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SENATE BILL 226

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Li di o G. Rai nal di

AN ACT

RELATING TO TAXATION; REFORMING TAX ADMINISTRATION PROCEDURES
BY AMENDING AND ENACTING SECTIONS OF THE GASOLINE TAX ACT;
CHANGING THE INCIDENCE OF THE GASOLINE TAX; PROVIDING FOR
REIMBURSEMENTS FOR NONTAXABLE SALES AND USES; CREATING FILING
AND PAYMENT REQUIREMENTS FOR GASOLINE RETAILERS, RACK OPERATORS
AND DISTRIBUTORS; PROVIDING A PENALTY.

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

Section 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] CIVIL PENALTY FOR FAILURE TO FILE AN
INFORMATION RETURN.--A taxpayer who fails to file an
information return on time pursuant to the Gasoline Tax Act
shall pay a penalty of fifty dollars (\$50.00) for each late
report. This penalty shall be in addition to other applicable

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1 penalties. "

2 Section 2. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
3 Chapter 99, Section 3, as amended) is amended to read:

4 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE. --

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

12 (1) Group 1: all taxes due under the
13 Withholding Tax Act, the Gross Receipts and Compensating Tax
14 Act, local option gross receipts tax acts, the Interstate
15 Telecommunications Gross Receipts Tax Act and the Leased
16 Vehicle Gross Receipts Tax Act;

17 (2) Group 2: all taxes due under the Oil and
18 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
19 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad
20 Valorem Production Tax Act; [~~or~~]

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

23 (4) Group 4: all taxes and fees due under the
24 Gasoline Tax Act.

25 For taxpayers who have more than one identification number

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1 issued by the department, the average tax payment shall be
2 computed by combining the amounts paid under the several
3 identification numbers.

4 B. Taxpayers who are required to make payment in
5 accordance with the provisions of this section shall make
6 payment by one or more of the following means on or before the
7 due date so that funds are immediately available to the state
8 on or before the due date:

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

12 (2) currency of the United States;

13 (3) check drawn on and payable at any New
14 Mexico financial institution provided that the check is
15 received by the department at the place and time required by
16 the department at least one banking day prior to the due date;
17 or

18 (4) check drawn on and payable at any domestic
19 non-New Mexico financial institution provided that the check is
20 received by the department at the time and place required by
21 the department at least two banking days prior to the due date.

22 C. If the taxes required to be paid under this
23 section are not paid in accordance with Subsection B of this
24 section, the payment is not timely and is subject to the
25 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

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1 D. For the purposes of this section, "average tax
2 payment" means the total amount of taxes paid with respect to a
3 group of taxes listed under Subsection A of this section during
4 a calendar year divided by the number of months in that
5 calendar year containing a due date on which the taxpayer was
6 required to pay one or more taxes in the group. "

7 Section 3. Section 7-13-2 NMSA 1978 (being Laws 1971,
8 Chapter 207, Section 2, as amended) is amended to read:

9 "7-13-2. DEFINITIONS. --As used in the Gasoline Tax Act:

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

13 B. "department" means the taxation and revenue
14 department, the secretary of taxation and revenue or any
15 employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

17 C. "distributor" means ~~[any]~~ a person, not
18 including the United States of America or any of its agencies
19 except to the extent now or hereafter permitted by the
20 constitution and laws thereof, who ~~[receives gasoline in this~~
21 ~~state]~~ transports, distributes and sells for resale gasoline
22 purchased from a refinery or pipeline terminal in New Mexico or
23 imports gasoline for resale in New Mexico; "distributor" shall
24 be construed so that a person simultaneously may be both a
25 distributor and a retailer or importer;

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

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

8 F. "fuel supply tank" means ~~any~~ a tank or other
9 receptacle in which or by which fuel may be carried and
10 supplied to the fuel-furnishing device or apparatus of the
11 propulsion mechanism of a motor vehicle when the tank or
12 receptacle either contains gasoline or gasoline is delivered
13 into it;

14 G. "gallon" means the quantity of liquid necessary
15 to fill a standard United States gallon liquid measure or that
16 same quantity adjusted to a temperature of sixty degrees
17 fahrenheit at the election of ~~any~~ a distributor, but ~~a~~ the
18 distributor shall report on the same basis for a period of at
19 least one year;

