

Representative John Dougall proposes the following substitute bill:

TAX CHANGES

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Motor and Special Fuel Tax Act to amend motor fuel, special fuel, and aviation fuel tax provisions.

Highlighted Provisions:

This bill:

- ▶ restructures the Motor and Special Fuel Tax Act to impose a 4 cent fuel on motor fuel, special fuel, and aviation fuel;
 - ▶ provides that all exemptions, refunds, and credits for motor fuel, special fuel, and aviation fuel apply to the 4 cent fuel tax imposed;
 - ▶ provides that a supplemental motor and special fuel tax is imposed at the rate of 20-1/2 cents per gallon;
 - ▶ imposes a 4 cent fuel tax on special fuel used to propel a railroad locomotive engine;
 - ▶ provides that a common carrier that is a railroad is entitled to a refund of 1-1/2 cents of the special fuel and provides procedures for claiming the refund;
 - ▶ imposes a supplemental aviation fuel tax on aviation fuel sold to certain air carriers;
- and
- ▶ makes technical changes.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill takes effect January 1, 2009.

30 This bill coordinates with S.B. 106, Clean Air and Efficient Vehicle Tax Incentives, by
31 providing substantive and technical amendments.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-13-102**, as last amended by Laws of Utah 2000, Chapter 258

35 **59-13-201**, as last amended by Laws of Utah 2004, Chapter 237

36 **59-13-301**, as last amended by Laws of Utah 2003, Chapters 7 and 268

37 **59-13-301.5**, as last amended by Laws of Utah 2001, Chapter 9

38 **59-13-304**, as last amended by Laws of Utah 2005, First Special Session, Chapter 1

39 **59-13-401**, as last amended by Laws of Utah 1999, Chapter 179

40 **59-13-402**, as last amended by Laws of Utah 2001, Chapter 235

41 **59-13-404**, as enacted by Laws of Utah 2001, Chapter 235

42 ENACTS:

43 **59-13-105**, Utah Code Annotated 1953

44 **59-13-323**, Utah Code Annotated 1953



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

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

48 **59-13-102. Definitions.**

49 As used in this chapter:

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

52 (2) "Clean fuel" means:

53 (a) the following special fuels:

54 (i) propane;

55 (ii) compressed natural gas; or

56 (iii) electricity; or

57 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal
58 clean Air Act Amendments of 1990, Title II.

59 (3) "Commission" means the State Tax Commission.

60 (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known,
61 offered for sale, or used as a fuel in diesel engines.

62 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be
63 known or sold, when the liquid is used in an internal combustion engine for the generation of
64 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject
65 to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

66 (5) "Distributor" means any person in this state who:

67 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at
68 retail or wholesale;

69 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,
70 distribution, or sale in this state;

71 (c) is engaged in the business of purchasing motor fuel for resale in wholesale
72 quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;
73 or

74 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

75 (i) federally certificated air carriers; and

76 (ii) other persons.

77 (6) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec.
78 4082 or United States Environmental Protection Agency or Internal Revenue Service
79 regulations and that is considered destined for nontaxable off-highway use.

80 (7) "Exchange agreement" means an agreement between licensed suppliers where one
81 is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier
82 or the other supplier's customer at the loading rack of the terminal where the delivering supplier
83 holds an inventory position.

84 (8) "Federally certificated air carrier" means a person who holds a certificate issued by
85 the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or
86 scheduled operation, as defined in 14 C.F.R. Sec. 119.3.

87 (9) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is

88 generally used in an engine or motor for the generation of power, including aviation fuel, clean
89 fuel, diesel fuel, motor fuel, and special fuel.

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

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

95 (12) "Motor fuels received" means:

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

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

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

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

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

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

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

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

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

119 fuel. Removal does not include:

120 (a) loss by evaporation or destruction; or

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

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

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

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

126 (b) Special fuel includes:

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

128 (ii) diesel fuel.

