

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 789

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

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT, THE
PETROLEUM PRODUCTS LOADING FEE ACT AND THE SPECIAL FUELS
SUPPLIER TAX ACT; CHANGING THE DEFINITION OF WHEN GASOLINE IS
RECEIVED; SIMPLIFYING THE REPORTING AND TAXATION OF DYED FUEL;
CHANGING THE BASE OF THE PETROLEUM PRODUCTS LOADING FEE TO
THAT OF THE GASOLINE AND SPECIAL FUEL EXCISE TAXES; PROVIDING
PENALTIES FOR FAILURE TO SUBMIT INFORMATION RETURNS.

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;

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

. 127676. 1

underscored material = new
[bracketed material] = del ete

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

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

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

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

underscored material = new
[bracketed material] = delete

1 reconstruction, maintenance or repair;

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

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

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

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

17 (1)

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

underscored material = new
[bracketed material] = delete

1 is "received" at the time and place it is first unloaded in
2 this state and by the person who is the owner thereof
3 immediately preceding the unloading, unless the owner
4 immediately after the unloading is a registered distributor,
5 in which case such registered distributor is considered as
6 having received the gasoline;

7 ~~θ.~~ N. "retailer" means a person who sells
8 gasoline generally in quantities of thirty-five gallons or
9 less and delivers such gasoline into the fuel supply tanks of
10 motor vehicles. "Retailer" shall be construed so that a
11 person simultaneously may be both a retailer and a distributor
12 or wholesaler;

13 ~~[P.]~~ 0. "secretary" means the secretary of
14 taxation and revenue or the secretary's delegate;

15 ~~[Q.]~~ P. "taxpayer" means a person required to pay
16 gasoline tax;

17 ~~[R.]~~ Q. "unloaded" means removal of gasoline from
18 tank cars, tank trucks, tank wagons or other types of
19 transportation equipment into a nonmobile container at the
20 place at which the unloading takes place; and

21 ~~[S.]~~ R. "wholesaler" means a person who is not a
22 distributor and who sells gasoline in quantities of thirty-
23 five gallons or more and does not deliver such gasoline into
24 the fuel supply tanks of motor vehicles. "Wholesaler" shall
25 be construed so that a person simultaneously may be a

underscored material = new
[bracketed material] = delete

1 wholesaler and a retailer. "

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

4 "7-13-2.1. [NEW MATERIAL] WHEN GASOLINE RECEIVED AND BY
5 WHOM --

6 A. Gasoline that is produced, refined,
7 manufactured, blended or compounded at a refinery in this
8 state or stored at a pipeline terminal in this state by any
9 person is received by that person when it is loaded there into
10 tank cars, tank trucks, tank wagons or any other type of
11 transportation equipment or when it is placed into a tank or
12 other container in this state from which sales or deliveries
13 not involving transportation are made. Gasoline is not
14 received when it is shipped from one refinery or pipeline
15 terminal to another refinery or pipeline terminal.

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

24 C. Any product other than gasoline that is blended
25 in this state to produce gasoline at a location other than a

underscored material = new
[bracketed material] = del ete

1 refinery or pipeline terminal is received by the person who is
2 the owner of the gasoline at the time and place the blending
3 is completed.

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

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

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

25 A. gasoline received in New Mexico, but exported

underscored material = new
[bracketed material] = delete

1 from this state for consumption outside this state by a [~~rack~~
2 ~~operator, distributor or wholesaler~~] taxpayer other than in
3 the fuel supply tank of a motor vehicle or sold for export by
4 a [~~rack operator or distributor~~] taxpayer; provided that, in
5 either case:

