

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 12

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXATION OF MOTOR FUELS; AMENDING SECTION 41-4903, IDAHO CODE,
2 TO REVISE THE DEFINITION OF PETROLEUM; AMENDING SECTION 63-2404, IDAHO
3 CODE, TO PROVIDE THAT MOTOR FUELS AND OTHER PETROLEUM PRODUCTS SHALL BE
4 REPORTED TO THE STATE TAX COMMISSION AND SHALL BE ACCOUNTED FOR USING
5 MOTOR FUELS TAX ACCOUNTING PURPOSES AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 63-2411, IDAHO CODE, TO PROVIDE WHO MAY LAWFULLY AC-
7 CEPT OR PURCHASE MOTOR FUEL; AMENDING SECTION 63-2423, IDAHO CODE, TO
8 PROVIDE THAT A PERSON WHO HAS PAID HIS SPECIAL FUELS TAX DIRECTLY TO THE
9 DISTRIBUTOR MAY BE ELIGIBLE FOR A REFUND OF THE TAX; AMENDING SECTION
10 63-2424, IDAHO CODE, TO PROVIDE FOR SELLING OF GASEOUS FUELS PERMITS BY
11 GASEOUS FUELS DISTRIBUTORS; AMENDING SECTION 63-2429, IDAHO CODE, TO
12 PROVIDE REQUIRED RECORDS OF MOTOR FUELS DISTRIBUTORS AND SPECIAL FUELS
13 DEALERS AND EVERY PERSON REPORTING, MANUFACTURING, REFINING, DEALING,
14 TRANSPORTING OR STORING MOTOR FUELS IN IDAHO; AMENDING SECTION 63-2431,
15 IDAHO CODE, TO PROVIDE THAT THE TAX ON MOTOR FUELS SHALL BE IN LIEU OF
16 ALL OTHER EXCISE TAXES, LICENSE FEES OR PROPERTY TAXES IMPOSED UPON MO-
17 TOR FUELS BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE; AND
18 AMENDING SECTION 63-2436, IDAHO CODE, TO PROVIDE FOR REPORTS BY RAIL-
19 ROADS, OTHER COMMON CARRIER OR CONTRACT CARRIER OTHER THAN A LICENSEE
20 WHO MAKES A DELIVERY OF MOTOR FUELS.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Section 41-4903, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 41-4903. DEFINITIONS. For the purposes of this chapter:

26 (1) "Aboveground storage tank" means any one (1) or a combination of
27 tanks, including pipes connected thereto, that is used to contain an accumu-
28 lation of petroleum or petroleum products, and the volume of which, includ-
29 ing the volume of pipes connected thereto, is less than ten percent (10%) be-
30 neath the surface of the ground. This term does not include a heating tank,
31 farm tank or residential tank or any tank with a capacity of one hundred ten
32 (110) gallons or less.

33 (2) "Accidental release" means any sudden or nonsudden release of pe-
34 troleum from a storage tank that results in a need for corrective action or
35 compensation for bodily injury or property damage neither expected nor in-
36 tended by the tank owner or operator.

37 (3) "Administrator" means the state insurance fund or any person em-
38 ployed by the board of trustees to replace the state insurance fund, employed
39 by the board to administer the Idaho petroleum clean water trust fund.

40 (4) "Application fee" means the amount paid or payable by an owner or
41 operator applying for a contract of insurance with the trust fund to offset

1 the costs of issuing contracts of insurance and other costs of administering
2 this fund.

3 (5) "Board" means the board of trustees appointed by the governor.

4 (6) "Bodily injury" means any bodily injury, sickness, disease or death
5 sustained by any person and caused by an occurrence defined in subsection
6 (19) of this section.

7 (7) "Contamination" means the presence of petroleum or petroleum prod-
8 ucts in surface or subsurface soil, surface water, or ground water.

9 (8) "Commission" means the state tax commission of the state of Idaho.

10 (9) "Corrective action" means those actions as are reasonably neces-
11 sary to satisfy applicable federal and state standards in the event of a re-
12 lease into the environment from a petroleum storage tank. Corrective ac-
13 tion includes initial corrective action response or actions consistent with
14 a remedial action to clean up contaminated soil and ground water or address
15 residual effects after initial corrective action is taken, as well as ac-
16 tions necessary to monitor, assess and evaluate a release. Corrective ac-
17 tion also includes the cost of removing a tank which is releasing or has been
18 releasing petroleum products and the release cannot be corrected without re-
19 moving the tank; but corrective action does not include the cost of replacing
20 this tank with another tank.