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

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

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

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

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

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

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

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

145 (21) (a) "Use," as used in Section 59-13-105 and Part 3, Special Fuel, means the
146 consumption of special fuel for the operation or propulsion of:

147 (i) a motor vehicle upon the public highways of the state; and

148 (ii) a railroad locomotive engine.

149 (b) "Use" includes the reception of special fuel into:

- 150 (i) the fuel supply tank of a motor vehicle[-]; or
151 (ii) the fuel supply tank for a railroad locomotive engine.
152 (22) "User," as used in Part 3, Special Fuel, means any person who uses special fuel
153 within this state in an engine or motor for the generation of power to operate or propel;
154 (a) a motor vehicle upon the public highways of the state[-]; or
155 (b) a railroad locomotive engine.
156 (23) "Ute tribal member" means an enrolled member of the Ute tribe.
157 (24) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
158 (25) "Ute trust land" means the lands:
159 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for
160 the benefit of:
161 (i) the Ute tribe;
162 (ii) an individual; or
163 (iii) a group of individuals; or
164 (b) specified as trust land by agreement between the governor and the Ute tribe meeting
165 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).
166 Section 2. Section **59-13-105** is enacted to read:
167 **59-13-105. Tax on fuel -- Rate - Tax basis -- Exemptions -- Revenue deposited in**
168 **the Transportation Fund.**
169 (1) (a) Subject to the restrictions in this section, a tax is imposed at the rate of 4 cents
170 per gallon on:
171 (i) all motor fuel that is sold, used, or received for sale or use in the state;
172 (ii) all motor fuels that meet the definition of clean fuel in Section 59-13-102 that are
173 sold, used, or received for sale or use in the state;
174 (iii) the removal of undyed diesel fuel from any refinery;
175 (iv) the removal of undyed diesel from any terminal;
176 (v) the entry into the state of any undyed diesel fuel for consumption, use, sale, or
177 warehousing;
178 (vi) the sale of undyed diesel fuel to any person who is not registered as a supplier
179 under this part unless the tax has been collected under this section and Section 59-13-301;
180 (vii) any untaxed special fuel blended with undyed diesel fuel;

- 181 (viii) use of untaxed special fuel, other than a clean special fuel;
182 (ix) dyed diesel fuel that is sold or used to propel a railroad locomotive engine; or
183 (ix) aviation fuel.
184 (b) The tax imposed under this section shall only be imposed once upon any motor
185 fuel, special fuel, or aviation fuel.
186 (2) (a) No fuel tax is imposed under this section on:
187 (i) motor fuel that is brought into and sold in this state in original packages as purely
188 interstate commerce sales;
189 (ii) motor fuel or undyed diesel fuel that is exported from this state if proof of actual
190 exportation on forms prescribed by the commission is made within 180 days after exportation;
191 (iii) motor fuel or components of motor fuel that is sold and used in this state and
192 distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in
193 this state;
194 (iv) motor fuel or undyed diesel fuel that is sold to the United States government or any
195 of its instrumentalities or to this state or any of its political subdivisions;
196 (v) dyed diesel fuel that is sold or used for any purpose other than to operate or propel
197 a:
198 (A) motor vehicle on a highway; or
199 (B) railroad locomotive engine;
200 (vi) dyed diesel fuel that is sold to this state or any of its political subdivisions; and
201 (vii) undyed diesel fuel that:
202 (A) is used in a vehicle off-highway;
203 (B) is used to operate a power take-off unit of a vehicle;
204 (C) is used for off-highway agricultural users;
205 (D) is used in a separately fueled engine on a vehicle that does not propel the vehicle
206 upon the highways of the state; or
207 (E) is used in machinery and equipment not registered and not required to be registered
208 for highway use.
209 (b) (i) No tax is imposed or collected on special fuel if it is:
210 (A) purchased for business use and not required to be registered for highway use; and
211 (B) used pursuant to the conditions of a state implementation plan approved under

212 Title 19, Chapter 2, Air Conservation Act.

213 (ii) Upon request of a buyer meeting the requirements of this Subsection (2)(b)(i)(B),
214 the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

215 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
216 commission shall make rules governing the procedures for administering the tax exemption
217 provided under Subsection (2)(a)(iv).