20 H. "gasoline" means ~~any~~ a flammable liquid
21 hydrocarbon used primarily as fuel for the propulsion of motor
22 vehicles, motorboats or aircraft except for diesel engine fuel,
23 kerosene, liquefied petroleum gas, compressed or liquefied
24 natural gas and products specially prepared and sold for use in
25 aircraft propelled by turbo-prop or jet-type engines;

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1 I. "government-licensed vehicle" means a motor
2 vehicle lawfully displaying a registration plate, as defined in
3 the Motor Vehicle Code, issued by the United States or any
4 state, identifying the motor vehicle as belonging to the United
5 States or any of its agencies or instrumentalities or an Indian
6 nation, tribe or pueblo or any of its political subdivisions,
7 agencies or instrumentalities;

8 J. "highway" means every road, highway,
9 thoroughfare, street or way, including toll roads, generally
10 open to the use of the public as a matter of right for the
11 purpose of motor vehicle travel regardless of whether it is
12 temporarily closed for the purpose of construction,
13 reconstruction, maintenance or repair;

14 K. "motor vehicle" means ~~[any]~~ a self-propelled
15 vehicle or device that is either subject to registration under
16 Section 66-3-1 NMSA 1978 or used or that may be used on the
17 public highways in whole or in part for the purpose of
18 transporting persons or property and includes ~~[any]~~ a connected
19 trailer or semitrailer;

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

25 M "rack operator" means the operator of a refinery

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1 in this state or the owner of gasoline stored at a pipeline
2 terminal in this state; "rack operator" shall be construed so
3 that a person simultaneously may be a rack operator and a
4 distributor;

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

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

24 P. "secretary" means the secretary of taxation and
25 revenue or the secretary's delegate;

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

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

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

13 Section 4. Section 7-13-2.1 NMSA 1978 (being Laws 1999,
14 Chapter 190, Section 2) is amended to read:

15 "7-13-2.1. WHEN GASOLINE RECEIVED AND BY WHOM --

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

24 [~~(1) when gasoline is delivered at the~~
25 ~~refinery or pipeline terminal to a person registered as a~~

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1 ~~distributor pursuant to the Gasoline Tax Act, then it is~~
2 ~~received there by the distributor to whom it is delivered at~~
3 ~~the time of the delivery;~~

4 ~~(2) when gasoline is delivered at the refinery~~
5 ~~or pipeline terminal to a person not registered as a~~
6 ~~distributor pursuant to the Gasoline Tax Act for the account of~~
7 ~~a person that is registered as a distributor, it is received~~
8 ~~there by the distributor for whose account it is delivered at~~
9 ~~the time of delivery; and~~

10 ~~(3)] gasoline is not received when it is~~
11 ~~shipped from one refinery or pipeline terminal to another~~
12 ~~refinery or pipeline terminal.~~

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 receives the gasoline at the time and place of
18 importation [~~unless the gasoline is delivered to a person who~~
19 ~~is registered as a distributor pursuant to the Gasoline Tax~~
20 ~~Act, in which case the distributor is deemed to have received~~
21 ~~the gasoline at the time and place of importation].~~

22 C. Any product other than gasoline that is blended
23 in this state to produce gasoline other than at a refinery or
24 pipeline terminal is received by the person who is the owner of
25 the gasoline at the time and place the blending is 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 of
5 the Indian reservation or pueblo grant, the gasoline is also
6 received when the gasoline is transported off the reservation
7 or pueblo grant by any means other than in the fuel supply tank
8 of a motor vehicle. In such a case, the person who owns the
9 gasoline immediately after the time of transportation off the
10 reservation or pueblo grant [~~or, if the gasoline is delivered~~
11 ~~to a person registered as a distributor pursuant to the~~
12 ~~Gasoline Tax Act, the distributor~~] receives the gasoline at the
13 time and place the gasoline is transported off the reservation
14 or pueblo grant. "

15 Section 5. Section 7-13-3.5 NMSA 1978 (being Laws 1997,
16 Chapter 192, Section 3) is amended to read:

17 "7-13-3.5. BOND REQUIRED OF TAXPAYERS. --

18 A. [~~Except as provided in Subsection H of this~~
19 ~~section~~] Every taxpayer shall file with the department a bond
20 on a form approved by the attorney general with a surety
21 company authorized by the [~~state corporation~~] public regulation
22 commission to transact business in this state as a surety and
23 upon which bond the taxpayer is the principal obligor and the
24 state the obligee. The bond shall be conditioned upon the
25 prompt filing of true reports and the payment by the taxpayer

. 152352. 1

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1 to the department of all taxes levied by the Gasoline Tax Act,
2 together with all applicable penalties and interest thereon.

