

**MOTOR AND SPECIAL FUEL TAX ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to a tax on liquified natural gas.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of clean fuel;
- ▶ provides that beginning on July 1, 2011, a tax is imposed at a reduced rate on liquified natural gas per gasoline gallon equivalent; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**59-13-102**, as last amended by Laws of Utah 2000, Chapter 258

**59-13-301**, as last amended by Laws of Utah 2008, Chapters 153 and 382

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-13-102** is amended to read:

**59-13-102. Definitions.**

As used in this chapter:

30 (1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the  
31 operation of aircraft.

32 (2) "Clean fuel" means:

33 (a) the following special fuels:

34 (i) propane;

35 (ii) compressed natural gas; [~~or~~]

36 (iii) liquified natural gas; or

37 [~~(iii)~~] (iv) electricity; or

38 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal  
39 clean Air Act Amendments of 1990, Title II.

40 (3) "Commission" means the State Tax Commission.

41 (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known,  
42 offered for sale, or used as a fuel in diesel engines.

43 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be  
44 known or sold, when the liquid is used in an internal combustion engine for the generation of  
45 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject  
46 to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

47 (5) "Distributor" means any person in this state who:

48 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at  
49 retail or wholesale;

50 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,  
51 distribution, or sale in this state;

52 (c) is engaged in the business of purchasing motor fuel for resale in wholesale  
53 quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;

54 or

55 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

56 (i) federally certificated air carriers; and

57 (ii) other persons.

58 (6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec.  
59 4082 or United States Environmental Protection Agency or Internal Revenue Service  
60 regulations and that is considered destined for nontaxable off-highway use.

61 (7) "Exchange agreement" means an agreement between licensed suppliers where one  
62 is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier  
63 or the other supplier's customer at the loading rack of the terminal where the delivering supplier  
64 holds an inventory position.

65 (8) "Federally certificated air carrier" means a person who holds a certificate issued by  
66 the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or  
67 scheduled operation, as defined in 14 C.F.R. Sec. 119.3.

68 (9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is  
69 generally used in an engine or motor for the generation of power, including aviation fuel, clean  
70 fuel, diesel fuel, motor fuel, and special fuel.

71 (10) "Highway" means every way or place, of whatever nature, generally open to the  
72 use of the public for the purpose of vehicular travel notwithstanding that the way or place may  
73 be temporarily closed for the purpose of construction, maintenance, or repair.

74 (11) "Motor fuel" means fuel that is commonly or commercially known or sold as  
75 gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

76 (12) "Motor fuels received" means:

77 (a) motor fuels that have been loaded at the refinery or other place into tank cars,  
78 placed in any tank at the refinery from which any withdrawals are made directly into tank  
79 trucks, tank wagons, or other types of transportation equipment, containers, or facilities other  
80 than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not  
81 involving transportation are made directly; or

82 (b) motor fuels that have been imported by any person into the state from any other  
83 state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when,  
84 and the place where, the interstate transportation of the motor fuel is completed within the state  
85 by the person who at the time of the delivery is the owner of the motor fuel.

86 (13) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used,  
87 designed, or maintained for transportation of persons or property which:

88 (i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000  
89 pounds;

90 (ii) has three or more axles regardless of weight; or

91 (iii) is used in a combination of vehicles when the weight of the combination of  
92 vehicles exceeds 26,000 pounds gross vehicle weight.

93 (b) "Qualified motor vehicle" does not include a recreational vehicle not used in  
94 connection with any business activity.

95 (14) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which  
96 consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a  
97 refinery or terminal into a motor vehicle, rail car, or vessel.

98 (15) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel  
99 fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel  
100 fuel. Removal does not include:

101 (a) loss by evaporation or destruction; or

102 (b) transfers between refineries, racks, or terminals.

103 (16) (a) "Special fuel" means any fuel regardless of name or character that:

104 (i) is usable as fuel to operate or propel a motor vehicle upon the public highways of  
105 the state; and

106 (ii) is not taxed under the category of aviation or motor fuel.

107 (b) Special fuel includes:

108 (i) fuels that are not conveniently measurable on a gallonage basis; and

109 (ii) diesel fuel.