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

220 (4) (a) The tax on special fuel shall be paid by the supplier.

221 (b) The special fuel tax shall be paid by every user who is required by Sections
222 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

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

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

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

230 (6) (a) All refund, credit, administrative, and penalty provisions of Part 2, Motor Fuel,
231 apply to a tax imposed on motor fuel under this section.

232 (b) All refund, credit, administrative, and penalty provisions of Part 3, Special Fuel,
233 apply to a tax imposed on special fuel under this section.

234 (c) All the administrative and penalty provisions of Part 4, Aviation Fuel, apply to a tax
235 imposed on aviation fuel under this section.

236 Section 3. Section **59-13-201** is amended to read:

237 **59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the**
238 **Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax**
239 **in limited circumstances.**

240 (1) [~~(a) Subject~~] In addition to the fuel tax imposed under Section 59-13-105 and
241 subject to the provisions of this section, a supplemental tax is imposed at the rate of [24-1/2]
242 20-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this

243 state.

244 ~~[(b) In lieu of the tax imposed under Subsection (1)(a) and subject to the provisions of~~
245 ~~this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a),~~
246 ~~rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in~~
247 ~~Section 59-13-102 and are sold, used, or received for sale or use in this state.]~~

248 (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the
249 state or sold at refineries in the state on or after the effective date of the rate change.

250 (3) (a) No motor fuel tax is imposed upon:

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

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

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

258 (iv) motor fuel that is sold to the United States government, this state, or the political
259 subdivisions of this state.

260 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
261 commission shall make rules governing the procedures for administering the tax exemption
262 provided under Subsection (3)(a)(iv).

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

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

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

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

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

278 (7) (a) The United States government or any of its instrumentalities, this state, or a
279 political subdivision of this state that has purchased motor fuel from a licensed distributor or
280 from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this
281 section and Section 59-13-105 is entitled to a refund of the tax and may file with the
282 commission for a quarterly refund.

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

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

288 (i) .5% of the motor fuel tax revenues collected under this section and Section
289 59-13-105; or

290 (ii) \$1,050,000.

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

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

293 (9) (a) [~~Beginning on April 1, 2001, a~~ A tax imposed under this section and Section
294 59-13-105 on motor fuel that is sold, used, or received for sale or use in this state is reduced to
295 the extent provided in Subsection (9)(b) if:

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

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

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

302 (b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this
303 section and Section 59-13-105:

304 (A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that

305 difference is greater than \$0; and

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

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

309 (A) the amount of tax imposed on the motor fuel by this section and Section
310 59-13-105; less

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

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

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

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

320 (i) may not:

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

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

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

325 (ii) shall:

326 (A) be in writing;

327 (B) be signed by:

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

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

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

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

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

335 (iii) may:

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

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

339 (II) related to the tax on motor fuel imposed under this section and Section 59-13-105;

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

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

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

347 (A) from the Navajo Nation; and

348 (B) meeting the requirements of Subsection (9)(f)(ii).

349 (ii) The notice described in Subsection (9)(f)(i) shall state:

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

352 (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A);
353 and

354 (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

355 (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not
356 permitted under this Subsection (9) beginning on the first day of the calendar quarter after a
357 30-day period beginning on the day the agreement terminates.

358 (h) If there is a conflict between this Subsection (9) and the agreement required by
359 Subsection (9)(a), this Subsection (9) governs.