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

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

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

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

22 C. gasoline received in New Mexico sold to an
23 Indian nation, tribe or pueblo or any political subdivision,
24 agency or instrumentality of that Indian nation, tribe or
25 pueblo for the exclusive use of the Indian nation, tribe or

underscored material = new
[bracketed material] = delete

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

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

11 Section 4. Section 7-13-5 NMSA 1978 (being Laws 1971,
12 Chapter 207, Section 5, as amended) is amended to read:

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

19 Section 5. Section 7-13-6 NMSA 1978 (being Laws 1971,
20 Chapter 207, Section 6, as amended) is amended to read:

21 "7-13-6. RETURNS BY DISTRIBUTORS AND WHOLESALERS--
22 EXCEPTION--PENALTY. -- Distributors and wholesalers shall file
23 information returns in form and content as prescribed by the
24 department on or before the twenty-fifth day of the month
25 following the month in which gasoline is sold in New Mexico.

underscored material = new
[bracketed material] = del ete

1 Sales of gasoline in quantities of thirty-five gallons or more
2 delivered into the fuel tanks of aircraft are not wholesale
3 sales for the purposes of this section, and information
4 returns on such sales need not be filed with the department.
5 If a distributor or wholesaler fails to timely make a report
6 required by this section, a penalty of one hundred dollars
7 (\$100) may be imposed. "

8 Section 6. Section 7-13A-3 NMSA 1978 (being Laws 1990,
9 Chapter 124, Section 16, as amended) is amended to read:

10 "7-13A-3. IMPOSITION AND RATE OF FEE--DENOMINATION AS
11 "PETROLEUM PRODUCTS LOADING FEE".--

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

19 B. For the privilege of importing gasoline or
20 special fuel into this state for resale or consumption in this
21 state there is imposed a fee determined as provided in
22 Subsection [€] D of this section on each load of gasoline or
23 special fuel imported into New Mexico for resale or
24 consumption on which the petroleum products loading fee has
25 not been previously paid. [~~For the purposes of this section,~~

underscored material = new
[bracketed material] = delete

1 "load" ~~means eight thousand gallons of gasoline or special~~
2 ~~fuel.~~]

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

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

16 (1) in the event the secretary of environment
17 certifies that the unobligated balance of the corrective
18 action fund at the end of the prior fiscal year equals or
19 exceeds eighteen million dollars (\$18,000,000), the fee shall
20 be set at forty dollars (\$40.00) per load;

21 (2) in the event the secretary of
22 environment certifies that the unobligated balance of the
23 corrective action fund at the end of the prior fiscal year
24 exceeds twelve million dollars (\$12,000,000) but is less than
25 eighteen million dollars (\$18,000,000), the fee shall be set

underscored material = new
[bracketed material] = del ete

1 at eighty dollars (\$80.00) per load;

2 (3) 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 six million dollars (\$6,000,000) but is less than
6 twelve million dollars (\$12,000,000), the fee shall be set at
7 one hundred twenty dollars (\$120) per load; and

8 (4) 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 is
11 less than six million dollars (\$6,000,000), the fee shall be
12 set at one hundred fifty dollars (\$150) per load.

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

18 [~~E.~~] F. As used in this section, "unobligated
19 balance of the corrective action fund" means corrective action
20 fund equity less all known or anticipated liabilities against
21 the fund. "

22 Section 7. Section 7-16A-2 NMSA 1978 (being Laws 1992,
23 Chapter 51, Section 2, as amended) is amended to read:

24 "7-16A-2. DEFINITIONS. --As used in the Special Fuels
25 Supplier Tax Act:

underscored material = new
[bracketed material] = delete

1 ~~[A. "bulk storage" means the storage of special~~
2 ~~fuels in any tank or receptacle, other than a supply tank, for~~
3 ~~the purpose of sale by a dealer or for use by a user or for~~
4 ~~any other purpose;~~

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

9 ~~C.]~~ A. "dealer" means any person who sells and
10 delivers special fuel to a user;

11 ~~[D.]~~ B. "department" means the taxation and
12 revenue department, the secretary of taxation and revenue or
13 any employee of the department exercising authority lawfully
14 delegated to that employee by the secretary;

15 C. "dyed fuel" means diesel-engine fuel or
16 kerosene that has been dyed in accordance with federal or
17 state regulations and is used in any manner other than for
18 propulsion of motor vehicles on the highways of this state;