21 (10) "Department" means the department of insurance of the state of
22 Idaho.

23 (11) "Director" means the director of the department of insurance.

24 (12) "Farm tank" means any tank with a capacity of more than one hundred
25 ten (110) gallons but less than one thousand one hundred (1,100) gallons sit-
26 uated above ground or underground which is used for storing motor fuel for
27 noncommercial purposes and which is located on a tract of land devoted to the
28 production of crops or raising animals, including fish, and associated res-
29 idences and improvements. A farm tank must be located on the farm property.
30 "Farm" includes fish hatcheries, rangeland and nurseries with growing oper-
31 ations.

32 (13) "Free product" means petroleum or petroleum products in the non-
33 aqueous phase, (e.g., liquid not dissolved in water).

34 (14) "Fund" or "trust fund" means the Idaho petroleum clean water trust
35 fund.

36 (15) "Heating tank" means any tank with a capacity of more than one hun-
37 dred ten (110) gallons situated above ground or underground which is used for
38 storing heating oil for consumptive use on the premises where stored.

39 (16) "Legal defense costs" means any expense that an owner or operator
40 or the trust fund incurs in defending against claims or actions brought by
41 the federal environmental protection agency or a state agency to require
42 corrective action or to recover the costs of corrective action; or by or
43 on behalf of a third party for bodily injury or property damage caused by a
44 release.

45 (17) "Licensed distributor" means any distributor who has obtained a
46 license under the provisions of section 63-2427A, Idaho Code. If a person
47 subject to the fee imposed by section 41-4909(7), Idaho Code, is not required
48 to obtain a distributor's license under paragraph (a) or (b) of subsection
49 (1) of section 63-2427A, Idaho Code, such person shall apply to the commis-
50 sion for a limited license for the purpose of complying with the requirements

1 of this chapter. Such a limited license shall not be valid for any other
2 purpose. No bond shall be required for a limited license. A holder of a lim-
3 ited license is a "licensed distributor" for the purposes of filing reports,
4 paying fees and other actions necessary to the proper administration and
5 enforcement of this chapter.

6 (18) "Noncommercial purposes" means not for resale, with respect to mo-
7 tor fuels.

8 (19) "Occurrence" means an accident, including continuous or repeated
9 exposure to conditions, which resulted in a release into the environment of
10 petroleum products from a petroleum storage tank.

11 (20) "Operator" means any person in control, or having responsibility
12 for, the daily operations of a petroleum storage tank.

13 (21) "Owner" means the owner of a petroleum storage tank, except that
14 "owner" does not include any person who, without participation in the man-
15 agement of a petroleum storage tank, holds indicia of ownership primarily to
16 protect the owner's security interest in the tank.

17 (22) "Person" means any corporation, association, partnership, one (1)
18 or more individuals, or any governmental unit, or agency thereof, other than
19 federal or state agencies.

20 (23) "Petroleum" and/or "petroleum products" mean crude oil, or any
21 fraction thereof, which is liquid at standard conditions of temperature
22 and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and
23 seven-tenths (14.7) pounds per square inch absolute). The term includes
24 motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating
25 oil and aviation fuel. Biodiesel and biodiesel blends, as those terms are
26 defined in section 63-2401, Idaho Code, ethanol, and natural gasoline are
27 also petroleum or petroleum products.

28 (24) "Property damage" means injury or destruction to tangible property
29 caused by an occurrence.

30 (25) "Release" means any spilling, leaking, emitting, discharging, es-
31 caping, leaching, or disposing from a petroleum storage tank into ground wa-
32 ter, surface water, or surface or subsurface soils.

33 (26) "Residential tank" means any tank with a capacity of more than one
34 hundred ten (110) gallons but less than one thousand one hundred (1,100) gal-
35 lons situated above ground or underground which is used for storing motor
36 fuel for noncommercial purposes and which is located on property used pri-
37 marily for dwelling purposes.

38 (27) "Site" means a single parcel of property where petroleum or petro-
39 leum products are stored in a petroleum storage tank and includes all con-
40 tiguous land, structures, other appurtenances, surface water, ground water,
41 surface and subsurface soil, and subsurface strata within and beneath the
42 property boundary.

43 (28) "State" means the state of Idaho or any office, department, agency,
44 authority, commission, board, institution, hospital, college, university
45 or other instrumentality thereof.