360 Section 4. Section **59-13-301** is amended to read:

361 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**
362 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

363 (1) (a) [~~Except~~] In addition to the tax on special fuel imposed under Section 59-13-105
364 and except as provided in Subsections (2), (3), and (11) and Section 59-13-304, a tax is
365 imposed at the same rate imposed under Subsection 59-13-201(1)[~~(a)~~] on the:

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

- 367 (ii) removal of undyed diesel fuel from any terminal;
- 368 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or
369 warehousing;
- 370 (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under
371 this part unless the tax has been collected under this section;
- 372 (v) any untaxed special fuel blended with undyed diesel fuel; or
- 373 (vi) use of untaxed special fuel, other than a clean special fuel.
- 374 (b) The tax imposed under this section shall only be imposed once upon any special
375 fuel.
- 376 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:
- 377 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon
378 the public highways of the state, but this exemption applies only in those cases where the
379 purchasers or the users of special fuel establish to the satisfaction of the commission that the
380 special fuel was used for purposes other than to operate a motor vehicle upon the public
381 highways of the state; or
- 382 (ii) is sold to this state or any of its political subdivisions.
- 383 (b) No special fuel tax is imposed on undyed diesel fuel which:
- 384 (i) is sold to the United States government or any of its instrumentalities or to this state
385 or any of its political subdivisions;
- 386 (ii) is exported from this state if proof of actual exportation on forms prescribed by the
387 commission is made within 180 days after exportation;
- 388 (iii) is used in a vehicle off-highway;
- 389 (iv) is used to operate a power take-off unit of a vehicle;
- 390 (v) is used for off-highway agricultural uses;
- 391 (vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle
392 upon the highways of the state; or
- 393 (vii) is used in machinery and equipment not registered and not required to be
394 registered for highway use.
- 395 (3) No tax is imposed or collected on special fuel if it is:
- 396 (a) purchased for business use in machinery and equipment not registered and not
397 required to be registered for highway use; and

398 (b) used pursuant to the conditions of a state implementation plan approved under Title
399 19, Chapter 2, Air Conservation Act.

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

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

403 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
404 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

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

407 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
408 commission from taxes and license fees under this part shall be deposited daily with the state
409 treasurer and credited to the Transportation Fund.

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

413 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
414 may be used by the commission as a dedicated credit to cover the costs of electronic
415 credentialing as provided in Section 41-1a-303.

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

418 (9) (a) The United States government or any of its instrumentalities, this state, or a
419 political subdivision of this state that has purchased special fuel from a supplier or from a retail
420 dealer of special fuel and has paid the tax on the special fuel as provided in this section or
421 Section 59-13-105 is entitled to a refund of the tax and may file with the commission for a
422 quarterly refund in a manner prescribed by the commission.

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

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

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

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

434 (11) (a) Beginning on April 1, 2001, a tax imposed under this section and Section
435 59-13-105 on special fuel is reduced to the extent provided in Subsection (11)(b) if:

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

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

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

441 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this
442 section and Section 59-13-105:

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

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

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

449 (A) the amount of tax imposed on the special fuel by this section and Section
450 59-13-105; less

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

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

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

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

459 (i) may not:

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

461 (B) provide a reduction of taxes greater than or different from the reduction described

462 in this Subsection (11); or

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

464 (ii) shall:

465 (A) be in writing;

466 (B) be signed by:

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

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

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

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

471 (E) state any accommodation the Navajo Nation makes related to the construction and

472 maintenance of state highways and other infrastructure within the Utah portion of the Navajo

473 Nation; and

474 (iii) may:

475 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the

476 Navajo Nation information that is:

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

478 (II) related to the tax on special fuel imposed under this section and Section 59-13-105;

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

480 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers

481 located or doing business within the Utah portion of the Navajo Nation.

482 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax

483 imposed on special fuel, any change in the amount of the reduction of taxes under this

484 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the

485 calendar quarter after a 60-day period beginning on the date the commission receives notice:

486 (A) from the Navajo Nation; and

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

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

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

490 special fuel;

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

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

494 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
495 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
496 30-day period beginning on the day the agreement terminates.