3 B. In lieu of the bond, the taxpayer may elect to
4 file with the department cash or bonds of the United States or
5 New Mexico or of any political subdivision of the state.

6 C. The total amount of the bond, cash or securities
7 required of any taxpayer shall be fixed by the department and
8 may be increased or reduced by the department at any time,
9 subject to the limitations provided in this section.

10 D. In fixing the total amount of the bond, cash or
11 securities required of any taxpayer required to post bond, the
12 department shall require an equivalent in total amount to at
13 least two times the amount of the department's estimate of the
14 taxpayer's monthly gasoline tax, determined in such manner as
15 the secretary may deem proper; provided, however, the total
16 amount of bond, cash or securities required of a taxpayer shall
17 never be less than one thousand dollars (\$1,000).

18 E. In the event the department decides that the
19 amount of the existing bond, cash or securities is insufficient
20 to insure payment to this state of the amount of the gasoline
21 tax and any penalties and interest for which the taxpayer is or
22 may at any time become liable, [~~then~~] the taxpayer, upon
23 written demand of the department mailed to the last known
24 address of the taxpayer as shown on the records of the
25 department, shall file an additional bond, cash or securities

. 152352. 1

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1 in the manner, form and amount determined by the department to
2 be necessary to secure at all times the payment by the taxpayer
3 of all taxes, penalties and interest due under the Gasoline Tax
4 Act.

5 F. A surety on a bond furnished by a taxpayer as
6 required by this section shall be released and discharged from
7 all liability accruing on the bond after the expiration of
8 ninety days from the date upon which the surety files with the
9 department a written request to be released and discharged;
10 provided, however, that such request shall not operate to
11 release or discharge the surety from any liability already
12 accrued or that shall accrue before the expiration of the
13 ninety-day period, unless a new bond is filed during the
14 ninety-day period, in which case the previous bond may be
15 canceled as of the effective date of the new bond. On receipt
16 of notice of such request, the department promptly shall notify
17 the taxpayer who furnished the bond that the taxpayer, on or
18 before the expiration of the ninety-day period, shall file with
19 the department a new bond with a surety satisfactory to the
20 department in the amount and form required in this section.

21 G. The taxpayer required to file bond with or
22 provide cash or securities to the department in accordance with
23 this section and who is required by another state law to file
24 another bond with or provide cash or securities to the
25 department may elect to file a combined bond or provide cash or

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1 securities applicable to the provisions of both this section
2 and the other law, with the approval of the secretary. The
3 amount of the combined bond, cash or securities shall be
4 determined by the department and the form of the combined bond
5 shall be approved by the attorney general.

6 H. ~~[Every taxpayer who, for the twenty-four month~~
7 ~~period immediately preceding July 1, 1994, has not been a~~
8 ~~delinquent taxpayer pursuant to the Gasoline Tax Act is exempt~~
9 ~~from the requirement pursuant to this section to file a bond.]~~

10 A taxpayer required to file a bond pursuant to the provisions
11 of this section who, for a twenty-four consecutive month period
12 ending after July 1, [1994] 2007, has not been a delinquent
13 taxpayer pursuant to the Gasoline Tax Act may request to be
14 exempt from the requirement to file a bond beginning with the
15 first day of the first month following the end of the twenty-
16 four month period. If a taxpayer exempted pursuant to this
17 subsection subsequently becomes a delinquent taxpayer under the
18 Gasoline Tax Act, the department may terminate the exemption
19 and require the filing of a bond in accordance with this
20 section. If the department terminates the exemption, the
21 termination shall not be effective any earlier than ten days
22 after the date the department notifies the taxpayer in writing
23 of the termination. "

24 Section 6. Section 7-13-4 NMSA 1978 (being Laws 1991,
25 Chapter 9, Section 32, as amended) is amended to read:

. 152352. 1

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1 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
2 gasoline tax due, the following amounts of gasoline may be
3 deducted from the total amount of gasoline received in New
4 Mexico during the tax period, provided satisfactory proof
5 thereof is furnished to the department:

