

Part 2 Motor Fuel

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

- (1)
- (a) Subject to the provisions of this section and through December 31, 2015, a tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.
 - (b)
 - (i) Subject to the provisions of this section and beginning on January 1, 2016, a tax is imposed at the rate of 12% of the statewide average rack price of a gallon of motor fuel per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.
 - (ii)
 - (A) Until December 31, 2018, and subject to the requirements under Subsection (1)(b)(iii), the statewide average rack price of a gallon of motor fuel under Subsection (1)(b)(i) shall be determined by calculating the previous fiscal year statewide average rack price of a gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 12 months ending on the previous June 30 as published by an oil pricing service.
 - (B) Beginning on January 1, 2019, and subject to the requirements under Subsection (1)(b)(iii), the statewide average rack price of a gallon of motor fuel under Subsection (1)(b)(i) shall be determined by calculating the previous three fiscal years statewide average rack price of a gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 36 months ending on the previous June 30 as published by an oil pricing service.
 - (iii)
 - (A) Subject to the requirement in Subsection (1)(b)(iii)(B), the statewide average rack price of a gallon of motor fuel determined under Subsection (1)(b)(ii) may not be less than \$2.45 per gallon.
 - (B) Beginning on a calendar year following the year that the actual statewide average rack price of a gallon of motor fuel reaches \$2.45 before applying the minimum under Subsection (1)(b)(iii)(A), the commission shall, on January 1, annually adjust the minimum statewide average rack price of a gallon of motor fuel described in Subsection (1)(b)(iii)(A) by taking the minimum statewide average rack price of a gallon of motor fuel for the previous calendar year and adding an amount equal to the greater of:
 - (I) an amount calculated by multiplying the minimum average rack price of a gallon of motor fuel for the previous calendar year by the actual percent change during the previous fiscal year in the Consumer Price Index; and
 - (II) 0.
 - (C) The statewide average rack price of a gallon of motor fuel determined by the commission under Subsection (1)(b)(ii) may not exceed \$3.33 per gallon.
 - (iv) The commission shall annually:
 - (A) determine the statewide average rack price of a gallon of motor fuel in accordance with Subsection (1)(b)(ii);
 - (B) adjust the fuel tax rate imposed under Subsection (1)(b)(i), rounded to the nearest one-tenth of a cent, based on the determination under Subsection (1)(b)(ii);
 - (C) publish the adjusted fuel tax as a cents per gallon rate; and

- (D) post or otherwise make public the adjusted fuel tax rate as determined in Subsection (1)(b)(iv)(B) no later than 60 days prior to the annual effective date under Subsection (1)(b)(v).
- (v) The tax rate imposed under this Subsection (1)(b) and adjusted as required under Subsection (1)(b)(iv) shall take effect on January 1 of each year.
- (c) In lieu of the tax imposed under Subsection (1)(a) or (b) and subject to the provisions of this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a) or (b), rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in Section 59-13-102 and are sold, used, or received for sale or use in this state.
- (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state or sold at refineries in the state on or after the effective date of the rate change.
- (3)
 - (a) No motor fuel tax is imposed upon:
 - (i) motor fuel that is brought into and sold in this state in original packages as purely interstate commerce sales;
 - (ii) motor fuel that is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;
 - (iii) motor fuel or components of motor fuel that is sold and used in this state and distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or
 - (iv) motor fuel that is sold to the United States government, this state, or the political subdivisions of this state.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the tax exemption provided under Subsection (3)(a)(iv).
- (4) The commission may either collect no tax on motor fuel exported from the state or, upon application, refund the tax paid.
- (5)
 - (a) All revenue received by the commission 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 motor fuel tax.
- (6)
 - (a) The commission shall determine what amount of motor fuel tax revenue is received from the sale or use of motor fuel used in motorboats registered under the provisions of the State Boating Act, and this amount shall be deposited in a restricted revenue account in the General Fund of the state.
 - (b) The funds from this account shall be used for the construction, improvement, operation, and maintenance of state-owned boating facilities and for the payment of the costs and expenses of the Division of Parks and Recreation in administering and enforcing the State Boating Act.
- (7)
 - (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (7)(a).

