

CLEAN SPECIAL FUEL TAX CERTIFICATE

- EXEMPTION

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

This act modifies the Revenue and Taxation Code by clarifying that government vehicles are exempt from purchasing the clean special fuel tax certificate. This act makes technical corrections.

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

AMENDS:

59-13-301, as last amended by Chapter 232, Laws of Utah 2001

59-13-303, as last amended by Chapter 128, Laws of Utah 2002

59-13-304, as last amended by Chapter 287, Laws of Utah 2000

59-13-305, as last amended by Chapter 128, Laws of Utah 2002

59-13-314, as last amended by Chapter 271, Laws of Utah 1997

59-13-320, as last amended by Chapter 271, Laws of Utah 1997

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

Section 1. Section **59-13-301** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(b) No special fuel tax is imposed on undyed diesel fuel which:

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

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

(iii) is used in a vehicle off-highway;

(iv) is used to operate a power take-off unit of a vehicle;

(v) is used for off-highway agricultural uses;

(vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) is used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

(a) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(b) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.

(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) All revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited 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 special fuel tax.

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

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

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

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

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

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

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

- (i) the Navajo Nation imposes a tax on the special fuel;
- (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the person required to pay the tax is an enrolled member of the Navajo Nation; and
- (iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (11) for the administration of the reduction of tax.

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

(A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that difference is greater than \$0; and

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

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

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

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

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

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (11).

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

(i) may not:

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

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

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

(ii) shall:

(A) be in writing;

(B) be signed by:

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

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

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

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

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

(iii) may:

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

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

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

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

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

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

(A) from the Navajo Nation; and

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

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

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

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

and

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

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

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

Section 2. Section **59-13-303** is amended to read:

**59-13-303. Bond requirements -- Special fuel user permits -- Application --
Revocation of permits under certain circumstances.**

(1) The commission may require a user to furnish a bond.

(2) (a) Except as provided in Subsection (2)(b), each user shall, prior to the use of the fuel in a qualified motor vehicle, apply to the commission on forms prescribed by the commission for a special fuel user permit. When the application is approved by the commission, a single special fuel user permit shall be issued to the user.

(b) In place of the special fuel user permit issued under Subsection (2)(a), a user may purchase a special fuel user trip permit. A special fuel user trip permit is valid for 96 hours or until the qualified vehicle leaves the state, whichever occurs first.

(3) A special fuel user permit number shall be assigned to each licensed user and is nontransferable and valid until surrendered by the user for nonuse or until revoked by the commission.

(4) The special fuel user permit expires December 31 of each year. Special fuel user permits for the calendar year shall be honored until February 28 of the following year. An application shall be filed with the commission each year for a new special fuel user permit for vehicles operated by a licensed user.

(5) (a) The special fuel [~~vehicle~~] user permit shall be kept in the passenger compartment of each vehicle, or as otherwise authorized by the commission.

(b) A user that does not comply with the requirements of this section may be required to

purchase a special fuel user trip permit.

(6) The commission may revoke the special fuel user permit issued under this section from any person refusing or neglecting to comply with this part.

(7) Any user reporting Utah special fuel tax liability under Part 5, Interstate Agreements, is exempted from the permit requirements of this section.

Section 3. Section **59-13-304** is amended to read:

59-13-304. Exemptions from Special Fuel Tax -- Clean Special Fuel Tax -- Certificate required -- Fees for certificates -- Inspection of vehicles -- Exemptions.

(1) (a) [~~A~~] Except as provided in Subsection (4), a user of special fuel who owns a vehicle powered by a clean special fuel as defined under Section 59-13-102 shall pay a clean special fuel tax as provided under this section for use of clean special fuel.

(b) A user of special fuel who qualifies for the clean special fuel tax shall annually purchase from the commission a clean special fuel tax certificate for each vehicle owned or leased that is [~~described under Subsection (1)(a)~~] powered by a clean special fuel.

(c) Clean special fuel tax certificates are provided to encourage the use of clean fuels to reduce air pollution.

(2) (a) The fee for a clean special fuel tax certificate is:

(i) 70/.19 of the tax per gallon imposed under Subsection 59-13-201(1)(a), rounded up to the nearest dollar, for qualified motor vehicles as defined under Section 59-13-102; and

(ii) 36/.19 of the tax per gallon imposed under Subsection 59-13-201(1)(a), rounded up to the nearest dollar, for other vehicles.

(b) The commission may require each vehicle to be inspected for safe operation before issuing the certificate.