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

499 Section 5. Section **59-13-301.5** is amended to read:

500 **59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.**

501 (1) In accordance with this section, the Ute tribe may receive a refund from the state of
502 amounts paid in accordance with ~~[Section]~~ Sections 59-13-105 and 59-13-301 if:

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

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

506 (i) the Ute tribe; or

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

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

509 (B) located on Ute trust land; and

510 (c) the governor and the Ute tribe execute and maintain an agreement meeting the
511 requirements of Subsection (3).

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

514 (a) provides an allocation formula or procedure for determining:

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

516 (ii) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal
517 member; and

518 (b) provides a process by which:

519 (i) the Ute tribe obtains a refund permitted by this section; and

520 (ii) reports and remits special fuel tax to the state for sales made to persons who are not
521 Ute tribal members.

- 522 (3) The agreement required under Subsection (1):
523 (a) may not:
524 (i) authorize the state to impose a tax in addition to a tax imposed under this chapter;
525 (ii) provide a refund, credit, or similar tax relief that is greater or different than the
526 refund permitted under this section; or
527 (iii) affect the power of the state to establish rates of taxation; and
528 (b) shall:
529 (i) provide that the state agrees to allow the refund described in this section;
530 (ii) be in writing;
531 (iii) be signed by:
532 (A) the governor; and
533 (B) the chair of the Business Committee of the Ute tribe;
534 (iv) be conditioned on obtaining any approval required by federal law; and
535 (v) state the effective date of the agreement.
536 (4) (a) The governor shall report to the commission by no later than February 1 of each
537 year as to whether or not an agreement meeting the requirements of this Subsection (4) is in
538 effect.
539 (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the
540 refund permitted under this section is not allowed beginning the January 1 following the date
541 the agreement terminates.
542 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
543 commission may make rules regarding the procedures for seeking a refund agreed to under the
544 agreement described in Subsection (2).
- 545 Section 6. Section **59-13-304** is amended to read:
546 **59-13-304. Exemptions from Special Fuel Tax -- Clean Special Fuel Tax --**
547 **Certificate required -- Fees for certificates -- Inspection of vehicles -- Exemptions.**
548 (1) (a) Except as provided in Subsection (4), a user of special fuel who owns a vehicle
549 powered by a clean special fuel as defined under Section 59-13-102 shall pay a clean special
550 fuel tax as provided under this section for use of clean special fuel.
551 (b) A user of special fuel who qualifies for the clean special fuel tax shall annually
552 purchase from the commission a clean special fuel tax certificate for each vehicle owned or

553 leased that is powered by a clean special fuel.

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

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

557 (i) 70/.19 of the tax per gallon imposed on special fuel under Section 59-13-105 and
558 Subsection 59-13-201(1)[(a)], rounded up to the nearest dollar, for qualified motor vehicles as
559 defined under Section 59-13-102; and

560 (ii) 36/.19 of the tax per gallon imposed on special fuel under Section 59-13-105 and
561 Subsection 59-13-201(1)[(a)], rounded up to the nearest dollar, for other vehicles.

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

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

566 (3) (a) Beginning January 1, 2001 through December 31, 2010, there is imposed a
567 surcharge of \$35 on each clean special fuel tax certificate issued under this section.

568 (b) (i) Until Subsection (3)(b)(ii) applies, surcharges imposed under Subsection (3)(a)
569 shall be deposited into the Centennial Highway Fund Restricted Account created under Section
570 72-2-118.

571 (ii) When the highway general obligation bonds have been paid off and the highway
572 projects completed that are intended to be paid from revenues deposited in the Centennial
573 Highway Fund Restricted Account as determined by the Executive Appropriations Committee
574 under Subsection 72-2-118(6)(d), the surcharge imposed under Subsection (3)(a) shall be
575 deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124.