6 A. gasoline received in New Mexico, but exported
7 from this state by a rack operator [~~distributor or wholesaler~~]
8 other than in the fuel supply tank of a motor vehicle or sold
9 for export by a rack operator [~~or distributor~~]; provided that,
10 in either case:

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

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

17 (3) the destination state's gasoline or
18 equivalent fuel tax is paid to New Mexico in accordance with
19 the terms of an agreement entered into pursuant to Section
20 9-11-12 NMSA 1978 with the destination state;

21 B. gasoline received in New Mexico sold to the
22 United States or [~~any~~] an agency or instrumentality thereof for
23 the exclusive use of the United States or [~~any~~] an agency or
24 instrumentality thereof [~~Gasoline sold to the United States~~
25 ~~includes gasoline delivered into the supply tank of a~~

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1 ~~government-licensed vehicle of the United States];~~

2 C. gasoline received in New Mexico sold to an
3 Indian nation, tribe or pueblo or ~~[any]~~ a political
4 subdivision, agency or instrumentality of that Indian nation,
5 tribe or pueblo for the exclusive use of the Indian nation,
6 tribe or pueblo or ~~[any]~~ a political subdivision, agency or
7 instrumentality thereof. Gasoline sold to an Indian nation,
8 tribe or pueblo includes gasoline delivered into the supply
9 tank of a government-licensed vehicle of the Indian nation,
10 tribe or pueblo;

11 D. gasoline received in New Mexico, that has been
12 dyed in accordance with department regulations ~~[and-used]~~ for
13 use in ~~[any]~~ a manner other than for propulsion of motor
14 vehicles on the highways of this state or motorboats or
15 activities ancillary to that propulsion;

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

18 (1) the sale occurs on the Indian reservation,
19 pueblo grant or trust land of the distributor's Indian nation,
20 tribe or pueblo;

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

24 (3) the Indian nation, tribe or pueblo has
25 certified to the department that it has in effect an excise,

. 152352. 1

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1 privilege or similar tax on the gasoline; provided that the
2 volume of gasoline deducted pursuant to this subsection shall
3 be the total gallons sold in accordance with the provisions of
4 this subsection multiplied by a fraction the numerator of which
5 is the rate of the tribal tax certified to the department by
6 the Indian nation, tribe or pueblo and the denominator of which
7 is the rate of the gasoline tax imposed pursuant to the
8 Gasoline Tax Act, but if the fraction exceeds one, it shall be
9 one for purposes of determining the deduction; and

10 F. gasoline received in New Mexico and sold by a
11 registered Indian tribal distributor from a nonmobile storage
12 container located within that distributor's Indian reservation,
13 pueblo grant or trust land for resale outside that
14 distributor's Indian reservation, pueblo grant or trust land;
15 provided the department certifies that the distributor claiming
16 the deduction sold no less than one million gallons of gasoline
17 from a nonmobile storage container located within that
18 distributor's Indian reservation, pueblo grant or trust land
19 for resale outside that distributor's Indian reservation,
20 pueblo grant or trust land during the period of May through
21 August 1998; and provided further that the amount of gasoline
22 deducted by a registered Indian tribal distributor pursuant to
23 this subsection shall not exceed two million five hundred
24 thousand gallons per month, calculated as a monthly average
25 during the calendar year. Volumes deducted pursuant to

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1 Subsection E of this section shall not be deducted pursuant to
2 this subsection. "

3 Section 7. A new section of the Gasoline Tax Act, Section
4 7-13-4.5 NMSA 1978, is enacted to read:

5 "7-13-4.5. [NEW MATERIAL] DISTRIBUTORS AND WHOLESALERS--
6 TAXABLE PRESUMPTION--NONTAXABLE SALES AND USES--
7 REIMBURSEMENT.--

8 A. Gasoline purchased by a distributor or
9 wholesaler from a person who received the gasoline in New
10 Mexico and on which the tax has been paid or is due shall be
11 presumed to be taxable unless the distributor or wholesaler
12 provides proof satisfactory to the department that the gasoline
13 was sold, exported or used for one of the following nontaxable
14 purposes:

15 (1) the gasoline was exported from this state
16 by the distributor or wholesaler other than in the fuel supply
17 tank of a motor vehicle or sold for export by the distributor;
18 provided that, in either case:

