

1 **MOTOR AND SPECIAL FUEL TAX**
2 **AMENDMENTS**

3 2007 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Craig A. Frank**

6 Senate Sponsor: Wayne L. Niederhauser

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating
11 to refunds or credits of motor fuel and special fuel tax.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ authorizes the State Tax Commission to refund or credit motor fuel or special fuel
15 tax paid on motor fuel or special fuel that is mixed with dyed diesel fuel or special
16 fuel and is required to be re-refined;

17 ▶ provides that the claimant of a refund or credit has the burden of proof to establish a
18 claim for a refund or credit;

19 ▶ specifies the evidence that is necessary to receive a refund or credit; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill takes effect on July 1, 2007.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-13-202.5**, as last amended by Chapter 178, Laws of Utah 2003



28 **59-13-322**, as last amended by Chapter 178, Laws of Utah 2003



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

31 Section 1. Section **59-13-202.5** is amended to read:

32 **59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, discharge in**
33 **bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval --**
34 **Rulemaking -- Appeals -- Penalties.**

35 (1) (a) A retailer, wholesaler, or licensed distributor, who without fault, sustains a loss
36 or destruction of 8,000 or more gallons of motor fuel in a single incident due to fire, flood,
37 storm, accident, or the commission of a crime and who has paid or is required to pay the tax on
38 the motor fuel as provided by this part, is entitled to a refund or credit of the tax subject to the
39 conditions and limitations provided under this section.

40 (b) The claimant shall file a claim for a refund or credit with the commission within 90
41 days of the incident.

42 (c) Any part of a loss or destruction eligible for indemnification under an insurance
43 policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a
44 refund or credit under this section.

45 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
46 information outlined in this section upon request of the commission.

47 (e) The burden of proof of loss or destruction is on the claimant who shall provide
48 evidence of loss or destruction to the satisfaction of the commission.

49 (f) (i) The claim shall include an affidavit containing the:

- 50 (A) name of claimant;
- 51 (B) claimant's address;
- 52 (C) date, time, and location of the incident;
- 53 (D) cause of the incident;
- 54 (E) name of the investigating agencies at the scene;
- 55 (F) number of gallons actually lost from sale; and
- 56 (G) information on any insurance coverages related to the incident.

57 (ii) The claimant shall support the claim by submitting the original invoices or copy of
58 the original invoices.

59 (iii) This original claim and all information contained in it constitutes a permanent file
60 with the commission in the name of the claimant.

61 (2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on motor fuel
62 as provided by this part is entitled to a refund for taxes paid on that portion of an account that:

63 (i) relates to 4,500 or more gallons of motor fuel purchased in a single transaction for
64 which no payment has been received; and

65 (ii) has been discharged in a bankruptcy proceeding.

66 (b) The claimant shall file a claim for refund with the commission within 90 days from
67 the date of the discharge.

68 (c) Any claimant filing a claim for a refund shall furnish any or all of the information
69 outlined in this section upon request of the commission.

70 (d) The burden of proof of discharge is on the claimant who shall provide evidence of
71 discharge to the satisfaction of the commission.

72 (e) The claim shall include an affidavit containing the following:

73 (i) the name of the claimant;

74 (ii) the claimant's address;

75 (iii) the name of the debtor that received a discharge in bankruptcy; and

76 (iv) the portion of the account that is subject to an order granting a discharge.

77 (f) The claimant shall support the claim by submitting:

78 (i) the original invoices or a copy of the original invoices; and

79 (ii) a certified copy of the notice of discharge.

80 (g) This original claim and all information contained in it constitutes a permanent file
81 with the commission in the name of the claimant.

82 (h) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
83 commission shall promulgate rules for the allocation of the discharge under this Subsection (2)
84 to maximize the claimant's refund amount.

85 (3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, or
86 licensed distributor is entitled to a refund or credit of motor fuel tax if:

87 (i) dyed diesel fuel or special fuel is mixed with motor fuel; and

88 (ii) the retailer, wholesaler, or licensed distributor:

89 (A) returns the mixed motor fuel to the refinery for re-refining; and

90 (B) has paid or is required to pay the tax on the motor fuel as provided by this part.