- (8)
 - (a) The commission shall refund annually into the Off-Highway Vehicle Account in the General Fund an amount equal to .5% of the motor fuel tax revenues collected under this section.
 - (b) This amount shall be used as provided in Section 41-22-19.
- (9)
 - (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection (9)(b) if:
 - (i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel is paid to the Navajo Nation;
 - (ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not 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 (9) for the administration of the reduction of tax.
 - (b)
 - (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:
 - (A) the state shall be paid the difference described in Subsection (9)(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 (9)(b)(ii) is less than or equal to \$0.
 - (ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:
 - (A) the amount of tax imposed on the motor fuel by this section; less
 - (B) the tax imposed and collected by the Navajo Nation on the motor fuel.
 - (c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.
 - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (9).
 - (e) The agreement required under Subsection (9)(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 (9); 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 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 motor fuel, any change in the reduction of taxes under this Subsection (9) 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 (9)(f)(ii).
 - (ii) The notice described in Subsection (9)(f)(i) shall state:
 - (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on motor fuel;
 - (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A); and
 - (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).
- (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not permitted under this Subsection (9) 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 (9) and the agreement required by Subsection (9)(a), this Subsection (9) governs.

Amended by Chapter 275, 2015 General Session

59-13-201.5 Refund of taxes impacting Ute tribe and Ute tribal members.

- (1) In accordance with this section, the Ute tribe may receive a refund from the state of amounts paid to a distributor for taxes imposed on the distributor in accordance with Section 59-13-204 if:
- (a) the motor fuel is purchased from a licensed distributor;
 - (b) the Ute tribe pays the distributor as provided in Section 59-13-204;
 - (c) the motor fuel is purchased for use by:
 - (i) the Ute tribe; or
 - (ii) a Ute tribal member from a retail station:
 - (A) wholly owned by the Ute tribe; and
 - (B) that is located on Ute trust land; and
 - (d) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of Subsection (3).
- (2) In addition to the agreement required by Subsection (1), the commission shall enter into an agreement with the Ute tribe that:
- (a) provides an allocation formula or procedure for determining:
 - (i) the amount of motor fuel sold by the Ute tribe to a Ute tribal member; and
 - (ii) the amount of motor fuel sold by the Ute tribe to a person who is not a Ute tribal member; and
 - (b) provides a process by which:
 - (i) the Ute tribe obtains a refund permitted by this section; and

- (ii) reports and remits motor fuel tax to the state for sales made to persons who are not Ute tribal members.
- (3) The agreement required under Subsection (1):
 - (a) may not:
 - (i) authorize the state to impose a tax in addition to a tax imposed under this chapter; or
 - (ii) provide a refund, credit, or similar tax relief that is greater or different than the refund permitted under this section;
 - (iii) affect the power of the state to establish rates of taxation; and
 - (b) shall:
 - (i) provide that the state agrees to allow the refund described in this section;
 - (ii) be in writing;
 - (iii) be signed by:
 - (A) the governor; and
 - (B) the chair of the Business Committee of the Ute tribe;
 - (iv) be conditioned on obtaining any approval required by federal law; and
 - (v) state the effective date of the agreement.
- (4)
 - (a) The governor shall report to the commission by no later than February 1 of each year as to whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
 - (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the refund permitted under this section is not allowed beginning the January 1 following the date the agreement terminates.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules regarding the procedures for seeking a refund agreed to under the agreement described in Subsection (2).

Amended by Chapter 382, 2008 General Session

59-13-202 Refund of tax for agricultural uses on individual income and corporate franchise and income tax returns -- Application for permit for refund -- Division of Finance to pay claims -- Rules permitted to enforce part -- Penalties -- Revenue and Taxation Interim Committee study.