19 (a) the person exporting the gasoline is
20 registered in or licensed by the destination state to pay that
21 state's gasoline or equivalent fuel tax;

22 (b) proof is submitted that the
23 destination state's gasoline or equivalent fuel tax has been
24 paid or is not due with respect to the gasoline; or

25 (c) the destination state's gasoline or

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1 equivalent fuel tax is paid to New Mexico in accordance with
2 the terms of an agreement entered into pursuant to Section
3 9-11-12 NMSA 1978 with the destination state;

4 (2) the gasoline was sold to the United States
5 or an agency or instrumentality thereof for the exclusive use
6 of the United States or an agency or instrumentality thereof.
7 Gasoline sold to the United States includes gasoline delivered
8 into the fuel supply tank of a government-licensed vehicle of
9 the United States;

10 (3) the gasoline was sold to an Indian nation,
11 tribe or pueblo or a political subdivision, agency or
12 instrumentality of that Indian nation, tribe or pueblo for the
13 exclusive use of the Indian nation, tribe or pueblo or a
14 political subdivision, agency or instrumentality thereof.
15 Gasoline sold to an Indian nation, tribe or pueblo includes
16 gasoline delivered into the supply tank of a government-
17 licensed vehicle of the Indian nation, tribe or pueblo;

18 (4) the gasoline was dyed in accordance with
19 department regulations and used in a manner other than for
20 propulsion of motor vehicles on the highways of this state or
21 motorboats or activities ancillary to that propulsion;

22 (5) the gasoline was sold at retail other than
23 by a registered Indian tribal distributor and:

24 (a) the sale occurred on the Indian
25 reservation, pueblo grant or trust land of the distributor's

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1 Indian nation, tribe or pueblo;

2 (b) the gasoline was placed into the
3 fuel supply tank of a motor vehicle on that reservation, pueblo
4 grant or trust land; and

5 (c) the Indian nation, tribe or pueblo
6 has certified to the department that it has in effect an
7 excise, privilege or similar tax on the gasoline; provided that
8 the volume of gasoline for which a tax refund may be claimed
9 pursuant to this paragraph shall be the total gallons sold in
10 accordance with the provisions of this paragraph multiplied by
11 a fraction, the numerator of which is the rate of the tribal
12 tax certified to the department by the Indian nation, tribe or
13 pueblo and the denominator of which is the rate of the gasoline
14 tax imposed pursuant to the Gasoline Tax Act, but if the
15 fraction exceeds one, it shall be one for purposes of
16 determining the refund;

17 (6) gasoline received in New Mexico and sold
18 by a registered Indian tribal distributor from a nonmobile
19 storage container located within that distributor's Indian
20 reservation, pueblo grant or trust land for resale outside that
21 distributor's Indian reservation, pueblo grant or trust land;
22 provided the department certifies that the distributor claiming
23 the refund sold no less than one million gallons of gasoline
24 from a nonmobile storage container located within that
25 distributor's Indian reservation, pueblo grant or trust land

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1 for resale outside that distributor's Indian reservation,
2 pueblo grant or trust land during the period of May through
3 August 1998; and provided further that the amount of gasoline
4 for which a tax refund is claimed by a registered Indian tribal
5 distributor pursuant to this paragraph shall not exceed two
6 million five hundred thousand gallons per month, calculated as
7 a monthly average during the calendar year. Volumes for which
8 a tax refund is claimed pursuant to Paragraph (5) of this
9 subsection shall not be eligible for refund pursuant to this
10 paragraph; and

11 (7) the distributor is not a registered Indian
12 tribal distributor and the gasoline was sold at retail in New
13 Mexico and:

14 (a) the sale occurred on an Indian
15 reservation, pueblo grant or trust land;

16 (b) the gasoline was placed into the
17 fuel supply tank of a motor vehicle on that reservation, pueblo
18 grant or trust land;

19 (c) the Indian nation, tribe or pueblo
20 has certified to the department that it has in effect an
21 excise, privilege or similar tax on gasoline; provided that the
22 gallons of gasoline for which a tax refund may be claimed
23 pursuant to this paragraph shall be the total gallons sold in
24 accordance with the provisions of this paragraph multiplied by
25 a fraction, the numerator of which is the rate of the tribal

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1 tax certified to the department by the Indian nation, tribe or
2 pueblo and the denominator of which is the rate of the gasoline
3 tax imposed pursuant to the Gasoline Tax Act, but, if the
4 fraction exceeds one, the fraction shall be deemed to be one
5 for purposes of determining the refund; and

6 (d) the person is subject to and in
7 compliance with the tax on gasoline imposed by the Indian
8 nation, tribe or pueblo where the sale occurred.