110 (17) "Supplier," as used in Part 3, Special Fuel, means a person who:

111 (a) imports or acquires immediately upon importation into this state diesel fuel from  
112 within or without a state, territory, or possession of the United States or the District of  
113 Columbia;

114 (b) produces, manufactures, refines, or blends diesel fuel in this state;

115 (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to  
116 which there has been no previous taxable sale or use; or

117 (d) is in a two party exchange where the receiving party is deemed to be the supplier.

118 (18) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of  
119 diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel  
120 is removed for distribution at a rack.

121 (19) "Two party exchange" means a transaction in which special fuel is transferred  
122 between licensed suppliers pursuant to an exchange agreement.

123 (20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing  
124 requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental  
125 Protection Agency or Internal Revenue Service regulations.

126 (21) "Use," as used in Part 3, Special Fuel, means the consumption of special fuel for  
127 the operation or propulsion of a motor vehicle upon the public highways of the state and  
128 includes the reception of special fuel into the fuel supply tank of a motor vehicle.

129 (22) "User," as used in Part 3, Special Fuel, means any person who uses special fuel  
130 within this state in an engine or motor for the generation of power to operate or propel a motor  
131 vehicle upon the public highways of the state.

132 (23) "Ute tribal member" means an enrolled member of the Ute tribe.

133 (24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

134 (25) "Ute trust land" means the lands:

135 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for  
136 the benefit of:

137 (i) the Ute tribe;

138 (ii) an individual; or

139 (iii) a group of individuals; or

140 (b) specified as trust land by agreement between the governor and the Ute tribe meeting  
141 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

142 Section 2. Section **59-13-301** is amended to read:

143 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**  
144 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

145 (1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section  
146 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

- 147 (i) removal of undyed diesel fuel from any refinery;
- 148 (ii) removal of undyed diesel fuel from any terminal;
- 149 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or  
150 warehousing;

151 (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under  
152 this part unless the tax has been collected under this section;

- 153 (v) any untaxed special fuel blended with undyed diesel fuel; or
- 154 (vi) use of untaxed special fuel other than propane or electricity.

155 (b) The tax imposed under this section shall only be imposed once upon any special  
156 fuel.

157 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

- 158 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon  
159 the public highways of the state, but this exemption applies only in those cases where the  
160 purchasers or the users of special fuel establish to the satisfaction of the commission that the  
161 special fuel was used for purposes other than to operate a motor vehicle upon the public  
162 highways of the state; or

163 (ii) is sold to this state or any of its political subdivisions.

164 (b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

165 (i) [~~is~~] sold to the United States government or any of its instrumentalities or to this  
166 state or any of its political subdivisions;

167 (ii) [~~is~~] exported from this state if proof of actual exportation on forms prescribed by  
168 the commission is made within 180 days after exportation;

169 (iii) [~~is~~] used in a vehicle off-highway;

- 170 (iv) [~~is~~] used to operate a power take-off unit of a vehicle;
- 171 (v) [~~is~~] used for off-highway agricultural uses;
- 172 (vi) [~~is~~] used in a separately fueled engine on a vehicle that does not propel the vehicle  
173 upon the highways of the state; or
- 174 (vii) [~~is~~] used in machinery and equipment not registered and not required to be  
175 registered for highway use.
- 176 (3) No tax is imposed or collected on special fuel if it is:
  - 177 (a) (i) purchased for business use in machinery and equipment not registered and not  
178 required to be registered for highway use; and
  - 179 (ii) used pursuant to the conditions of a state implementation plan approved under Title  
180 19, Chapter 2, Air Conservation Act; or
  - 181 (b) propane or electricity.
- 182 (4) Upon request of a buyer meeting the requirements under Subsection (3), the  
183 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.
- 184 (5) The special fuel tax shall be paid by the supplier.
- 185 (6) (a) The special fuel tax shall be paid by every user who is required by Sections  
186 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.
  - 187 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases  
188 which are delivered into vehicles and for which special fuel tax liability is reported.
- 189 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the  
190 commission from taxes and license fees under this part shall be deposited daily with the state  
191 treasurer and credited to the Transportation Fund.
  - 192 (b) An appropriation from the Transportation Fund shall be made to the commission to  
193 cover expenses incurred in the administration and enforcement of this part and the collection of  
194 the special fuel tax.
  - 195 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303  
196 may be used by the commission as a dedicated credit to cover the costs of electronic  
197 credentialing as provided in Section 41-1a-303.

