

1 **NAVAJO NATION - MOTOR AND SPECIAL**

2 **FUEL TAXES**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

6 **This act modifies the Revenue and Tax Code to provide for a reduction of motor and special**
7 **fuel taxes if the motor or special fuel is taxed by the Navajo Nation and to make technical**
8 **changes. The act authorizes agreements with the Navajo Nation related to administration**
9 **of motor and special fuels taxes. The act has an immediate effective date. The act provides**
10 **instructions for enrolling if the act does not pass by the necessary vote to have an immediate**
11 **effective date.**

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

13 AMENDS:

14 **59-13-201**, as last amended by Chapter 283, Laws of Utah 1999

15 **59-13-204**, as last amended by Chapter 258, Laws of Utah 2000

16 **59-13-301**, as last amended by Chapter 86, Laws of Utah 2000

17 This act enacts uncodified material.

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

19 Section 1. Section **59-13-201** is amended to read:

20 **59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the**
21 **Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax.**

22 (1) (a) A tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is
23 sold, used, or received for sale or used in this state.

24 (b) A tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a),
25 rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in
26 Section 59-13-102 and are sold, used, or received for sale or use in this state.

27 (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state

28 or sold at refineries in the state on or after the effective date of the rate change.

29 (3) (a) No tax is imposed upon:

30 (i) motor fuel that is brought into and sold in this state in original packages as purely
31 interstate commerce sales;

32 (ii) motor fuel that is exported from this state if proof of actual exportation on forms
33 prescribed by the commission is made within 180 days after exportation;

34 (iii) motor fuel or components of motor fuel that is sold and used in this state and distilled
35 from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or

36 (iv) motor fuel that is sold to the United States government, this state, or the political
37 subdivisions of this state where sale and delivery is made in quantities of 750 gallons or more.

38 (b) For purposes of this subsection, the state and its political subdivisions may make
39 collective purchases for purposes of meeting the 750 gallon requirement, and the state and political
40 subdivisions may provide for this purchase in any manner approved by the commission.

41 (4) The commission may either collect no tax on motor fuel exported from the state or,
42 upon application, refund the tax paid.

43 (5) (a) All revenue received by the commission under this part shall be deposited daily
44 with the state treasurer and credited to the Transportation Fund.

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

48 (6) (a) The commission shall determine what amount of motor fuel tax revenue is received
49 from the sale or use of motor fuel used in motorboats registered under the provisions of the State
50 Boating Act, and this amount shall be deposited in a restricted revenue account in the General
51 Fund of the state.

52 (b) The funds from this account shall be used for the construction, improvement,
53 operation, and maintenance of state-owned boating facilities and for the payment of the costs and
54 expenses of the Division of Parks and Recreation in administering and enforcing the State Boating
55 Act.

56 (7) (a) The United States government or any of its instrumentalities, this state, or a political
57 subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail
58 dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled

59 to a refund of the tax and may file with the commission for a quarterly refund.

60 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
61 commission shall make rules governing the application and refund provided for in Subsection
62 (7)(a).

63 (8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in
64 the General Fund an amount equal to the lesser of the following:

65 (i) .5% of the motor fuel tax revenues collected under this section; or

66 (ii) \$850,000.

67 (b) This amount shall be used as provided in Section 41-22-19.

68 (c) This Subsection (8) sunsets on July 1, 2010.

69 (9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is
70 sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection
71 (9)(b) if:

72 (i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel
73 is paid to the Navajo Nation;

74 (ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not
75 the person required to pay the tax is an enrolled member of the Navajo Nation; and

76 (iii) the commission and the Navajo Nation execute and maintain an agreement as
77 provided in this Subsection (9) for the administration of the reduction of tax.

78 (b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

79 (A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that difference
80 is greater than \$0; and

81 (B) a person may not require the state to provide a refund, a credit, or similar tax relief if
82 the difference described in Subsection (9)(b)(ii) is less than or equal to \$0.

