

**AVIATION FUEL TAX AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

AN ACT RELATING TO THE MOTOR AND SPECIAL FUEL TAX ACT; INCREASING THE AVIATION FUEL TAX; CHANGING THE ALLOCATION OF AVIATION FUEL TAX REVENUE; DEFINING AVIATION FUEL DISTRIBUTOR AND FEDERALLY CERTIFICATED AIR CARRIER; MODIFYING BONDING REQUIREMENTS FOR AVIATION FUEL DISTRIBUTORS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**59-13-102**, as last amended by Chapter 271, Laws of Utah 1997

**59-13-401**, as enacted by Chapter 6, Laws of Utah 1987

**59-13-402**, as enacted by Chapters 6 and 187, Laws of Utah 1987

**59-13-403**, as last amended by Chapter 145, Laws of Utah 1989

*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:

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

(2) "Clean fuel" means:

(a) the following special fuels:

(i) propane;

(ii) compressed natural gas; or

(iii) electricity; or

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

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

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

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

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

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

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

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

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

(i) federally certificated air carriers; and

(ii) other persons.

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

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

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

[~~(8)~~] (9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is generally used in an engine or motor for the generation of power, including aviation fuel, clean fuel,

diesel fuel, motor fuel, and special fuel.

~~[(9)]~~ (10) "Highway" means every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel notwithstanding that the way or place may be temporarily closed for the purpose of construction, maintenance, or repair.

~~[(10)]~~ (11) "Motor fuel" means fuel that is commonly or commercially known or sold as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

~~[(11)]~~ (12) "Motor fuels received" means:

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

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

~~[(12)]~~ (13) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used, designed, or maintained for transportation of persons or property which:

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

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

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

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

~~[(13)]~~ (14) "Rack," as used in Part 3, means a deck, platform, or open bay which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a refinery or terminal into a motor vehicle, rail car, or vessel.

~~[(14)]~~ (15) "Removal," as used in Part 3, means the physical transfer of diesel fuel from a

production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal does not include:

- (a) loss by evaporation or destruction; or
- (b) transfers between refineries, racks, or terminals.

~~[(15)]~~ (16) (a) "Special fuel" means any fuel regardless of name or character that:

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

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

(b) Special fuel includes ~~[those]~~:

(i) fuels that are not conveniently measurable on a gallonage basis~~[-]; and~~

~~[(b)]~~ (ii) ~~["Special fuel" includes]~~ diesel fuel.

~~[(16)]~~ (17) "Supplier," as used in Part 3, means a person who:

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

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

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

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

~~[(17)]~~ (18) "Terminal," as used in Part 3, means a facility for the storage of diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.

~~[(18)]~~ (19) "Two party exchange" means a transaction in which special fuel is transferred between licensed suppliers pursuant to an exchange agreement.

~~[(19)]~~ (20) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations.

~~[(20)]~~ (21) "Use," as used in Part 3, means the consumption of special fuel for the operation or propulsion of a motor vehicle upon the public highways of the state and includes the reception of

special fuel into the fuel supply tank of a motor vehicle.

~~[(21)]~~ (22) "User," as used in Part 3, means any person who uses special fuel within this state in an engine or motor for the generation of power to operate or propel a motor vehicle upon the public highways of the state.

Section 2. Section **59-13-401** is amended to read:

**59-13-401. Aviation fuel tax -- Rate.**

(1) A tax is imposed [at the rate] upon aviation fuel at the rates provided in this section.

(2) Except as provided by Subsection (3) the tax on aviation fuel shall be:

(a) beginning July 1, 1999, six cents per gallon;

(b) beginning July 1, 2000, eight cents per gallon; and

(c) beginning July 1, 2001, nine cents per gallon.

(3) Aviation fuel purchased for use by a federally certificated air carrier is subject to a tax of four cents per gallon [upon all aviation fuel].

Section 3. Section **59-13-402** is amended to read:

**59-13-402. Revenue from taxes deposited with treasurer -- Credit to Aeronautics Restricted Account -- Purposes for which funds may be used -- Allocation of funds -- Reports -- Returns required.**

(1) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer who shall credit all of the revenue collected to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the aviation fuel tax.

(c) Refunds to which taxpayers are entitled under this part shall be paid from the Transportation Fund.