19 ~~[E.]~~ D. "government-licensed vehicle" means a
20 motor vehicle lawfully displaying a registration plate, as
21 defined in the Motor Vehicle Code issued by:

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

25 (2) the state of New Mexico, identifying the

underscored material = new
[bracketed material] = delete

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

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

6 [~~F.~~] E. "gross vehicle weight" means the weight of
7 a motor vehicle or combination motor vehicle without load,
8 plus the weight of any load on the vehicle;

9 [~~G.~~] F. "highway" means every road, highway,
10 thoroughfare, street or way, including toll roads, generally
11 open to the use of the public as a matter of right for the
12 purpose of motor vehicle travel and notwithstanding that the
13 same may be temporarily closed for the purpose of
14 construction, reconstruction, maintenance or repair;

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

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

underscored material = new
[bracketed material] = delete

1 ~~[J-]~~ I. "rack operator" means the operator of a
2 refinery in this state, any person who blends special fuel in
3 this state or the owner of special fuel stored at a pipeline
4 terminal in this state;

5 ~~[K-]~~ J. "registrant" means any person who has
6 registered a motor vehicle pursuant to the laws of this state
7 or of another state;

8 ~~[L-]~~ K. "sale" means any delivery, exchange, gift
9 or other disposition;

10 ~~[M-]~~ L. "secretary" means the secretary of
11 taxation and revenue or the secretary's delegate;

12 ~~[N-]~~ M. "special fuel" means diesel-engine fuel or
13 kerosene, other than dyed fuel, used for the generation of
14 power to propel a motor vehicle;

15 ~~[O-]~~ N. "special fuel user" means any user who is
16 a registrant, owner or operator of a motor vehicle using
17 special fuel and having a gross vehicle weight in excess of
18 twenty-six thousand pounds;

19 ~~[P-]~~ O. "state" or "jurisdiction" means a state,
20 territory or possession of the United States, the District of
21 Columbia, the commonwealth of Puerto Rico, a foreign country
22 or a state or province of a foreign country;

23 ~~[Q-]~~ P. "supplier" means any person, but not
24 including a rack operator or the United States or any of its
25 agencies except to the extent now or hereafter permitted by

underscored material = new
[bracketed material] = del ete

1 the constitution of the United States and laws thereof, who
2 receives special fuel;

3 ~~[R.]~~ Q. "supply tank" means any tank or other
4 receptacle in which or by which fuel may be carried and
5 supplied to the fuel-furnishing device or apparatus of the
6 propulsion mechanism of a motor vehicle when the tank or
7 receptacle either contains special fuel or special fuel is
8 delivered into it;

9 ~~[S.]~~ R. "tax" means the special fuel excise tax
10 imposed pursuant to the Special Fuels Supplier Tax Act; ~~[and]~~

11 S. "taxpayer" means any person, other than a user,
12 required to pay special fuel excise tax; and

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

20 Section 8. Section 7-16A-2.1 NMSA 1978 (being Laws 1997,
21 Chapter 192, Section 6) is amended to read:

22 "7-16A-2.1. WHEN SPECIAL FUEL RECEIVED OR USED--WHO IS
23 REQUIRED TO PAY TAX. --

24 A. A rack operator receives special fuel at the
25 time and place when the rack operator first loads the special

underscored material = new
[bracketed material] = delete

1 fuel at the refinery or pipeline terminal into tank cars, tank
2 trucks, tank wagons or any other type of transportation
3 equipment or when the rack operator places the special fuel
4 into any tank or other container in this state from which
5 sales or deliveries not involving transportation are made. A
6 rack operator who receives special fuel is required to pay
7 special fuel excise tax on the special fuel received [~~except~~
8 ~~as provided otherwise in Subsection B of this section~~].
9 Special fuel is not received when it is shipped from one
10 refinery or pipeline terminal to another refinery or pipeline
11 terminal.