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

579 Section 7. Section **59-13-323** is enacted to read:

580 **59-13-323. Refunds of special fuel tax used in railroad locomotive engine.**

581 (1) A common carrier that is a railroad is entitled to a \$.015 refund or credit of the
582 special fuel tax imposed under Section 59-13-105 paid on gallons of special fuel used in a
583 railroad locomotive engine, subject to the conditions and limitations provided under this

584 section.

585 (2) (a) A common carrier that is a railroad shall file a claim for a refund or credit with
586 the commission within 90 days of the end of the tax year for which a claim is made.

587 (b) A common carrier that is a railroad filing a claim for a refund or credit shall furnish
588 any or all of the information outlined in this section upon request of the commission.

589 (3) (a) The claim shall include an application containing:

590 (i) the name of the railroad common carrier;

591 (ii) the number of gallons actually purchased;

592 (iii) the place of purchase; and

593 (iv) any other information required by the commission to support the claim.

594 (b) The original claim and all information contained in it constitutes a permanent file
595 with the commission in the name of the railroad common carrier claimant.

596 (4) (a) Upon commission approval of the claim for a refund, the commission shall pay
597 the amount found due to the railroad common carrier claimant.

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

599 (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
600 the commission may:

601 (i) promulgate rules to enforce this section; and

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

603 (b) If the commission is not satisfied with the evidence submitted in connection with
604 the claim, it may reject the claim or require additional evidence.

605 (6) A railroad common carrier aggrieved by the decision of the commission with
606 respect to a refund or credit may file a request for agency action, requesting a hearing before
607 the commission.

608 (7) (a) A railroad common carrier who makes any false claim, report, or statement,
609 with the intent to defraud or secure a refund or credit to which the claimant is not entitled, is
610 subject to the criminal penalties provided under Section 59-1-401.

611 (b) The commission shall initiate the filing of a complaint for alleged violations of this
612 part.

613 (c) In addition to the penalties described in Subsection (7)(a), the railroad common
614 carrier may not receive any refund or credit as a claimant for a period of five years.

615 Section 8. Section **59-13-401** is amended to read:

616 **59-13-401. Aviation fuel tax -- Rate.**

617 (1) [~~A~~] In addition to the tax on aviation fuel imposed under Section 59-13-105, a
618 supplemental tax is imposed upon aviation fuel at the rates provided in this section.

619 (2) Except as provided by Subsection (3), the tax on aviation fuel shall be~~[:]~~ five cents
620 per gallon.

621 [~~(a) beginning July 1, 1999, six cents per gallon;~~]

622 [~~(b) beginning July 1, 2000, eight cents per gallon; and~~]

623 [~~(c) beginning July 1, 2001, nine cents per gallon.~~]

624 [~~(3) Aviation fuel purchased for use by a federally certificated air carrier is subject to a~~
625 ~~tax of four cents per gallon.~~]

626 (3) No tax is imposed under this section on aviation fuel purchased for use by a
627 federally certificated air carrier.

628 Section 9. Section **59-13-402** is amended to read:

629 **59-13-402. Revenue from taxes deposited with treasurer -- Credit to Aeronautics**
630 **Restricted Account -- Purposes for which funds may be used -- Allocation of funds --**
631 **Reports -- Returns required.**

632 (1) (a) All revenue received by the commission under this part shall be deposited daily
633 with the state treasurer who shall credit all of the revenue collected to the Transportation Fund.

634 (b) An appropriation from the Transportation Fund shall be made to the commission to
635 cover expenses incurred in the administration and enforcement of this part and the collection of
636 the aviation fuel tax.

637 (c) Refunds to which taxpayers are entitled under this part shall be paid from the
638 Transportation Fund.