83 (ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

84 (A) the amount of tax imposed on the motor fuel by this section; less

85 (B) the tax imposed and collected by the Navajo Nation on the motor fuel.

86 (c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a
87 tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor
88 fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo
89 Nation.

90 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
91 commission shall make rules governing the procedures for administering the reduction of tax
92 provided under this Subsection (9).

93 (e) The agreement required under Subsection (9)(a):

94 (i) may not:

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

96 (B) provide a reduction of taxes greater than or different from the reduction described in
97 this Subsection (9); or

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

99 (ii) shall:

100 (A) be in writing;

101 (B) be signed by:

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

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

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

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

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

108 Nation; and

109 (iii) may:

110 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo
111 Nation information that is:

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

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

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

115 (C) provide for inspections or audits of distributors, carriers, or retailers located or doing
116 business within the Utah portion of the Navajo Nation.

117 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed
118 on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the
119 change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period
120 beginning on the date the commission receives notice:

- 121 (A) from the Navajo Nation; and
122 (B) meeting the requirements of Subsection (9)(f)(ii).
123 (ii) The notice described in Subsection (9)(f)(i) shall state:
124 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
125 motor fuel;
126 (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A);
127 and
128 (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).
129 (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not
130 permitted under this Subsection (9) beginning on the first day of the calender quarter after a 30-day
131 period beginning on the day the agreement terminates.
132 (h) If there is a conflict between this Subsection (9) and the agreement required by
133 Subsection (9)(a), this Subsection (9) governs.

134 Section 2. Section **59-13-204** is amended to read:

135 **59-13-204. Distributors liable for tax -- Computations -- Exceptions -- Assumption**
136 **of liability statements -- Motor fuel received -- Tax to be added to price of motor fuel.**

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

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

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

147 (c) Distributors licensed under this part may sell motor fuel to other licensed distributors
148 without the payment or collection of the tax, if the purchasing distributor furnishes the seller with
149 an assumption of liability statement indicating the purchasing distributor is a licensed and bonded
150 Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel
151 purchased from the seller. The seller shall report each sale to the commission in a monthly report

152 of sales as provided under Section 59-13-206.

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

156 (4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes
157 levied and assessed by this part to the price of the motor fuels.

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

160 (c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under Section
161 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and assessed by this
162 part to the price of motor fuel that is purchased:

163 (i) by a Ute tribal member; and

164 (ii) at a retail station:

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

166 (B) located on Ute trust land.

167 (d) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this part
168 do not include the amount of the reduction of tax under Subsection 59-3-201(9).

169 Section 3. Section **59-13-301** is amended to read:

170 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and**
171 **credited to Transportation Fund -- Reduction of tax.**

172 (1) (a) Except as provided in Subsections (2) [~~and~~], (3), and (11) and Section 59-13-304,
173 a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

174 (i) removal of undyed diesel fuel from any refinery;

175 (ii) removal of undyed diesel fuel from any terminal;

176 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or
177 warehousing;

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

180 (v) any untaxed special fuel blended with undyed diesel fuel; or

181 (vi) use of untaxed special fuel, other than a clean special fuel.

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

- 183 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:
184 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the
185 public highways of the state, but this exemption applies only in those cases where the purchasers
186 or the users of special fuel establish to the satisfaction of the commission that the special fuel was
187 used for purposes other than to operate a motor vehicle upon the public highways of the state; or
188 (ii) is sold to this state or any of its political subdivisions.
- 189 (b) No special fuel tax is imposed on undyed diesel fuel which:
190 (i) is sold to the United States government or any of its instrumentalities or to this state
191 or any of its political subdivisions;
192 (ii) is exported from this state if proof of actual exportation on forms prescribed by the
193 commission is made within 180 days after exportation;
194 (iii) is used in a vehicle off-highway;
195 (iv) is used to operate a power take-off unit of a vehicle;
196 (v) is used for off-highway agricultural uses;
197 (vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle upon
198 the highways of the state; or
199 (vii) is used in machinery and equipment not registered and not required to be registered
200 for highway use.
- 201 (3) No tax is imposed or collected on special fuel if it is:
202 (a) purchased for business use in machinery and equipment not registered and not required
203 to be registered for highway use; and
204 (b) used pursuant to the conditions of a state implementation plan approved under Title
205 19, Chapter 2, Air Conservation Act.
- 206 (4) Upon request of a buyer meeting the requirements under Subsection (3), the Division
207 of Air Quality shall issue an exemption certificate that may be shown to a seller.
- 208 (5) The special fuel tax shall be paid by the supplier.
- 209 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
210 59-13-303 and 59-13-305 to obtain a special fuel permit and file special fuel tax reports.
211 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases
212 which are delivered into vehicles and for which special fuel tax liability is reported.
- 213 (7) (a) All revenue received by the commission from taxes and license fees under this part