- (1) As used in this section:
 - (a)
 - (i) Except as provided in Subsection (1)(a)(ii), "claimant" means a resident or nonresident person.
 - (ii) "Claimant" does not include an estate or trust.
 - (b) "Estate" means a nonresident estate or a resident estate.
 - (c) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:
 - (i) as provided by statute; and
 - (ii) regardless of whether, for the taxable year for which the claimant, estate, or trust claims the tax credit, the claimant, estate, or trust has a tax liability under:
 - (A) Chapter 7, Corporate Franchise and Income Taxes; or
 - (B) Chapter 10, Individual Income Tax Act.
 - (d) "Trust" means a nonresident trust or a resident trust.
- (2) Any claimant, estate, or trust that purchases and uses any motor fuel within the state for the purpose of operating or propelling stationary farm engines and self-propelled farm machinery

used for nonhighway agricultural uses, and that has paid the tax on the motor fuel as provided by this part, is entitled to a refund of the tax subject to the conditions and limitations provided under this part.

- (3)
- (a) A claimant, estate, or trust desiring a nonhighway agricultural use refund under this part shall claim the refund as a refundable tax credit on the tax return the claimant, estate, or trust files under:
 - (i) Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) Chapter 10, Individual Income Tax Act.
 - (b) A claimant, estate, or trust not subject to filing a tax return described in Subsection (3)(a) shall obtain a permit and file claims on a calendar year basis.
 - (c) Any claimant, estate, or trust claiming a refundable tax credit under this section is required to furnish any or all of the information outlined in this section upon request of the commission.
 - (d) A refundable tax credit under this section is allowed only on purchases on which tax is paid during the taxable year covered by the tax return.
- (4) In order to obtain a permit for a refund of motor fuel tax paid, an application shall be filed containing:
- (a) the name of the claimant, estate, or trust;
 - (b) the claimant's, estate's, or trust's address;
 - (c) location and number of acres owned and operated, location and number of acres rented and operated, the latter of which shall be verified by a signed statement from the legal owner;
 - (d) number of acres planted to each crop, type of soil, and whether irrigated or dry; and
 - (e) make, size, and type of fuel used and power rating of each piece of equipment using fuel. If the claimant, estate, or trust is an operator of self-propelled or tractor-pulled farm machinery with which the claimant, estate, or trust works for hire doing custom jobs for other farmers, the application shall include information the commission requires and shall all be contained in, and be considered part of, the original application. The claimant, estate, or trust shall also file with the application a certificate from the county assessor showing each piece of equipment using fuel. This original application and all information contained in it constitutes a permanent file with the commission in the name of the claimant, estate, or trust.
- (5) A claimant, estate, or trust claiming the right to a refund of motor fuel tax paid shall file a claim with the commission by April 15 of each year for the refund for the previous calendar year. The claim shall state the name and address of the claimant, estate, or trust, the number of gallons of motor fuel purchased for nonhighway agricultural uses, and the amount paid for the motor fuel. The claimant, estate, or trust shall retain the original invoice to support the claim. No more than one claim for a tax refund may be filed annually by each user of motor fuel purchased for nonhighway agricultural uses.
- (6) Upon commission approval of the claim for a refund, the Division of Finance shall pay the amount found due to the claimant, estate, or trust. The total amount of claims for refunds shall be paid from motor fuel taxes.
- (7) The commission may refuse to accept as evidence of purchase or payment any instruments that show alteration or that fail to indicate the quantity of the purchase, the price of the motor fuel, a statement that the motor fuel is purchased for purposes other than transportation, and the date of purchase and delivery. If the commission is not satisfied with the evidence submitted in connection with the claim, the commission may reject the claim or require additional evidence.