9 B. Upon a showing satisfactory to the department
10 that a distributor or wholesaler purchased gasoline on which
11 the excise tax pursuant to the Gasoline Tax Act was paid and
12 the gasoline was subsequently sold, exported or used for a
13 nontaxable purpose pursuant to Subsection A of this section,
14 the distributor or wholesaler may apply to the department for a
15 reimbursement in an amount equal to the tax paid on that
16 gasoline.

17 C. A distributor who is eligible to apply for a
18 reimbursement pursuant to Subsection B of this section shall
19 apply on a form and in the manner determined by the department.
20 The department shall determine what documentation is necessary
21 to establish satisfactory proof that the gasoline was sold,
22 exported or used for a nontaxable purpose. "

23 Section 8. A new section of the Gasoline Tax Act is
24 enacted to read:

25 " [NEW MATERIAL] CERTIFICATES OF ELIGIBILITY. -- The

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1 department shall issue a certificate of eligibility to a person
2 entitled to a deduction pursuant to the Gasoline Tax Act. That
3 person shall display a copy of that certificate upon each of
4 the person's tank cars, tank trucks, tank wagons, other types
5 of transportation equipment or other containers from which the
6 person sells, exports or delivers gasoline. The department may
7 adopt regulations regarding issuance and administration of
8 certificates of eligibility. "

9 Section 9. Section 7-13-5 NMSA 1978 (being Laws 1971,
10 Chapter 207, Section 5, as amended) is amended to read:

11 "7-13-5. TAX RETURNS--PAYMENT OF TAX. -- [~~Distributors~~]
12 Rack operators shall file gasoline tax returns in form and
13 content as prescribed by the secretary on or before the twenty-
14 fifth day of the month following the month in which gasoline is
15 received in New Mexico. Such returns shall be accompanied by
16 payment of the amount of gasoline tax due. "

17 Section 10. Section 7-13-12 NMSA 1978 (being Laws 1971,
18 Chapter 207, Section 11, as amended) is amended to read:

19 "7-13-12. MANIFEST OR BILL OF LADING REQUIRED WHEN
20 TRANSPORTING GASOLINE. --Every person transporting gasoline from
21 a refinery or pipeline terminal in this state, importing
22 gasoline into this state or exporting gasoline from this state,
23 other than by pipeline or in the fuel supply tanks of motor
24 vehicles, shall carry a manifest or bill of lading in form and
25 content as prescribed by or acceptable to the department. The

underscored material = new
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1 manifest or bill of lading shall be signed by the consignor and
2 by every person accepting the gasoline or any part of it, with
3 a notation as to the amount accepted. If a manifest or bill of
4 lading is not required to be carried by the terms of this
5 section, any person transporting gasoline without such a
6 manifest or bill of lading shall, upon demand, furnish proof
7 acceptable to the department that the gasoline so transported
8 was legally acquired by a registered distributor [~~who assumed~~
9 ~~liability~~] from a person who is liable for payment of the tax
10 imposed by the Gasoline Tax Act. "

11 Section 11. A new section of the Gasoline Tax Act is
12 enacted to read:

13 "[NEW MATERIAL] RETURNS BY RETAILERS-- REQUIREMENTS--
14 EXCEPTION.--Retailers shall file information returns in form
15 and content as prescribed by the department on or before the
16 twenty-fifth day of the month following the month in which
17 gasoline is sold in New Mexico. The department may require
18 that the information returns be provided through electronic
19 means if the department provides an exception from that
20 requirement for retailers that purchase limited amounts of
21 fuel. "

22 Section 12. A new section of the Gasoline Tax Act is
23 enacted to read:

24 "[NEW MATERIAL] RETURNS BY DISTRIBUTORS-- REQUIREMENTS.--
25 Distributors shall file information returns in form and content

1 as prescribed by the department on or before the twenty-fifth
2 day of the month following the month in which gasoline is sold
3 in New Mexico. "

4 Section 13. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is January 1, 2005.

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