(2) The state treasurer shall place an amount equal to the total amount received from the sale or use of aviation fuel in the Transportation Fund's Restricted Revenue Account for aeronautical operations of the Department of Transportation for:

(a) the construction, improvement, operation, and maintenance of publicly used airports in

this state and the payment of principal and interest on indebtedness incurred for those purposes;

(b) the promotion of aeronautics in this state; and

(c) the payment of the costs and expenses of the Department of Transportation in administering this part or other law conferring upon it the duty of regulating and supervising aeronautics in this state.

~~[(3) Seventy-five percent of the aviation fuel tax collected on fuel sold at each airport shall be paid to that airport for its use under Subsection (2). All amounts collected on fuel sold at airports owned and operated by cities of the first class shall be paid to the city treasurer on the first day of each month and used for airport use at the discretion of the governing authority of the city.]~~

~~[(4) The remaining 25% shall be expended as the aeronautical operations of the Department of Transportation may determine under Subsection (2).]~~

(3) The tax imposed on each gallon of aviation fuel under Section 59-13-401 shall be allocated to the airport where the aviation fuel was sold and to aeronautical operations of the Department of Transportation as follows:

	<u>Total</u>	<u>Allocation to</u>	<u>Allocation to</u>
	<u>Tax</u>	<u>Airport</u>	<u>Aeronautical</u>
			<u>Operations</u>
<u>Tax on Each Gallon of Aviation Fuel Purchased</u>			
<u>for Use by a Federally Certificated Air Carrier</u>	<u>\$.04</u>	<u>\$.03</u>	<u>\$.01</u>
<u>Tax on Each Gallon of Aviation Fuel Purchased</u>			
<u>for Use by a Person Other than a</u>			
<u>Federally Certificated Air Carrier at the Salt Lake International Airport</u>			
<u>beginning July 1, 1999</u>	<u>\$.06</u>	<u>\$.02</u>	<u>\$.04</u>
<u>beginning July 1, 2000</u>	<u>\$.08</u>	<u>\$.01</u>	<u>\$.07</u>
<u>beginning July 1, 2001</u>	<u>\$.09</u>	<u>\$.00</u>	<u>\$.09</u>
<u>Tax on Each Gallon of Aviation Fuel Purchased</u>			
<u>for Use by a Person Other than a</u>			
<u>Federally Certificated Air Carrier Other than at the Salt Lake International Airport</u>			

<u>beginning July 1, 1999</u>	<u>\$.06</u>	<u>\$.03</u>	<u>\$.03</u>
<u>beginning July 1, 2000</u>	<u>\$.08</u>	<u>\$.03</u>	<u>\$.05</u>
<u>beginning July 1, 2001</u>	<u>\$.09</u>	<u>\$.03</u>	<u>\$.06</u>

(a) The allocation to the publicly used airport may be used at the discretion of the airport's governing authority for the purposes specified in Subsection (2)(a).

(b) Upon appropriation by the Legislature, the allocation to aeronautical operations of the Department of Transportation shall be used as provided in Subsection (2).

~~[(5)]~~ (4) (a) The commission shall require reports and returns from distributors, retail dealers, and users in order to enable the commission and the Department of Transportation to allocate the revenue to be credited to the Transportation Fund's Restricted Revenue Account for the aeronautical ~~[operation]~~ operations of that department and the separate accounts of individual airports. ~~[Any]~~

(b) (i) Except as provided by Subsection (4)(b)(ii), any unexpended amount remaining in the account of any publicly used airport on the first day of January, April, July, and October shall be paid to the authority operating the airport [and used to defray operating expenses of the airport].

(ii) Aviation fuel tax allocated to any airport owned and operated by a city of the first class shall be paid to the city treasurer on the first day of each month.

(c) The state treasurer shall place [the remainder] aviation fuel tax collected on fuel sold at places other than publicly used airports in the Transportation Fund's Restricted Revenue Account for the aeronautical operations of the Department of Transportation.

Section 4. Section **59-13-403** is amended to read:

**59-13-403. Administration and penalties -- Bond requirements.**

(1) All administrative and penalty provisions of Part 2, Motor Fuel, apply to the administration of Part 4, Aviation Fuel.

(2) (a) Notwithstanding Subsection (1) and Subsection 59-13-203(3), [the bond requirement for aviation fuel distributors whose tax liability averages \$500 or less per month during the preceding six months is \$2,000:] and except as provided in Subsection (2)(b), the bond may not be less than \$2,000.

(b) A distributor is not required to furnish a bond if the distributor:

(i) meets the definition of distributor under Subsection 59-13-102(5)(d); and

(ii) has an average tax liability of \$500 or less per month.

**Section 5. Effective date.**

This act takes effect on July 1, 1999.