- (8) A claimant, estate, or trust aggrieved by the decision of the commission with respect to a refundable tax credit or refund may file a request for agency action, requesting a hearing before the commission.
- (9) A claimant, estate, or trust that makes any false claim, report, or statement, as claimant, estate, trust, agent, or creditor, with intent to defraud or secure a refund to which the claimant, estate, or trust is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the claimant, estate, or trust may not receive any refund as a claimant, estate, or trust or as a creditor of a claimant, estate, or trust for refund for a period of five years.
- (10)
 - (a) In accordance with any rules prescribed by the commission under Subsection (10)(b), the Division of Finance shall transfer at least annually from the Transportation Fund into the Education Fund an amount equal to the amount of the refund claimed under this section.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for:
 - (i) making a refund to a claimant, estate, or trust as required by Subsection (3)(a)(i);
 - (ii) making a transfer from the Transportation Fund into the Education Fund as required by Subsection (10)(a); or
 - (iii) enforcing this part.
- (11)
 - (a) On or before November 30, 2017, and every three years after 2017, the Revenue and Taxation Interim Committee shall review the tax credit provided by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.
 - (b) In conducting the review required by Subsection (11)(a), the Revenue and Taxation Interim Committee shall:
 - (i) schedule time on at least one committee agenda to conduct the review;
 - (ii) invite state agencies, individuals, and organizations concerned with the credit under review to provide testimony;
 - (iii) ensure that the recommendations described in this section include an evaluation of:
 - (A) the cost of the tax credit to the state;
 - (B) the purpose and effectiveness of the tax credit; and
 - (C) the extent to which the state benefits from the tax credit; and
 - (iv) undertake other review efforts as determined by the chairs of the Revenue and Taxation Interim Committee.

Amended by Chapter 1, 2016 Special Session 3

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

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

- (b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.
 - (c) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a refund or credit under this section.
 - (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.
 - (e) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.
 - (f)
 - (i) The claim shall include an affidavit containing the:
 - (A) name of claimant;
 - (B) claimant's address;
 - (C) date, time, and location of the incident;
 - (D) cause of the incident;
 - (E) name of the investigating agencies at the scene;
 - (F) number of gallons actually lost from sale; and
 - (G) information on any insurance coverages related to the incident.
 - (ii) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.
 - (iii) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.
- (2)
- (a) A retailer, wholesaler, or licensed distributor who has paid the tax on motor fuel as provided by this part is entitled to a refund for taxes paid on that portion of an account that:
 - (i) relates to 4,500 or more gallons of motor fuel purchased in a single transaction for which no payment has been received; and
 - (ii) has been discharged in a bankruptcy proceeding.
 - (b) The claimant shall file a claim for refund with the commission within 90 days from the date of the discharge.
 - (c) Any claimant filing a claim for a refund shall furnish any or all of the information outlined in this section upon request of the commission.
 - (d) The burden of proof of discharge is on the claimant who shall provide evidence of discharge to the satisfaction of the commission.
 - (e) The claim shall include an affidavit containing the following:
 - (i) the name of the claimant;
 - (ii) the claimant's address;
 - (iii) the name of the debtor that received a discharge in bankruptcy; and
 - (iv) the portion of the account that is subject to an order granting a discharge.
 - (f) The claimant shall support the claim by submitting:
 - (i) the original invoices or a copy of the original invoices; and
 - (ii) a certified copy of the notice of discharge.
 - (g) This original claim and all information contained in it constitutes a permanent file with the commission in the name of the claimant.
 - (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall promulgate rules for the allocation of the discharge under this Subsection (2) to maximize the claimant's refund amount.
- (3)

