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HOUSE BILL 48

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; ELIMINATING CERTAIN DEDUCTIONS FOR
GASOLINE SOLD BY REGISTERED INDIAN TRIBAL DISTRIBUTORS OR
CERTAIN OTHER PERSONS FROM THE GASOLINE TAX; REPEALING THE
AUTHORITY OF THE SECRETARY OF TRANSPORTATION TO ENTER INTO
GASOLINE TAX SHARING AGREEMENTS.

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
department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 C. "distributor" means ~~any~~ a person, not
4 including the United States of America or any of its agencies
5 except to the extent now or hereafter permitted by the
6 constitution and laws thereof, who receives gasoline in this
7 state. "Distributor" shall be construed so that a person
8 simultaneously may be both a distributor and a retailer or
9 importer;

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

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

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

23 G. "gallon" means the quantity of liquid necessary
24 to fill a standard United States gallon liquid measure or that
25 same quantity adjusted to a temperature of sixty degrees

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1 fahrenheit at the election of [~~any~~] a distributor, but [~~a~~] the
2 distributor shall report on the same basis for a period of at
3 least one year;

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

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

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

23 K. "motor vehicle" means [~~any~~] a self-propelled
24 vehicle or device that is either subject to registration under
25 Section 66-3-1 NMSA 1978 or used or that may be used on the

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1 public highways in whole or in part for the purpose of
2 transporting persons or property and includes [~~any~~] a connected
3 trailer or semitrailer;

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

9 M. "rack operator" means the operator of a refinery
10 in this state or the owner of gasoline stored at a pipeline
11 terminal in this state;

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

25 ~~0.]~~ N. "retailer" means a person who sells gasoline

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1 generally in quantities of thirty-five gallons or less and
2 delivers such gasoline into the fuel supply tanks of motor
3 vehicles. "Retailer" shall be construed so that a person
4 simultaneously may be both a retailer and a distributor or
5 wholesaler;

6 ~~[P-]~~ Q. "secretary" means the secretary of taxation
7 and revenue or the secretary's delegate;

8 ~~[Q-]~~ P. "taxpayer" means a person required to pay
9 gasoline tax;

10 ~~[R-]~~ Q. "unloaded" means removal of gasoline from
11 tank cars, tank trucks, tank wagons or other types of
12 transportation equipment into a nonmobile container at the
13 place at which the unloading takes place; and

14 ~~[S-]~~ R. "wholesaler" means a person who is not a
15 distributor and who sells gasoline in quantities of thirty-five
16 gallons or more and does not deliver such gasoline into the
17 fuel supply tanks of motor vehicles. "Wholesaler" shall be
18 construed so that a person simultaneously may be a wholesaler
19 and a retailer."

20 **SECTION 2.** Section 7-13-4 NMSA 1978 (being Laws 1991,
21 Chapter 9, Section 32, as amended) is amended to read:

22 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
23 gasoline tax due, the following amounts of gasoline may be
24 deducted from the total amount of gasoline received in New
25 Mexico during the tax period, provided satisfactory proof

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1 thereof is furnished to the department:

2 A. gasoline received in New Mexico, but exported
3 from this state by a rack operator, distributor or wholesaler
4 other than in the fuel supply tank of a motor vehicle or sold
5 for export by a rack operator or distributor; provided that, in
6 either case:

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

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

13 (3) the destination state's gasoline or
14 equivalent fuel tax is paid to New Mexico in accordance with
15 the terms of an agreement entered into pursuant to Section
16 9-11-12 NMSA 1978 with the destination state;

17 B. gasoline received in New Mexico sold to the
18 United States or an agency or instrumentality thereof for the
19 exclusive use of the United States or an agency or
20 instrumentality thereof. Gasoline sold to the United States
21 includes gasoline delivered into the supply tank of a
22 government-licensed vehicle of the United States;

23 C. gasoline received in New Mexico sold to an
24 Indian nation, tribe or pueblo or a political subdivision,
25 agency or instrumentality of that Indian nation, tribe or

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1 pueblo for the exclusive use of the Indian nation, tribe or
2 pueblo or a political subdivision, agency or instrumentality
3 thereof. Gasoline sold to an Indian nation, tribe or pueblo
4 includes gasoline delivered into the supply tank of a
5 government-licensed vehicle of the Indian nation, tribe or
6 pueblo;

7 D. gasoline received in New Mexico, dyed in
8 accordance with department regulations and used in a manner
9 other than for propulsion of motor vehicles on the highways of
10 this state or motorboats or activities ancillary to that
11 propulsion;

12 ~~[E. gasoline received in New Mexico and sold at~~
13 ~~retail by a registered Indian tribal distributor if:~~

14 ~~(1) the sale occurs on the Indian reservation,~~
15 ~~pueblo grant or trust land of the distributor's Indian nation,~~
16 ~~tribe or pueblo;~~

17 ~~(2) the gasoline is placed into the fuel~~
18 ~~supply tank of a motor vehicle on that reservation, pueblo~~
19 ~~grant or trust land; and~~

20 ~~(3) the Indian nation, tribe or pueblo has~~
21 ~~certified to the department that it has in effect an excise,~~
22 ~~privilege or similar tax on the gasoline; provided that the~~
23 ~~volume of gasoline deducted pursuant to this subsection shall~~
24 ~~be the total gallons sold in accordance with the provisions of~~
25 ~~this subsection multiplied by a fraction the numerator of which~~

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

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

24 ~~[G.]~~ E. gasoline received in New Mexico on which
25 New Mexico gasoline tax was paid by the out-of-state terminal

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1 at which the gasoline was loaded, provided that documentation
2 that the gasoline was to be imported into New Mexico was
3 provided to the terminal operator by the person receiving the
4 fuel."

5 SECTION 3. REPEAL.--Sections 7-13-4.4 and 67-3-8.1 NMSA
6 1978 (being Laws 2000, Chapter 50, Section 1 and Laws 2003,
7 Chapter 150, Section 3, as amended) are repealed.

8 SECTION 4. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2012.