639 (2) The state treasurer shall place an amount equal to the total amount received from
640 the sale or use of aviation fuel in the Transportation Fund's Restricted Revenue Account for
641 aeronautical operations of the Department of Transportation for:

642 (a) the construction, improvement, operation, and maintenance of publicly used
643 airports in this state and the payment of principal and interest on indebtedness incurred for
644 those purposes;

645 (b) the promotion of aeronautics in this state; and

646 (c) the payment of the costs and expenses of the Department of Transportation in
 647 administering this part or other law conferring upon it the duty of regulating and supervising
 648 aeronautics in this state.

649 (3) The tax imposed on each gallon of aviation fuel under ~~[Section]~~ Sections
 650 59-13-105 and 59-13-401 shall be allocated to the airport where the aviation fuel was sold and
 651 to aeronautical operations of the Department of Transportation as follows:

	Total	Allocation to	Allocation to
	Tax	Airport	Aeronautical
	Allocated		Operations
655 (a) Tax on Each Gallon of Aviation			
656 Fuel Purchased for Use by a Federally			
657 Certificated Air Carrier Other than at			
658 the Salt Lake International Airport	\$.04	\$.03	\$.01
659 (b) Tax, less a refund or credit			
660 claimed under Section 59-13-404,			
661 on Each Gallon of Aviation			
662 Fuel Purchased for Use by a Certificated			
663 Air Carrier at the Salt Lake International			
664 Airport	\$.025	\$.015	\$.01
665 (c) Tax on Each Gallon of Aviation			
666 Fuel Purchased for Use by a Person Other			
667 than a Federally Certificated Air Carrier			
668 at the Salt Lake International Airport			
669 [beginning July 1, 1999	\$.06	\$.02	\$.04]
670 [beginning July 1, 2000	\$.08	\$.01	\$.07]
671 [beginning July 1, 2001]	\$.09	\$.00	\$.09
672 (d) Tax on Each Gallon of Aviation Fuel			
673 Purchased for Use by a Person Other			
674 than a Federally Certificated Air Carrier			
675 Other than at the Salt Lake International Airport			
676 [beginning July 1, 1999	\$.06	\$.03	\$.03]

677	[beginning July 1, 2000	\$.08	\$.03	\$.05]
678	[beginning July 1, 2001]	\$.09	\$.03	\$.06

679 (e) The allocation to the publicly used airport may be used at the discretion of the
680 airport's governing authority for the purposes specified in Subsection (2)(a).

681 (f) Upon appropriation by the Legislature, the allocation to aeronautical operations of
682 the Department of Transportation shall be used as provided in Subsection (2).

683 (4) (a) The commission shall require reports and returns from distributors, retail
684 dealers, and users in order to enable the commission and the Department of Transportation to
685 allocate the revenue to be credited to the Transportation Fund's Restricted Revenue Account for
686 the aeronautical operations of that department and the separate accounts of individual airports.

687 (b) (i) Except as provided by Subsection (4)(b)(ii), any unexpended amount remaining
688 in the account of any publicly used airport on the first day of January, April, July, and October
689 shall be paid to the authority operating the airport.

690 (ii) Aviation fuel tax allocated to any airport owned and operated by a city of the first
691 class shall be paid to the city treasurer on the first day of each month.

692 (c) The state treasurer shall place aviation fuel tax collected on fuel sold at places other
693 than publicly used airports in the Transportation Fund's Restricted Revenue Account for the
694 aeronautical operations of the Department of Transportation.

695 Section 10. Section **59-13-404** is amended to read:

696 **59-13-404. Refunds of aviation fuel tax -- Filing claims -- Commission approval --**
697 **Rulemaking -- Appeals -- Penalties.**

698 (1) A federally certificated air carrier is entitled to a \$.015 refund or credit of the
699 aviation fuel tax imposed under Section 59-13-105 paid on gallons of aviation fuel purchased
700 at the Salt Lake International Airport, subject to the conditions and limitations provided under
701 this section.

702 (2) (a) A federally certificated air carrier shall file a claim for a refund or credit with
703 the commission within 90 days of the end of the tax year for which a claim is made.