- (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, or licensed distributor is entitled to a refund or credit of motor fuel tax if:
 - (i) dyed diesel fuel or special fuel is mixed with motor fuel; and
 - (ii) the retailer, wholesaler, or licensed distributor:
 - (A) returns the mixed motor fuel to the refinery for re-refining; and
 - (B) has paid the tax on the motor fuel as provided by this part.
- (b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the date the motor fuel was returned to the refinery for re-refinement.
- (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.
- (d) The burden of proof that the motor fuel was returned to the refinery for re-refinement is on the claimant who shall provide evidence to the satisfaction of the commission that the motor fuel was returned to the refinery for re-refinement.
- (e)
 - (i) The claim shall include an affidavit containing the:
 - (A) name of claimant;
 - (B) claimant's address;
 - (C) date, time, and location of the incident;
 - (D) nature of the incident; and
 - (E) number of gallons actually required to be re-refined.
 - (ii) The claimant shall support the claim by submitting written verification from a refinery that:
 - (A) the motor fuel mixed with the dyed diesel fuel or special fuel was returned to the refinery for re-refinement; and
 - (B) motor fuel tax was paid on the returned motor fuel.
 - (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it constitutes a permanent file with the commission in the name of the claimant.
- (4)
 - (a) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant.
 - (b) The total amount of claims for refunds shall be paid from the Transportation Fund.
- (5)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may:
 - (i) promulgate rules to enforce this part; and
 - (ii) refuse to accept unsubstantiated evidence for the claim.
 - (b) If the commission is not satisfied with the evidence submitted in connection with the claim, it may:
 - (i) reject the claim; or
 - (ii) require additional evidence.
- (6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.
- (7)
 - (a) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part.
 - (b) In addition to the penalties under Subsection (7)(a), the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

- (8) Any refund or credit made under this section does not affect any deduction allowed under Section 59-13-207.

Amended by Chapter 134, 2008 General Session

Amended by Chapter 382, 2008 General Session

59-13-203.1 Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for an applicant; and

(ii)

(A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);

(D) is a partner of the applicant described in Subsection (1)(c)(i);

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for a licensee; and

(ii)

(A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) A person that is required to collect a tax under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

- (i) by the commission in accordance with this section;
- (ii) without a license fee; and
- (iii) if:
 - (A) an applicant:
 - (I) states the applicant's name and address in the application; and
 - (II) provides other information in the application that the commission may require; and
 - (B) the person meets the requirements of this section to be granted a license as determined by the commission;
- (b) may not be assigned to another person; and
- (c) is valid:
 - (i) only for the person named on the license; and
 - (ii) until:
 - (A) the person described in Subsection (3)(c)(i):
 - (I) ceases to do business; or
 - (II) changes that person's business address; or
 - (B) the commission revokes the license.
- (4) The commission shall review an application and determine whether:
 - (a) the applicant meets the requirements of this section to be issued a license; and
 - (b) a bond is required to be posted with the commission in accordance with Subsection (5) before the applicant may be issued a license.
- (5)
 - (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:
 - (i) a license under this section was revoked for a delinquency under this part for:
 - (A) the applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or
 - (ii) there is a delinquency in paying a tax under this part for:
 - (A) the applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part.
 - (b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:
 - (i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsections (5)(c) through (g); or
 - (ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.
 - (c) A bond under this Subsection (5) shall be:
 - (i) executed by:
 - (A) for an applicant, the applicant as principal, with a corporate surety; or
 - (B) for a licensee, the licensee as principal, with a corporate surety; and
 - (ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:
 - (A) the payment of all taxes under this part;
 - (B) the payment of any:
 - (I) penalty as provided in Section 59-1-401; or

- (II) interest as provided in Section 59-1-402; or
- (C) any other obligation of the:
 - (I) applicant under this part; or
 - (II) licensee under this part.
- (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:
 - (i) commission estimates of:
 - (A) an applicant's tax liability under this part; or
 - (B) a licensee's tax liability under this part; and
 - (ii) the amount of a delinquency described in Subsection (5)(e) if:
 - (A) a license under this section was revoked for a delinquency under this part for:
 - (I)
 - (Aa) an applicant; or
 - (Bb) a licensee;
 - (II) a fiduciary of the:
 - (Aa) applicant; or
 - (Bb) licensee; or
 - (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part; or
 - (B) there is a delinquency in paying a tax under this part for:
 - (I)
 - (Aa) an applicant; or
 - (Bb) a licensee;
 - (II) a fiduciary of the:
 - (Aa) applicant; or
 - (Bb) licensee; or
 - (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part.
- (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
 - (i) for an applicant, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; or
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or
 - (B) the amount of tax that any of the following owe under this part:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; and
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or
 - (ii) for a licensee, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the licensee;
 - (II) a fiduciary of the licensee; or
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part; or