12 ~~[B. When the rack operator first loads special~~
13 ~~fuel at the refinery or pipeline terminal into tank cars, tank~~
14 ~~trucks, tank wagons or any other type of transportation~~
15 ~~equipment for the account of another person who is registered~~
16 ~~with the department as a supplier and is taxable under the~~
17 ~~Special Fuels Supplier Tax Act, however, that person receives~~
18 ~~the special fuel and is required to pay the special fuel~~
19 ~~excise tax.]~~

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

25 C. Special fuel imported into New Mexico by any

underscored material = new
[bracketed material] = delete

1 means other than in the supply tank of a motor vehicle or by
2 pipeline is received at the time and place it is imported into
3 this state. The person who owns the special fuel at the time
4 of importation receives the special fuel and is required to
5 pay the special fuel excise tax.

6 D. If special fuel is received within the exterior
7 boundaries of an Indian reservation or pueblo grant and the
8 ~~[person required to pay the special fuel excise tax is immune~~
9 ~~from state taxation, the special fuel is also received when~~
10 ~~the special fuel is transported off the reservation or pueblo~~
11 ~~grant by any means other than in the fuel supply tank of a~~
12 ~~motor vehicle or by pipeline. Any person who owns special~~
13 ~~fuel after the special fuel is transported off the reservation~~
14 ~~or pueblo grant receives the special fuel and is the person~~
15 ~~required to pay the special fuel excise tax, unless the~~
16 ~~special fuel excise tax has been paid by a previous owner]~~
17 special fuel excise tax is not paid with respect to the
18 special fuel by the person receiving the special fuel within
19 the exterior boundaries of the Indian reservation or pueblo
20 grant, the special fuel is also received when the special fuel
21 is transported off the reservation or pueblo grant by any
22 means other than in the fuel supply tank of a motor vehicle.
23 In such a case, the person who owns the special fuel
24 immediately after the time of transportation off the
25 reservation or pueblo grant or, if the special fuel is

underscored material = new
[bracketed material] = delete

1 delivered to a person registered as a distributor pursuant to
2 the Special Fuels Supplier Tax Act, the distributor receives
3 the special fuel at the time and place the special fuel is
4 transported off the reservation or pueblo grant.

5 E. Special fuel is used in New Mexico when it is
6 put into the supply tank of any motor vehicle registered,
7 owned or operated by a special fuel user, consumed by a
8 special fuel user in the propulsion of a motor vehicle on the
9 highways of this state or any activity ancillary to that
10 propulsion, or imported into the state in the fuel supply tank
11 of any motor vehicle for the propulsion of the motor vehicle
12 on New Mexico highways. "

13 Section 9. Section 7-16A-10 NMSA 1978 (being Laws 1992,
14 Chapter 51, Section 10, as amended) is amended to read:

15 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
16 FUEL SUPPLIERS.--In computing the tax due, the following
17 amounts of special fuel may be deducted from the total amount
18 of special fuel received in New Mexico during the tax period,
19 provided that satisfactory proof thereof is furnished to the
20 department:

21 A. special fuel received in New Mexico, but
22 exported from this state for consumption outside this state by
23 a rack operator, special fuel supplier or dealer, other than
24 in the fuel supply tank of a motor vehicle or sold for export
25 by a rack operator or distributor; provided that, in either

underscored material = new
[bracketed material] = del ete

1 case:

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

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

8 (3) the destination state's special fuel 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. special fuel sold to the United States or any
13 agency or instrumentality thereof for the exclusive use of the
14 United States or any agency or instrumentality thereof.
15 Special fuel sold to the United States includes special fuel
16 delivered into the supply tank of a government-licensed
17 vehicle;

18 C. special fuel sold to the state of New Mexico or
19 any political subdivision, agency or instrumentality thereof
20 for the exclusive use of the state of New Mexico or any
21 political subdivision, agency or instrumentality thereof.
22 Special fuel sold to the state of New Mexico includes special
23 fuel delivered into the supply tank of a government-licensed
24 vehicle;

25 D. special fuel sold to an Indian nation, tribe or

underscored material = new
[bracketed material] = delete

1 pueblo or any agency or instrumentality thereof for the
2 exclusive use of the Indian nation, tribe or pueblo or any
3 agency or instrumentality thereof. Special fuel sold to an
4 Indian nation, tribe or pueblo includes special fuel delivered
5 into the supply tank of a government-licensed vehicle;

