

1 **MOTOR AND SPECIAL FUEL TAX -**
2 **APPLICATION TO THE UINTAH AND OURAY**
3 **RESERVATION**

4 2000 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Beverly Ann Evans**

7 AN ACT RELATING TO REVENUE AND TAXATION; ADDRESSING REQUIRED PASS
8 THROUGH OF MOTOR FUEL TAXES; PROVIDING REFUNDS RELATED TO IMPACTS
9 OF MOTOR OR SPECIAL FUELS ON THE UTE TRIBE AND ITS MEMBERS; PROVIDING
10 FOR DEPENDENT ENACTMENT; AND MAKING TECHNICAL CHANGES.

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

12 AMENDS:

13 **59-13-102**, as last amended by Chapter 179, Laws of Utah 1999

14 **59-13-204**, as enacted by Chapter 6, Laws of Utah 1987

15 ENACTS:

16 **59-13-201.5**, Utah Code Annotated 1953

17 **59-13-301.5**, Utah Code Annotated 1953

18 This act enacts uncodified material.

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

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

21 **59-13-102. Definitions.**

22 As used in this chapter:

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

25 (2) "Clean fuel" means:

26 (a) the following special fuels:

27 (i) propane;

- 28 (ii) compressed natural gas; or
- 29 (iii) electricity; or
- 30 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal clean
- 31 Air Act Amendments of 1990, Title II.
- 32 (3) "Commission" means the State Tax Commission.
- 33 (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known, offered
- 34 for sale, or used as a fuel in diesel engines.
- 35 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be
- 36 known or sold, when the liquid is used in an internal combustion engine for the generation of
- 37 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to
- 38 the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.
- 39 (5) "Distributor" means any person in this state who:
- 40 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at
- 41 retail or wholesale;
- 42 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,
- 43 distribution, or sale in this state;
- 44 (c) is engaged in the business of purchasing motor fuel for resale in wholesale quantities
- 45 to retail dealers of motor fuel and who accounts for his own motor fuel tax liability; or
- 46 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:
- 47 (i) federally certificated air carriers; and
- 48 (ii) other persons.
- 49 (6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec.
- 50 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations
- 51 and that is considered destined for nontaxable off-highway use.
- 52 (7) "Exchange agreement" means an agreement between licensed suppliers where one is
- 53 a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier or
- 54 the other supplier's customer at the loading rack of the terminal where the delivering supplier holds
- 55 an inventory position.
- 56 (8) "Federally certificated air carrier" means a person who holds a certificate issued by the
- 57 Federal Aviation Administration authorizing the person to conduct an all-cargo operation or
- 58 scheduled operation, as defined in 14 C.F.R. Sec. 119.3.

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

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

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

67 (12) "Motor fuels received" means:

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

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

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

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

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

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

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

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

88 (15) "Removal," as used in Part 3, means the physical transfer of diesel fuel from a
89 production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal

90 does not include:

91 (a) loss by evaporation or destruction; or

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

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

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

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

97 (b) Special fuel includes:

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

99 (ii) diesel fuel.

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

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

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

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

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

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

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

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

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

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

- 121 (23) "Ute tribal member" means an enrolled member of the Ute tribe.
- 122 (24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- 123 (25) "Ute trust land" means the lands:
- 124 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for the
- 125 benefit of:
- 126 (i) the Ute tribe;
- 127 (ii) an individual; or
- 128 (iii) a group of individuals; or
- 129 (b) specified as trust land by agreement between the governor and the Ute tribe meeting
- 130 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).
- 131 Section 2. Section **59-13-201.5** is enacted to read:
- 132 **59-13-201.5. Refund of taxes impacting Ute tribe and Ute tribal members.**
- 133 (1) In accordance with this section, the Ute tribe may receive a refund from the state of
- 134 amounts paid to a distributor for taxes imposed on the distributor in accordance with Section
- 135 59-13-204 if:
- 136 (a) the motor fuel is purchased from a licensed distributor;
- 137 (b) the Ute tribe pays the distributor as provided in Section 59-13-204;
- 138 (c) the motor fuel is purchased for use by:
- 139 (i) the Ute tribe; or
- 140 (ii) a Ute tribal member from a retail station:
- 141 (A) wholly owned by the Ute tribe; and
- 142 (B) that is located on Ute trust land; and
- 143 (d) the governor and the Ute tribe execute and maintain an agreement meeting the
- 144 requirements of Subsection (3).
- 145 (2) (a) In addition to the agreement required by Subsection (1), the commission shall enter
- 146 into an agreement with the Ute tribe that:
- 147 (i) provides an allocation formula or procedure for determining:
- 148 (A) the amount of motor fuel sold by the Ute tribe to a Ute tribal member; and
- 149 (B) the amount of motor fuel sold by the Ute tribe to a person who is not a Ute tribal
- 150 member; and
- 151 (ii) provides a process by which:

152 (A) the Ute tribe obtains a refund permitted by this section; and
 153 (B) reports and remits motor fuel tax to the state for sales made to persons who are not Ute
 154 tribal members.

155 (3) The agreement required under Subsection (1):

156 (a) may not:

157 (i) authorize the state to impose a tax in addition to a tax imposed under this chapter; or

158 (ii) provide a refund, credit, or similar tax relief that is greater or different than the refund
 159 permitted under this section;

160 (iii) affect the power of the state to establish rates of taxation; and

161 (b) shall:

162 (i) provide that the state agrees to allow the refund described in this section;

163 (ii) be in writing;

164 (iii) be signed by:

165 (A) the governor; and

166 (B) the chair of the Business Committee of the Ute tribe;

167 (iv) be conditioned on obtaining any approval required by federal law; and

168 (v) state the effective date of the agreement.