- (B) the amount of tax that any of the following owe under this part:
 - (I) the licensee;
 - (II) a fiduciary of the licensee; and
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part.
- (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5) may not:
 - (i) be less than \$10,000; or
 - (ii) exceed \$500,000.
- (g)
 - (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined into one bond with any other bond required by this chapter.
 - (ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined into one bond with any other bond required by this chapter, the amount of that combined bond is determined by:
 - (A) calculating the separate amount of each bond required for each type of fuel included in the combined bond; and
 - (B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).
- (6)
 - (a) The commission shall revoke a license under this section if:
 - (i) a licensee violates any provision of this part; and
 - (ii) before the commission revokes the license the commission provides the licensee:
 - (A) reasonable notice; and
 - (B) a hearing.
 - (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:
 - (i) paying any:
 - (A) tax due under this part;
 - (B) penalty as provided in Section 59-1-401; or
 - (C) interest as provided in Section 59-1-402; and
 - (ii) posting a bond in accordance with Subsection (5).

Amended by Chapter 382, 2008 General Session

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

- (1) Distributors licensed under this part who receive motor fuel are liable for the tax as provided by this part, and shall report the receipt of the motor fuel to the commission and pay the tax as prescribed.
- (2)
 - (a) Distributors shall compute the tax on the total taxable amount of motor fuel produced, purchased, received, imported, or refined in this state, and all distributors shipping motor fuels into this state shall compute the tax on the total taxable amount of motor fuels received for sale or use in this state.
 - (b) All motor fuel distributed by any distributor to the distributor's branches within this state is considered to be sold at the time of this distribution and is subject to this part as if actually sold.

- (c) Distributors licensed under this part may sell motor fuel to other licensed distributors without the payment or collection of the tax, if the purchasing distributor furnishes the seller with an assumption of liability statement indicating the purchasing distributor is a licensed and bonded Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel purchased from the seller. The seller shall report each sale to the commission in a monthly report of sales as provided under Section 59-13-206.
- (3) If motor fuels have been purchased outside of this state and brought into this state in original packages from a distributor for the use of the consumer, then the tax shall be imposed when the motor fuel is received.
- (4)
 - (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes levied and assessed by this part to the price of the motor fuels.
 - (b) This Subsection (4) in no way affects the method of the collection of the taxes as specified in this part.
 - (c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under Section 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and assessed by this part to the price of motor fuel that is purchased:
 - (i) by a Ute tribal member; and
 - (ii) at a retail station:
 - (A) wholly owned by the Ute tribe; and
 - (B) located on Ute trust land.
 - (d) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this part do not include the amount of the reduction of tax under Subsection 59-13-201(9).

Amended by Chapter 306, 2007 General Session

59-13-205 License certificate -- Display at place of business -- Failure to secure license -- Penalties.

- (1) Each distributor of motor fuel shall, at all times, conspicuously display at the distributor's place of business or agency a license certificate issued by the commission.
- (2) If any person becomes a distributor, without first securing the license required by this part, the motor fuel tax shall be immediately due and payable on account of all motor fuel received. The commission shall proceed immediately to determine the amount of distributions and shall assess immediately the motor fuel tax on account of the distributions, adding to the motor fuel tax a penalty for failure to secure the license as provided in Section 59-1-401.

Enacted by Chapter 6, 1987 General Session

59-13-206 Distributor requirements -- Reports and statements to be furnished to the commission -- Contents of statements -- Statement to be signed -- Penalties.