6 ~~[E. special fuel sold to the holder of a special~~
7 ~~bulk storage user permit and delivered into special bulk~~
8 ~~storage pursuant to the provisions of Section 7-16A-8 NMSA~~
9 ~~1978;]~~ and

10 ~~[F.]~~ E. special fuel dyed in accordance with
11 federal regulations and used in any manner other than for
12 propulsion of motor vehicles on the highways of this state or
13 activities ancillary to that propulsion. "

14 Section 10. TEMPORARY PROVISION--REFUND OF PERMIT
15 FEES.--Each owner of a permit issued pursuant to the
16 provisions of Section 7-16A-8 NMSA 1978 as that section was in
17 effect prior to the effective date of this act may apply for,
18 and the taxation and revenue department shall grant, a refund
19 of the permit fee paid with respect to any period of time
20 after the effective date of this act for which the permit
21 would have been valid.

22 Section 11. REPEAL.--Sections 7-13A-4 and 7-16A-8 NMSA
23 1978 (being Laws 1991, Chapter 9, Section 34 and Laws 1992,
24 Chapter 51, Section 8, as amended) are repealed.

25 Section 12. EFFECTIVE DATE.--The effective date of the

underscored material = new
~~[bracketed material]~~ = del ete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

provisions of this act is July 1, 1999.

- 23 -

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 March 12, 1999

7
8 Mr. Speaker:

9
10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILL 789

14
15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
18 HOUSE BILL 789

19
20 DO PASS.
21
22
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HTRC/CSHB 789

Page 25

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 15 For 0 Against

Yes: 15

Excused: None

Absent: None

J:\99Bill\SWP\H0789

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 789

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

AN ACT

RELATING TO TAXATION; AMENDING THE SPECIAL FUELS SUPPLIER TAX
ACT TO SIMPLIFY THE REPORTING AND TAXATION OF DYED FUEL.

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

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

"7-16A-2. DEFINITIONS. -- As used in the Special Fuels
Supplier Tax Act:

~~[A. "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;~~

~~B. "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;~~

~~C.] A.~~ "dealer" means any person who sells and
delivers special fuel to a user;

underscored material = new
[bracketed material] = delete

[D-] B. "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;

C. "dyed fuel" means diesel-engine fuel or kerosene that has been dyed in accordance with federal or state regulations and is used in any manner other than for propulsion of motor vehicles on the highways of this state;

[E-] D. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code 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;

[F-] E. "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;

[G-] F. "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;

[H-] G. "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

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

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

9 [~~J.~~] I. "rack operator" means the operator of a
10 refinery in this state, any person who blends special fuel in
11 this state or the owner of special fuel stored at a pipeline
12 terminal in this state;

13 [~~K.~~] J. "registrant" means any person who has
14 registered a motor vehicle pursuant to the laws of this state
15 or of another state;

16 [~~L.~~] K. "sale" means any delivery, exchange, gift
17 or other disposition;

18 [~~M.~~] L. "secretary" means the secretary of
19 taxation and revenue or the secretary's delegate;

20 [~~N.~~] M. "special fuel" means diesel-engine fuel or
21 kerosene, other than dyed fuel, used for the generation of
22 power to propel a motor vehicle;

23 [~~O.~~] N. "special fuel user" means any user who is
24 a registrant, owner or operator of a motor vehicle using
25 special fuel and having a gross vehicle weight in excess of
26 twenty-six thousand pounds;

27 [~~P.~~] O. "state" or "jurisdiction" means a state,
28 territory or possession of the United States, the District of

1 Columbia, the commonwealth of Puerto Rico, a foreign country
 2 or a state or province of a foreign country;

3 ~~[Q.]~~ P. "supplier" means any person, but not
 4 including a rack operator or the United States or any of its
 5 agencies except to the extent now or hereafter permitted by
 6 the constitution of the United States and laws thereof, who
 receives special fuel;