91 (b) The claimant shall file a claim for a refund or credit with the commission within 90
92 days of the date the motor fuel was re-refined.

93 (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the
94 information outlined in this section upon request of the commission.

95 (d) The burden of proof of the re-refinement of the motor fuel is on the claimant who
96 shall provide evidence of re-refinement of the motor fuel to the satisfaction of the commission.

97 (e) (i) The claim shall include an affidavit containing the:

98 (A) name of claimant;

99 (B) claimant's address;

100 (C) date, time, and location of the incident;

101 (D) nature of the incident; and

102 (E) number of gallons actually required to be re-refined.

103 (ii) The claimant shall support the claim by submitting written verification from a
104 refinery that:

105 (A) the motor fuel mixed with the dyed diesel fuel or special fuel was re-refined; and

106 (B) motor fuel tax was paid on the re-refined motor fuel.

107 (iii) This original claim and all information contained in it constitutes a permanent file
108 with the commission in the name of the claimant.

109 ~~[(3)]~~ (4) (a) Upon commission approval of the claim for a refund, the commission shall
110 pay the amount found due to the claimant.

111 (b) The total amount of claims for refunds shall be paid from the Transportation Fund.

112 ~~[(4)]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
113 Act, the commission may:

114 (i) promulgate rules to enforce this part~~[-]~~; and ~~[may]~~

115 (ii) refuse to accept unsubstantiated evidence for the claim.

116 (b) If the commission is not satisfied with the evidence submitted in connection with
117 the claim, it may:

118 (i) reject the claim; or

119 (ii) require additional evidence.

120 ~~[(5)]~~ (6) Any person aggrieved by the decision of the commission with respect to a

121 refund or credit may file a request for agency action, requesting a hearing before the
122 commission.

123 ~~[(6)]~~ (7)(a) Any person who makes any false claim, report, or statement, either as
124 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
125 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
126 and the commission shall initiate the filing of a complaint for alleged violations of this part.

127 (b) In addition to ~~[these]~~ the penalties under Subsection (7)(a), the person may not
128 receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a
129 period of five years.

130 ~~[(7)]~~ (8) Any refund or credit made under this section does not affect any deduction
131 allowed under Section 59-13-207.

132 Section 2. Section **59-13-322** is amended to read:

133 **59-13-322. Refunds of tax due to fire, flood, storm, accident, crime, discharge in**
134 **bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval --**
135 **Rulemaking -- Appeals -- Penalties.**

136 (1) (a) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or
137 destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm,
138 accident, or the commission of a crime and who has paid or is required to pay the tax on the
139 special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the
140 conditions and limitations provided under this section.

141 (b) The claimant shall file a claim for a refund or credit with the commission within 90
142 days of the incident.

143 (c) Any part of a loss or destruction eligible for indemnification under an insurance
144 policy for the taxes paid or required on the loss or destruction of special fuel is not eligible for
145 a refund or credit under this section.

146 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
147 information outlined in this section upon request of the commission.

148 (e) The burden of proof of loss or destruction is on the claimant who shall provide
149 evidence of loss or destruction to the satisfaction of the commission.

150 (f) (i) The claim shall include an affidavit containing the:

151 (A) name of claimant;