214 shall be deposited daily with the state treasurer and credited to the Transportation Fund.

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

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

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

225 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
226 commission shall make rules governing the application and refund provided for in Subsection
227 (9)(a).

228 (10) (a) The purchaser shall pay the tax on diesel fuel purchased for uses under
229 Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as
230 provided in Subsections (9) and (10).

231 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
232 commission shall make rules governing the application and refund for off-highway and
233 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

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

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

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

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

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

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

- 245 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that
246 difference is greater than \$0; and
- 247 (B) a person may not require the state to provide a refund, a credit, or similar tax relief if
248 the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.
- 249 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:
- 250 (A) the amount of tax imposed on the special fuel by this section; less
251 (B) the tax imposed and collected by the Navajo Nation on the special fuel.
- 252 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the
253 special fuel does not include any interest or penalties a taxpayer may be required to pay to the
254 Navajo Nation.
- 255 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
256 commission shall make rules governing the procedures for administering the reduction of tax
257 provided under this Subsection (11).
- 258 (e) The agreement required under Subsection (11)(a):
- 259 (i) may not:
- 260 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
261 (B) provide a reduction of taxes greater than or different from the reduction described in
262 this Subsection (11); or
- 263 (C) affect the power of the state to establish rates of taxation;
- 264 (ii) shall:
- 265 (A) be in writing;
266 (B) be signed by:
- 267 (I) the chair of the commission or the chair's designee; and
268 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;
- 269 (C) be conditioned on obtaining any approval required by federal law;
270 (D) state the effective date of the agreement; and
271 (E) state any accommodation the Navajo Nation makes related to the construction and
272 maintenance of state highways and other infrastructure within the Utah portion of the Navajo
273 Nation; and
- 274 (iii) may:
- 275 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo

276 Nation information that is:

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

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

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

280 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located
281 or doing business within the Utah portion of the Navajo Nation.

282 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed
283 on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as
284 a result of the change in the tax rate is not effective until the first day of the calendar quarter after
285 a 60-day period beginning on the date the commission receives notice:

286 (A) from the Navajo Nation; and

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

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

289 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
290 special fuel;

291 (B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A);

292 and

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

294 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
295 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
296 30-day period beginning on the day the agreement terminates.

297 (h) If there is a conflict between this Subsection (11) and the agreement required by
298 Subsection (11)(a), this Subsection (11) governs.

299 **Section 4. Effective date.**

300 If approved by two-thirds of all the members elected to each house, this act takes effect
301 upon approval by the governor, or the day following the constitutional time limit of Utah
302 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
303 date of veto override.

304 **Section 5. Enrolling.**

305 If this bill is passed by the Legislature but is not approved by two-thirds of all the members
306 elected to each house, it is the intent of the Legislature that in enrolling this bill the Office of

307 Legislative Research and General Counsel change the date of "April 1, 2001" to "May 1, 2001"
308 in Subsection 59-13-201(9) and Subsection 59-13-301(11).

Legislative Review Note
as of 11-8-00 12:11 PM

This legislation raises the following constitutional or statutory concerns:

This bill amends tax provisions to reflect specific negotiations with the Navajo Nation. 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

Committee Note

The Revenue and Taxation Interim Committee recommended this bill.