- (1) Every distributor of motor fuel shall render to the commission, on or before the last day of each month, the following statements on forms prescribed by the commission:
 - (a) the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month;
 - (b) an itemized account of the date and quantities of motor fuel sold, used, or received for sale or use, stating separately the sales made in interstate commerce and those made in broken packages; and

- (c) any other information incidental to the enforcing of this part which the commission may require.
- (2) The statement shall be signed by a responsible representative of the distributor. This signature need not be notarized, but when signed is considered to have been made under oath. Bills shall be rendered to all purchasers of motor fuel by distributors.
- (3) A penalty for failure to file the statement required by Subsection (1) shall be as provided under Section 59-1-401.

Enacted by Chapter 6, 1987 General Session

59-13-207 Deductions allowed -- Prorating of deduction to retail dealers.

- (1) There is deducted 2% from the gross amount of motor fuel taxable under this part to allow for all evaporation, loss in handling, and expenses of collection. All distributors shall report the gross amount of taxable motor fuel which is produced, received, refined, or sold in this state from which this deduction shall be made.
- (2) At the time of submitting the report and payment of the tax, the producers and refiners shall further submit evidence to the satisfaction of the commission that from the amount of the 2% deduction made by them, one half of the deduction has been paid to the registered retail dealers on quantities sold to them during the period covered by the report.

Enacted by Chapter 6, 1987 General Session

59-13-208 Motor fuel shipments from out of state -- Reports required.

- (1) Every person delivering within this state any motor fuel which has been shipped from outside the state shall, on or before the last day of each month, report in writing all deliveries during the preceding month to the commission on forms prescribed by it. The report shall show:
 - (a) the date of delivery;
 - (b) the person who received the delivery;
 - (c) the quantity as shown by the bill of lading; and
 - (d) any other information the commission may require.
- (2) The commission may require from carriers necessary information regarding the shipment of other petroleum products.

Enacted by Chapter 6, 1987 General Session

59-13-209 Due date -- Delinquency -- Penalties -- Interest -- Collection procedure.

- (1)
 - (a) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month.
 - (b) The commission shall receipt the distributor for taxes paid and shall promptly deposit all revenue with the state treasurer.
- (2)
 - (a) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent.
 - (b) If a distributor is delinquent in tax payments, the commission shall impose a penalty as provided under Section 59-1-401.

- (c) The amount of the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402.
- (3)
 - (a) A report or payment of tax is not considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment is due.
 - (b) The commission, upon receipt of a report or remittance described in Subsection (3)(a), shall treat the report or payment as if it had been received on the date it was due.
- (4) If any part of a tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.
- (5)
 - (a) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding.
 - (b) The remedy described in Subsection (5)(a) is in addition to all other remedies.
- (6) If the tax imposed by this part is not paid when it is due, collection may be made in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

Amended by Chapter 212, 2009 General Session

59-13-210 Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to administer and enforce this part.

Amended by Chapter 212, 2009 General Session

59-13-211 Distributor's records -- Audit requirements -- Deposit of revenues with treasurer -- Dedicated credits.

- (1) A distributor who does not maintain adequate motor fuel records at one location in this state so that an audit of the records may be made, may be required to:
 - (a) forward the necessary records to Salt Lake City; or
 - (b) pay the necessary expenses of an auditor to make the examination at the proper division office.
- (2) Funds collected under this section:
 - (a) shall be deposited with the state treasurer; and
 - (b) are dedicated credits for the commission.

Amended by Chapter 212, 2009 General Session

59-13-212 Penalties for failure to make reports or returns -- Criminal penalties.

Any person who violates this part or who fails or neglects to make any statement, report, or return required by this part, where the penalty is not otherwise specifically prescribed, is guilty of a criminal violation as provided in Section 59-1-401.

Enacted by Chapter 6, 1987 General Session