- 152 (B) claimant's address;
- 153 (C) date, time, and location of the incident;
- 154 (D) cause of the incident;
- 155 (E) name of the investigating agencies at the scene;
- 156 (F) number of gallons actually lost from sale; and
- 157 (G) information on any insurance coverages related to the incident.
- 158 (ii) The claimant shall support the claim by submitting the original invoices or copy of
- 159 the original invoices.
- 160 (iii) This original claim and all information contained in it constitutes a permanent file
- 161 with the commission in the name of the claimant.
- 162 (2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on special
- 163 fuel as provided by this part is entitled to a refund for taxes paid on that portion of an account
- 164 that:
- 165 (i) relates to 4,500 or more gallons of special fuel purchased in a single transaction for
- 166 which no payment has been received; and
- 167 (ii) has been discharged in a bankruptcy proceeding.
- 168 (b) The claimant shall file a claim for refund with the commission within 90 days from
- 169 the date of the discharge.
- 170 (c) Any claimant filing a claim for a refund shall furnish any or all of the information
- 171 outlined in this section upon request of the commission.
- 172 (d) The burden of proof of discharge is on the claimant who shall provide evidence of
- 173 discharge to the satisfaction of the commission.
- 174 (e) The claim shall include an affidavit containing the following:
- 175 (i) the name of the claimant;
- 176 (ii) the claimant's address;
- 177 (iii) the name of the debtor that received a discharge in bankruptcy; and
- 178 (iv) the portion of the account that is subject to an order granting a discharge.
- 179 (f) The claimant shall support the claim by submitting:
- 180 (i) the original invoices or a copy of the original invoices; and
- 181 (ii) a certified copy of the notice of discharge.
- 182 (g) This original claim and all information contained in it constitutes a permanent file

183 with the commission in the name of the claimant.

184 (h) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
185 commission shall promulgate rules for the allocation of the discharge under this Subsection (2)
186 to maximize the claimant's refund amount.

187 (3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, or
188 licensed distributor is entitled to a refund or credit of special fuel tax if:

189 (i) dyed diesel fuel or special fuel is mixed with special fuel; and

190 (ii) the retailer, wholesaler, or licensed distributor:

191 (A) returns the mixed special fuel to the refinery for re-refining; and

192 (B) has paid or is required to pay the tax on the special fuel as provided by this part.

193 (b) The claimant shall file a claim for a refund or credit with the commission within 90
194 days of the date the special fuel was re-refined.

195 (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the
196 information outlined in this section upon request of the commission.

197 (d) The burden of proof of the re-refinement of the special fuel is on the claimant who
198 shall provide evidence of re-refinement of the special fuel to the satisfaction of the
199 commission.

200 (e) (i) The claim shall include an affidavit containing the:

201 (A) name of claimant;

202 (B) claimant's address;

203 (C) date, time, and location of the incident;

204 (D) nature of the incident; and

205 (E) number of gallons actually required to be re-refined.

206 (ii) The claimant shall support the claim by submitting written verification from a
207 refinery that:

208 (A) the special fuel mixed with the dyed diesel fuel or special fuel was re-refined; and

209 (B) special fuel tax was paid on the re-refined special fuel.

210 (iii) This original claim and all information contained in it constitutes a permanent file
211 with the commission in the name of the claimant.

212 [~~3~~] (4) (a) Upon commission approval of the claim for a refund, the commission shall
213 pay the amount found due to the claimant.

214 (b) The total amount of claims for refunds shall be paid from the Transportation Fund.
 215 [~~(4)~~] (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
 216 Act, the commission may:
 217 (i) promulgate rules to enforce this part[;]; and [may]
 218 (ii) refuse to accept unsubstantiated evidence for the claim.
 219 (b) If the commission is not satisfied with the evidence submitted in connection with
 220 the claim, it may:
 221 (i) reject the claim; or
 222 (ii) require additional evidence.
 223 [~~(5)~~] (6) Any person aggrieved by the decision of the commission with respect to a
 224 refund or credit may file a request for agency action, requesting a hearing before the
 225 commission.
 226 [~~(6)~~] (7) (a) Any person who makes any false claim, report, or statement, either as
 227 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
 228 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
 229 and the commission shall initiate the filing of a complaint for alleged violations of this part.
 230 (b) In addition to [~~these~~] the penalties under Subsection (7)(a), the person may not
 231 receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a
 232 period of five years.
 233 Section 3. **Effective date.**
 234 This bill takes effect on July 1, 2007.

Legislative Review Note
 as of 2-1-07 9:55 AM

Office of Legislative Research and General Counsel

H.B. 388 - Motor and Special Fuel Tax Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Provisions of this bill would allow certain business entities a refund of motor fuel tax in cases where it has to be returned to the refinery for re-refining. Without any history of such events, the impact cannot be estimated at this time. Impact of the bill would likely not result in direct, measurable costs and/or benefits for individuals or local governments.
