as
4 creating rights in a third party.

5 E. As used in this section:

6 (1) "gasoline tax sharing agreement" means a
7 written contractual agreement entered into between the
8 secretary and the tribe; and

9 (2) "tribe" means an Indian nation, tribe or
10 pueblo located in New Mexico. "

11 Section 3. EFFECTIVE DATE. --The effective date of the
12 provisions of this act is July 1, 2003.

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