704 (b) A federally certificated air carrier filing a claim for a refund or credit shall furnish
705 any or all of the information outlined in this section upon request of the commission.

706 (3) (a) The claim shall include an application containing:

707 (i) the name of the federally certificated air carrier claimant;

708 (ii) the number of gallons actually purchased;

709 (iii) the place of purchase; and

710 (iv) any other information required by the commission to support the claim.

711 (b) This original claim and all information contained in it, constitutes a permanent file
712 with the commission in the name of the federally certificated air carrier claimant.

713 (4) Upon commission approval of the claim for a refund, the commission shall pay the
714 amount found due to the federally certificated air carrier claimant. The total amount of claims
715 for refunds shall be paid from the Transportation Fund.

716 (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
717 the commission may promulgate rules to enforce this part, and may refuse to accept
718 unsubstantiated evidence for the claim.

719 (b) If the commission is not satisfied with the evidence submitted in connection with
720 the claim, it may reject the claim or require additional evidence.

721 (6) A federally certificated air carrier aggrieved by the decision of the commission with
722 respect to a refund or credit may file a request for agency action, requesting a hearing before
723 the commission.

724 (7) A federally certificated air carrier who makes any false claim, report, or statement,
725 with intent to defraud or secure a refund or credit to which the claimant is not entitled, is
726 subject to the criminal penalties provided under Section 59-1-401, and the commission shall
727 initiate the filing of a complaint for alleged violations of this part. In addition to these
728 penalties, the federally certificated air carrier may not receive any refund or credit as a claimant
729 for a period of five years.

730 Section 11. **Effective date.**

731 This bill takes effect on January 1, 2009.

732 Section 12. **Coordinating H.B. 359 with H.B. 106 -- Substantive and technical**
733 **changes.**

734 If this H.B. 359 and H.B. 106, Clean Air and Efficient Vehicle Tax Incentives, both
735 pass, it is the intent of the Legislature that the Office of Legislative Research prepare the Utah
736 Code database for publication as follows:

737 (1) modify Subsection 59-13-105(1)(a)(viii) to read:

738 "(viii) use of untaxed special fuel other than propane or electricity;"

739 (2) (a) insert a new Subsection (1)(a)(ix) in Section 59-13-105 to read:
740 "(ix) compressed natural gas, except that the rate under Subsection (1)(a) shall be
741 imposed per gasoline gallon equivalent."; and
742 (b) renumber remaining subsections accordingly;
743 (3) modify Subsection 59-13-105(2)(a)(ii) to read:
744 "(ii) motor fuel, undyed diesel fuel, or clean fuel that is exported from this state if
745 proof of actual exportation on forms prescribed by the commission is made within 180 days
746 after exportation;"
747 (4) modify Subsection 59-13-105(2)(a)(iv) to read:
748 "(iv) motor fuel, undyed diesel fuel, or clean fuel that is sold to the United States
749 government or any of its instrumentalities or to this state or any of its political subdivisions;"
750 (5) modify Subsection 59-13-105(2)(a)(vii) to read:
751 "(vii) undyed diesel fuel or clean fuel that:"
752 (6) modify Subsection 59-13-105(2)(b)(i) to read:
753 "(b) (i) (A) No tax is imposed or collected on special fuel if it is:
754 (I) purchased for business use and not required to be registered for highway use; and
755 (II) used pursuant to the conditions of a state implementation plan approved under Title
756 19, Chapter 2, Air Conservation Act; or
757 (B) propane or electricity."; and
758 (7) modify Subsection 59-13-301(12) to read:
759 "(12) Beginning on January 1, 2009, a tax imposed under this section on compressed
760 natural gas is imposed at a reduced rate of 4-1/2 cents per gasoline gallon equivalent to be
761 increased or decreased with any increase or decrease in the rates in Subsection 59-13-105 and
762 Subsection 59-13-201(1)(a)."