(c) Each vehicle shall be equipped with an approved and properly installed carburetion system if it is powered by a fuel that is gaseous at standard atmospheric conditions.

(3) (a) Beginning January 1, 2001 through December 31, 2005, there is imposed a surcharge of \$35 on each clean special fuel tax certificate issued under this section.

(b) Surcharges imposed under Subsection (3)(a) shall be deposited into the Centennial

Highway Fund created under Section 72-2-118.

(4) A governmental entity identified in Subsection 59-13-301(9) that owns or leases a vehicle powered by a special fuel that qualifies as a clean special fuel is exempt from the clean special fuel tax imposed under this section.

Section 4. Section **59-13-305** is amended to read:

59-13-305. User report required -- Contents of report -- Signature -- Penalties -- Exemptions from requirements -- Change of exemption status -- Duty to notify commission.

(1) Unless exempted by Subsection (5), each user shall file with the commission, on or before the last day of the month following the end of a reporting period, a report on forms prescribed by the commission showing:

(a) the amount of fuel purchased and the amount of fuel used during the preceding reporting period by that user in the state; and

(b) any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the user or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath.

(3) A penalty is imposed under Section 59-1-401 for failure to file reports as provided in this section for each report not filed, regardless of the imposition of other penalties under this part.

(4) (a) Each user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and has facilities for bulk storage of special fuels shall declare special fuel tax liability for any nonqualified motor vehicle on the user report required by Subsection (1).

(b) Credit shall be given on the report for any special fuel taxes paid on purchases for any nonqualified vehicle. Purchase records must be maintained to substantiate the amount of any credit claimed.

(5) (a) The following users are exempt from the filing requirements of Subsections (1) and (2) for the motor vehicles specified:

(i) a user who purchases a special fuel user trip permit for all of its operations for

qualified vehicles for the reporting period, except a user having a special fuel user permit under Subsection 59-13-303(2)(a);

(ii) a user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and does not have facilities for bulk storage of special fuels;

(iii) a user of special fuel, for which the tax imposed by this chapter has already been paid; or

(iv) a user that has a motor vehicle powered by special fuel for which the tax is paid under an interstate fuel tax agreement under Section 59-13-502.

(b) (i) The exemption under Subsection (5)(a)(iii) applies only when the user retains records verifying that all special fuel purchases for the exempt vehicle were taxed as required under this part.

(ii) The commission may at the time of application or renewal of a special fuel user permit under Section 59-13-303 require that the user certify:

(A) that the user qualifies for an exemption under Subsection (5)(a)(iii); and

(B) whether the user has facilities for bulk storage of special fuel.

(c) A user of a motor vehicle that qualifies for an exemption under Subsections (5)(a)(ii) and (iii) is also exempt from the requirements of Subsection 59-13-303(1) for that motor vehicle.

Section 5. Section **59-13-314** is amended to read:

59-13-314. Special fuel user permit required before registration of vehicle.

Before registering any motor vehicle which is operated by special fuels, the registered owner or lessee of the vehicle shall obtain:

(1) a valid special fuel [~~vehicle~~] user permit for the current year if required under Section 59-13-303; or

(2) a valid clean special fuel tax certificate [~~as provided by~~] for the current year if required under Section 59-13-304.

Section 6. Section **59-13-320** is amended to read:

59-13-320. Penalties for violations of the special fuel tax provisions.

(1) The following offenses, unless otherwise provided, are class B misdemeanors:

- (a) failing or refusing to pay the tax imposed by this part;
 - (b) engaging in business in this state as a supplier without being the holder of an uncanceled license to engage in this business;
 - (c) operating a motor vehicle, which requires special fuel, upon the highways of this state without a valid special fuel [~~vehicle~~] user permit;
 - (d) failing to make any of the reports required by this part;
 - (e) making any false statement in any application, report, or statement required by this part;
 - (f) refusing to permit the commission or any employee to examine records as provided by this part;
 - (g) failing to keep proper records of quantities of fuel received, produced, refined, manufactured, compounded, used, or delivered in this state as required by this part;
 - (h) making any false statement in connection with an application for the refund of any moneys or taxes provided in this part; or
 - (i) violating any of the provisions of this part for which no penalty is provided.
- (2) Any person required to make, render, sign, or verify any report and who makes any false or fraudulent report with intent to defeat or evade the assessment required by law to be made, is subject to a criminal violation under Section 59-1-401.
- (3) The remedies of the state are cumulative and no action taken by the commission or any of its officers to pursue any remedy may be construed to be an election on the part of the state to exclude any other allowed by law.