

**MOTOR AND SPECIAL FUEL TAX
AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

- ▶ authorizes the State Tax Commission to refund or credit motor fuel or special fuel tax paid on motor fuel or special fuel that is mixed with dyed diesel fuel or special fuel and is required to be re-refined;
- ▶ provides that a claimant of a refund or credit has the burden of proof to establish a claim for a refund or credit;
- ▶ specifies the evidence that is necessary to receive a refund or credit; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.

Utah Code Sections Affected:



28 AMENDS:

29 **59-13-202.5**, as last amended by Laws of Utah 2003, Chapter 178

30 **59-13-322**, as last amended by Laws of Utah 2003, Chapter 178

31

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

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

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

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

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

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

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

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

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

52 (A) name of claimant;

53 (B) claimant's address;

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

55 (D) cause of the incident;

56 (E) name of the investigating agencies at the scene;

57 (F) number of gallons actually lost from sale; and

58 (G) information on any insurance coverages related to the incident.

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

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

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

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

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

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

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

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

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

75 (i) the name of the claimant;

76 (ii) the claimant's address;

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

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

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

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

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

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

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

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

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

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

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

92 (B) has paid ~~Ĥ→ [or is required to pay \$→]~~ the tax on [Ĥ] ~~←\$ ←Ĥ~~ the motor fuel as provided
92a by this part.

93 (b) The claimant shall file a claim for a refund or credit with the commission within 90
94 days of the date the motor fuel was ~~Ĥ→ [re-refined]~~ returned to the refinery for
94a re-refinement ~~←Ĥ~~ .

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

97 (d) The burden of proof ~~Ĥ→ [of the]~~ that the motor fuel was returned to the
97a refinery for ~~←Ĥ~~ re-refinement ~~Ĥ→ [of the motor fuel]~~ ~~←Ĥ~~ is on the claimant who
98 shall provide evidence ~~Ĥ→ [of re-refinement of the motor fuel]~~ ~~←Ĥ~~ to the satisfaction of the
98a commission ~~Ĥ→ that the motor fuel was returned to the refinery for re-refinement~~ ~~←Ĥ~~ .

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

100 (A) name of claimant;

101 (B) claimant's address;

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

103 (D) nature of the incident; and

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

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

107 (A) the motor fuel mixed with the dyed diesel fuel or special fuel was ~~Ĥ→ [re-refined]~~
107a returned to the refinery for re-refinement ~~←Ĥ~~ ; and

108 (B) motor fuel tax was paid on the ~~Ĥ→ [re-refined]~~ returned ~~←Ĥ~~ motor fuel.

109 (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it
110 constitutes a permanent file with the commission in the name of the claimant.

111 ~~[(3)] (4) (a)~~ Upon commission approval of the claim for a refund, the commission shall
112 pay the amount found due to the claimant.

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

114 ~~[(4)] (5) (a)~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
115 Act, the commission may:

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

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

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

120 (i) reject the claim; or

121 (ii) require additional evidence.

122 [~~(5)~~] (6) Any person aggrieved by the decision of the commission with respect to a
123 refund or credit may file a request for agency action, requesting a hearing before the
124 commission.

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

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

132 [~~(7)~~] (8) Any refund or credit made under this section does not affect any deduction
133 allowed under Section 59-13-207.

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

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

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

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

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

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

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

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

153 (A) name of claimant;

154 (B) claimant's address;

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

156 (D) cause of the incident;

157 (E) name of the investigating agencies at the scene;

158 (F) number of gallons actually lost from sale; and

159 (G) information on any insurance coverages related to the incident.

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

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

164 (2) (a) A retailer, wholesaler, ~~H→~~ [or] ~~←H~~ licensed distributor ~~H→~~ , or licensed
164a supplier ←H who has paid the tax on special

165 fuel as provided by this part is entitled to a refund for taxes paid on that portion of an account
166 that:

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

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

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

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

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

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

177 (i) the name of the claimant;

178 (ii) the claimant's address;

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

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

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

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

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

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

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

189 (3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler,

189a ~~H~~→ [or] ←~~H~~

190 licensed distributor ~~H~~→ , or licensed supplier ←~~H~~ is entitled to a refund or credit of special fuel
190a tax if:

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

192 (ii) the retailer, wholesaler, ~~H~~→ [or] ←~~H~~ licensed distributor ~~H~~→ , or licensed
192a supplier ←~~H~~ :

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

194 (B) has paid ~~H~~→ [or is required to pay] ←~~H~~ the tax on the special fuel as provided
194a by this part.

195 (b) The claimant shall file a claim for a refund or credit with the commission within 90
196 days of the date the special fuel was ~~H~~→ [re-refined] returned to the refinery for
196a re-refinement ←~~H~~ .

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

199 (d) The burden of proof ~~H~~→ [of the re-refinement of the special fuel] that the special fuel
199a was returned to the refinery for re-refinement ←~~H~~ is on the claimant who
200 shall provide evidence ~~H~~→ [of re-refinement of the special fuel] ←~~H~~ to the satisfaction of the
201 commission ~~H~~→ that the special fuel was returned to the refinery for re-refinement ←~~H~~ .

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

203 (A) name of claimant;

204 (B) claimant's address;

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

206 (D) nature of the incident; and

207 (E) number of gallons of special fuel actually required to be re-refined.

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

210 (A) the special fuel mixed with the dyed diesel fuel or special fuel was ~~H~~→ [re-refined]
210a returned to the refinery for re-refinement ←~~H~~ ; and

211 (B) special fuel tax was paid on the ~~H~~→ [re-refined] returned ←~~H~~ special fuel.

212 (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it
213 constitutes a permanent file with the commission in the name of the claimant.

214 ~~[(3)]~~ (4) (a) Upon commission approval of the claim for a refund, the commission shall
215 pay the amount found due to the claimant.

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

217 ~~[(4)]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
218 Act, the commission may:

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

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

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

223 (i) reject the claim; or

224 (ii) require additional evidence.

225 ~~[(5)]~~ (6) Any person aggrieved by the decision of the commission with respect to a
226 refund or credit may file a request for agency action, requesting a hearing before the
227 commission.

228 ~~[(6)]~~ (7) (a) Any person who makes any false claim, report, or statement, either as
229 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
230 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
231 and the commission shall initiate the filing of a complaint for alleged violations of this part.

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

235 Section 3. **Effective date.**

236 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 10-30-07 7:43 AM

Office of Legislative Research and General Counsel

H.B. 35 - Motor and Special Fuel Tax Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. The State may forego some amount of future Transportation Fund revenue, the value of which cannot be quantified at this time.

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.