46 (29) "Tank" means a stationary device designed to contain an accumula-
47 tion of petroleum or petroleum products and constructed of nonearthen mate-
48 rials (e.g., concrete, steel, plastic) that provide structural support.

49 (30) "Trustees" means the trustees of the Idaho petroleum clean water
50 trust fund, who are appointed by the governor pursuant to this chapter.

1 (31) "Underground storage tank" means any one (1) or combination of
 2 tanks, including underground pipes connected thereto, that is used to con-
 3 tain an accumulation of petroleum or petroleum products, and the volume of
 4 which, including the volume of underground pipes connected thereto, is ten
 5 percent (10%) or more beneath the surface of the ground. This term does not
 6 include any:

- 7 (a) Farm or residential tank of one thousand one hundred (1,100) gal-
 8 lons or less capacity used for storing motor fuel for noncommercial pur-
 9 poses;
 10 (b) Tank used solely for storing heating oil for consumptive use on the
 11 premises where stored;
 12 (c) Septic tank;
 13 (d) Pipeline facility including gathering lines regulated under:
 14 (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app.
 15 1671, et seq.); or
 16 (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C.
 17 app. 2001, et seq.); or
 18 (iii) State laws comparable to the provisions of the law referred
 19 to in paragraph (d) (i) or (d) (ii) of this subsection as an in-
 20 trastate pipeline facility;
 21 (e) Surface impoundment, pit, pond or lagoon;
 22 (f) Storm water or wastewater collection system;
 23 (g) Flow-through process tank;
 24 (h) Liquid trap or associated gathering lines directly related to oil
 25 or gas production and gathering operations;
 26 (i) Storage tank situated in an underground area (such as a basement,
 27 cellar, mineworking, drift, shaft, or tunnel) if the storage tank is
 28 situated upon or above the surface of the floor;
 29 (j) Tanks with a capacity of one hundred ten (110) gallons or less.

30 The term "underground storage tank" does not include any pipes connected to
 31 any tank which is described in paragraphs (a) through (i) of this definition.

32 (32) "Underground storage tank regulations" means regulations for
 33 petroleum storage tanks promulgated by the United States environmental
 34 protection agency (EPA) pursuant to subtitle I of the solid waste disposal
 35 act, as amended by the resource conservation and recovery act, regulations
 36 promulgated by the state of Idaho as part of a state program for underground
 37 storage tank regulation under subtitle I, or other regulations affecting
 38 underground storage tank operations and management, including the interna-
 39 tional fire code adopted by the state of Idaho.

40 SECTION 2. That Section 63-2404, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 63-2404. METHOD OF MEASUREMENT OF GALLONS RECEIVED. ~~Gasoline and/or~~
 43 ~~aircraft engine fuel~~ Motor fuels and other petroleum products received by
 44 distributors shall be reported under rules and regulations prescribed by the
 45 state tax commission, and be based upon consistent methods, generally recog-
 46 nized and accepted for ~~gasoline and/or aircraft engine fuel~~ motor fuels tax
 47 accounting purposes, in respect to gallonage, stock transfers and stock ac-
 48 counting records.

1 SECTION 3. That Section 63-2411, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 63-2411. PURCHASE OF ~~GASOLINE~~ MOTOR FUEL BY RETAIL DEALERS. It shall
4 be unlawful for any retail dealer in ~~gasoline or aircraft engine~~ motor fuel
5 or for any person in the state of Idaho other than a licensed distributor to
6 purchase, receive or accept any gasoline motor fuel from any other person,
7 unless that person is a licensed distributor. Any person in violation of
8 these provisions shall be guilty of a misdemeanor.

9 SECTION 4. That Section 63-2423, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid
12 his special fuels tax directly to the ~~vendor~~ distributor from whom it was
13 purchased shall be refunded the amount of:

14 (a) Except as provided in subsection (2) of this section, any special
15 fuels tax paid on special fuels used for purposes other than operation
16 or propulsion of motor vehicles upon the highways in the state of Idaho;

17 (b) Any tax paid on special fuels used in motor vehicles owned or leased
18 and operated by an instrumentality of the federal government or of the
19 state of Idaho, including the state and all of its political subdivi-
20 sions;

21 (c) Any tax paid on special fuels used in motor vehicles to which
22 gaseous special fuel is delivered and which displays a valid gaseous
23 special fuels permit under section 63-2424, Idaho Code;

24 (d) Any special fuels tax paid on special fuels exported for use out-
25 side the state of Idaho. Special fuels carried from the state in the
26 fuel tank of a motor vehicle will not be deemed to be exported from the
27 state unless it is subject to a like or similar tax in the jurisdiction
28 to which it is taken and that tax is actually paid to the other jurisdic-
29 tion; and

30 (e) Any tax, penalty or interest erroneously or illegally paid or col-
31 lected.