169 (4) (a) The governor shall report to the commission by no later than February 1 of each
 170 year as whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

171 (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the
 172 refund permitted under this section is not allowed beginning the January 1 following the date the
 173 agreement terminates.

174 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 175 commission may make rules regarding the procedures for seeking a refund agreed to under the
 176 agreement described in Subsection (2).

177 Section 3. Section **59-13-204** is amended to read:

178 **59-13-204. Distributors liable for tax -- Computations -- Exceptions -- Assumption**
 179 **of liability statements -- Motor fuel received -- Tax to be added to price of motor fuel.**

180 (1) Distributors licensed under this part who receive motor fuel are liable for the tax as
 181 provided by this part, and shall report the receipt of the motor fuel to the commission and pay the
 182 tax as prescribed.

183 (2) (a) Distributors shall compute the tax on the total taxable amount of motor fuel
184 produced, purchased, received, imported, or refined in this state, and all distributors shipping
185 motor fuels into this state shall compute the tax on the total taxable amount of motor fuels received
186 for sale or use in this state.

187 (b) All motor fuel distributed by any distributor to the distributor's branches within this
188 state is considered to be sold at the time of this distribution and is subject to this part as if actually
189 sold.

190 (c) Distributors licensed under this part may sell motor fuel to other licensed distributors
191 without the payment or collection of the tax, if the purchasing distributor furnishes the seller with
192 an assumption of liability statement indicating the purchasing distributor is a licensed and bonded
193 Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel
194 purchased from the seller. The seller shall report each sale to the commission in a monthly report
195 of sales as provided under Section 59-13-206.

196 (3) If motor fuels have been purchased outside of this state and brought into this state in
197 original packages from a distributor for the use of the consumer, then the tax shall be imposed
198 when the motor fuel is received.

199 (4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes
200 levied and assessed by this part to the price of the motor fuels. [~~This provision~~]

201 (b) This Subsection (4) in no way affects the method of the collection of the taxes as
202 specified in this part.

203 (c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under Section
204 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and assessed by this
205 part to the price of motor fuel that is purchased:

206 (i) by a Ute tribal member; and

207 (ii) at a retail station:

208 (A) wholly owned by the Ute tribe; and

209 (B) located on Ute trust land.

210 Section 4. Section **59-13-301.5** is enacted to read:

211 **59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.**

212 (1) In accordance with this section, the Ute tribe may receive a refund from the state of
213 amounts paid in accordance with Section 59-13-301 if:

214 (a) the amounts paid by the Ute tribe when it purchases the special fuel includes the
215 amount paid in taxes on the special fuel;

216 (b) the special fuel is purchased for use by:

217 (i) the Ute tribe; or

218 (ii) a Ute tribal member from a retail station that is:

219 (A) wholly owned by the Ute tribe; and

220 (B) located on Ute trust land; and

221 (d) the governor and the Ute tribe execute and maintain an agreement meeting the
222 requirements of Subsection (3).

223 (2) (a) In addition to the agreement required by Subsection (1), the commission shall enter
224 into an agreement with the Ute tribe that:

225 (i) provides an allocation formula or procedure for determining:

226 (A) the amount of special fuel sold by the Ute tribe to a Ute tribal member; and

227 (B) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal
228 member; and

229 (ii) provides a process by which:

230 (A) the Ute tribe obtains a refund permitted by this section; and

231 (B) reports and remits special fuel tax to the state for sales made to persons who are not
232 Ute tribal members.

233 (3) The agreement required under Subsection (1):

234 (a) may not:

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

236 (ii) provide a refund, credit, or similar tax relief that is greater or different than the refund
237 permitted under this section; or

238 (iii) affect the power of the state to establish rates of taxation; and

239 (b) shall:

240 (i) provide that the state agrees to allow the refund described in this section;

241 (ii) be in writing;

242 (iii) be signed by:

243 (A) the governor; and

244 (B) the chair of the Business Committee of the Ute tribe;

- 245 (iv) be conditioned on obtaining any approval required by federal law; and
246 (v) state the effective date of the agreement.
247 (4) (a) The governor shall report to the commission by no later than February 1 of each
248 year as whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
249 (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the
250 refund permitted under this section is not allowed beginning the January 1 following the date the
251 agreement terminates.
252 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
253 commission may make rules regarding the procedures for seeking a refund agreed to under the
254 agreement described in Subsection (2).
255 **Section 5. Dependent Enactment.**
256 It is the intent of the Legislature that if S.B. 181, Income Taxes - Application to the Uintah
257 and Ouray Reservation, is not also passed by this Legislature, the enacting clause of this S.B. 213
258 is struck and the provisions of this S.B. 213 not be given effect.

Legislative Review Note
as of 2-8-00 1:47 PM

This legislation raises the following constitutional or statutory concerns:

This bill amends tax provisions to reflect specific negotiations with the Ute Indian Tribe of the Uintah and Ouray Reservation. Under the federal and state constitutions, there are some limits on a legislature's ability to legislate on the basis of classifications if those classifications are improperly narrow. A court may find that the tribe-specific classification in this legislation may be permissible because it is consistent with the government-to-government relationship between the state and tribes.

Office of Legislative Research and General Counsel