198 (8) The commission may either collect no tax on special fuel exported from the state  
199 or, upon application, refund the tax paid.

200 (9) (a) The United States government or any of its instrumentalities, this state, or a  
201 political subdivision of this state that has purchased special fuel from a supplier or from a retail  
202 dealer of special fuel and has paid the tax on the special fuel as provided in this section is  
203 entitled to a refund of the tax and may file with the commission for a quarterly refund in a  
204 manner prescribed by the commission.

205 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
206 commission shall make rules governing the application and refund provided for in Subsection  
207 (9)(a).

208 (10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses  
209 under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid  
210 as provided in Subsection (9) and this Subsection (10).

211 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
212 commission shall make rules governing the application and refund for off-highway and  
213 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

214 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural  
215 uses shall be made in accordance with the tax return procedures under Section 59-13-202.

216 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is  
217 reduced to the extent provided in Subsection (11)(b) if:

218 (i) the Navajo Nation imposes a tax on the special fuel;

219 (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the  
220 person required to pay the tax is an enrolled member of the Navajo Nation; and

221 (iii) the commission and the Navajo Nation execute and maintain an agreement as  
222 provided in this Subsection (11) for the administration of the reduction of tax.

223 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this  
224 section:

225 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that



226 difference is greater than \$0; and

227 (B) a person may not require the state to provide a refund, a credit, or similar tax relief  
228 if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

229 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference  
230 between:

231 (A) the amount of tax imposed on the special fuel by this section; less

232 (B) the tax imposed and collected by the Navajo Nation on the special fuel.

233 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on  
234 the special fuel does not include any interest or penalties a taxpayer may be required to pay to  
235 the Navajo Nation.

236 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
237 commission shall make rules governing the procedures for administering the reduction of tax  
238 provided under this Subsection (11).

239 (e) The agreement required under Subsection (11)(a):

240 (i) may not:

241 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

242 (B) provide a reduction of taxes greater than or different from the reduction described  
243 in this Subsection (11); or

244 (C) affect the power of the state to establish rates of taxation;

245 (ii) shall:

246 (A) be in writing;

247 (B) be signed by:

248 (I) the chair of the commission or the chair's designee; and

249 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;

250 (C) be conditioned on obtaining any approval required by federal law;

251 (D) state the effective date of the agreement; and

252 (E) state any accommodation the Navajo Nation makes related to the construction and  
253 maintenance of state highways and other infrastructure within the Utah portion of the Navajo

254 Nation; and

255 (iii) may:

256 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the

257 Navajo Nation information that is:

258 (I) contained in a document filed with the commission; and

259 (II) related to the tax imposed under this section;

260 (B) provide for maintaining records by the commission or the Navajo Nation; or

261 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers

262 located or doing business within the Utah portion of the Navajo Nation.

263 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax

264 imposed on special fuel, any change in the amount of the reduction of taxes under this

265 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the

266 calendar quarter after a 60-day period beginning on the date the commission receives notice:

267 (A) from the Navajo Nation; and

268 (B) meeting the requirements of Subsection (11)(f)(ii).

269 (ii) The notice described in Subsection (11)(f)(i) shall state:

270 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on

271 special fuel;

272 (B) the effective date of the rate change of the tax described in Subsection

273 (11)(f)(ii)(A); and

274 (C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

275 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not

276 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a

277 30-day period beginning on the day the agreement terminates.

278 (h) If there is a conflict between this Subsection (11) and the agreement required by

279 Subsection (11)(a), this Subsection (11) governs.

280 (12) (a) Beginning on January 1, 2009, a tax imposed under this section on compressed

281 natural gas is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be

282 increased or decreased proportionately with any increase or decrease in the rate in Subsection  
283 59-13-201(1)(a).

284 (b) Beginning on July 1, 2011, a tax imposed under this section on liquified natural gas  
285 is imposed at a reduced rate of 8-1/2 cents per gasoline gallon equivalent to be increased or  
286 decreased proportionately with any increase or decrease in the rate in Subsection  
287 59-13-201(1)(a).