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

12 ~~[S.]~~ R. "tax" means the special fuel excise tax
 13 imposed pursuant to the Special Fuels Supplier Tax Act; and

14 ~~[T.]~~ S. "user" means any person other than the
 15 United States government or any of its agencies or
 16 instrumentalities; the state of New Mexico or any of its
 17 political subdivisions, agencies or instrumentalities; or an
 18 Indian nation, tribe or pueblo or any agency or
 19 instrumentality of an Indian nation, tribe or pueblo, who uses
 special fuel to propel a motor vehicle on the highways. "

20 Section 2. Section 7-16A-10 NMSA 1978 (being Laws 1992,
 21 Chapter 51, Section 10, as amended) is amended to read:

22 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
 23 FUEL SUPPLIERS.--In computing the tax due, the following
 24 amounts of special fuel may be deducted from the total amount
 25 of special fuel received in New Mexico during the tax period,

underscored material = new
 [bracketed material] = delete

1 provided that satisfactory proof thereof is furnished to the
2 department:

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

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

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

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

19 B. special fuel sold to the United States or any
20 agency or instrumentality thereof for the exclusive use of the
21 United States or any agency or instrumentality thereof.
22 Special fuel sold to the United States includes special fuel
23 delivered into the supply tank of a government-licensed
24 vehicle;

25 C. special fuel sold to the state of New Mexico or
any political subdivision, agency or instrumentality thereof
for the exclusive use of the state of New Mexico or any
political subdivision, agency or instrumentality thereof.

1 Special fuel sold to the state of New Mexico includes special
2 fuel delivered into the supply tank of a government-licensed
3 vehicle;

4 D. special fuel sold to an Indian nation, tribe or
5 pueblo or any agency or instrumentality thereof for the
6 exclusive use of the Indian nation, tribe or pueblo or any
7 agency or instrumentality thereof. Special fuel sold to an
8 Indian nation, tribe or pueblo includes special fuel delivered
9 into the supply tank of a government-licensed vehicle;

10 ~~[E. special fuel sold to the holder of a special~~
11 ~~bulk storage user permit and delivered into special bulk~~
12 ~~storage pursuant to the provisions of Section 7-16A-8 NMSA~~
13 ~~1978;]~~ and

14 [F.] E. special fuel dyed in accordance with
15 federal regulations and used in any manner other than for
16 propulsion of motor vehicles on the highways of this state or
17 activities ancillary to that propulsion. "

18 Section 3. TEMPORARY PROVISION--REFUND OF PERMIT
19 FEES.--Each owner of a permit issued pursuant to the
20 provisions of Section 7-16A-8 NMSA 1978 as that section was in
21 effect prior to the effective date of this act may apply for,
22 and the taxation and revenue department shall grant, a refund
23 of the permit fee paid with respect to any period of time
24 after the effective date of this act for which the permit
25 would have been valid.

26 Section 4. REPEAL.--Section 7-16A-8 NMSA 1978 (being
27 Laws 1992, Chapter 51, Section 8, as amended) is repealed.

28 Section 5. EFFECTIVE DATE.--The effective date of the

underscored material = new
[bracketed material] = delete

1 provisions of this act is July 1, 1999.

2 - 32 -

underscored material = new
[bracketed material] = del ete

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **FORTY- FOURTH LEGISLATURE**
2 **FIRST SESSION, 1999**

3
4 **March 4, 1999**

5
6
7 **Mr. Speaker:**

8
9 **Your TRANSPORTATION COMMITTEE, to whom has been**
10 **referred**

11 **HOUSE BILL 789**

12 **has had it under consideration and reports same with**
13 **recommmendation that it DO PASS, and thence referred to the**
14 **TAXATION AND REVENUE COMMITTEE.**

15
16 **Respectfully submitted,**

17
18
19
20 _____
21 **Daniel P. Silva, Chairman**
22
23
24
25

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HTRC/HB 789

HB 759

Page 34

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 1 Against

Yes: 10

No: Whitaker

Excused: Heaton, Russell

Absent: None

J: \99BillSWP\H0789

underscored material = new
[bracketed material] = delete