32 (2) No refund of special fuels tax shall be paid on:

33 (a) Special fuels used in a recreational vehicle; or

34 (b) Special fuels used in noncommercial motor boats or in motor boats
35 operated by a governmental entity; or

36 (c) Special fuels used while idling a registered motor vehicle, pur-
37 suant to the definition of "idling" as provided in section 63-2401,
38 Idaho Code.

39 (3) Refunds authorized in this section shall be claimed in the same man-
40 ner as applies to refunds of gasoline tax under section 63-2410, Idaho Code,
41 and shall be subject to interest computed pursuant to subsection (5) of that
42 section.

43 SECTION 5. That Section 63-2424, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 63-2424. GASEOUS FUELS. (1) In the case of special fuels which are in a
46 gaseous form, the commission shall provide by rule the method to be used for

1 converting the measurement of the fuel to the equivalent of gallons for the
 2 purpose of applying tax rates. The method provided shall cause the tax rate
 3 provided in section 63-2402, Idaho Code, to apply to an amount of gaseous fu-
 4 els having energy equal to one (1) gallon of gasoline.

5 (2) As an alternative to the provisions of subsection (1) of this sec-
 6 tion, an annual fee in lieu of the excise tax may be collected on a vehicle
 7 powered by gaseous fuels. The rate of the fee shall be based on the follow-
 8 ing schedule for all types of gaseous fuels as adjusted by the formula for
 9 proration set out below. The permits shall be sold by gaseous fuels ~~venders~~
 10 distributors dispensing gaseous fuels into motor vehicles.

11	VEHICLE TONNAGE (GVW)	FEE
12	0 -- 8,000	\$ 60.00
13	8,001 -- 16,000	\$ 89.00
14	16,001 -- 26,000	\$179.00
15	26,001 and above	\$208.00

16 Permits for vehicles which are converted to gaseous fuels after the first of
 17 July in any year shall have the fee prorated for the appropriate number of
 18 months until renewal. The commission shall provide by rule the method to be
 19 used for converting the measurement of fuel to the equivalent of gallons for
 20 the purpose of applying increases in tax rates after this law becomes effec-
 21 tive. A decal issued by the commission shall be displayed in any vehicle for
 22 which a permit is issued hereunder as evidence that the annual fee has been
 23 paid in lieu of the fuel tax. This decal shall be displayed in a conspicuous
 24 place.

25 SECTION 6. That Section 63-2429, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 63-2429. REQUIRED RECORDS. (1) Every distributor and every special
 28 fuels dealer and every person reporting, manufacturing, refining, dealing,
 29 transporting or storing ~~gasoline, aircraft engine fuel or special motor~~ motor fu-
 30 els in this state shall keep records, receipts, invoices and other pertinent
 31 records as the commission may require. Records required and all other rele-
 32 vant books and records shall be available for inspection by the commission at
 33 all times during regular record keeper's business hours.

34 (2) Records required in subsection (1) of this section shall be kept for
 35 a period of three (3) years from the date on which the distributor's report or
 36 special fuels dealer's return to which they relate was required to be filed
 37 with the commission.

38 SECTION 7. That Section 63-2431, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 63-2431. TAX IN LIEU OF ALL OTHER TAXES IMPOSED. The taxes imposed by
 41 this chapter shall be in lieu of all other excise taxes, license fees or prop-
 42 erty taxes imposed upon ~~gasoline, aircraft engine fuel or special motor~~ motor fu-
 43 els by this state or any political subdivision of this state.

1 SECTION 8. That Section 63-2436, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 63-2436. REPORTS OF IMPORTATIONS BY CARRIER -- CONTENTS. The commis-
4 sion may require any railroad or other common carrier, or contract carrier,
5 or any person, other than a licensee, who makes delivery in this state of any
6 ~~gasoline, aircraft engine fuel or special~~ motor fuels to report in writing to
7 the commission, not later than the last day of each calendar month, all the
8 deliveries for the preceding calendar month. The commission may require in-
9 formation in the reports to include the place of origin and place of destina-
10 tion of the ~~gasoline, aircraft engine fuel or special~~ motor fuels delivered,
11 the names and addresses of consignors and consignees, loading ticket num-
12 bers, number of gallons delivered, and any other information the commission
13 may require.