

1                                   **MOTOR AND SPECIAL FUEL TAXES -**

2   **NAVAJO NATION TAXES**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Keele Johnson**

6 AN ACT RELATING TO REVENUE AND TAXES; PROVIDING A REDUCTION OF TAXES  
7 OF MOTOR AND SPECIAL FUEL TAXES IF THE MOTOR FUEL IS TAXED BY THE  
8 NAVAJO NATION; AUTHORIZING AGREEMENTS WITH THE NAVAJO NATION  
9 RELATED TO ADMINISTRATION OF MOTOR AND SPECIAL FUELS; MAKING  
10 TECHNICAL CHANGES; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND  
11 PROVIDING INSTRUCTIONS FOR ENROLLING.

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

13 AMENDS:

14                   **59-13-201**, as last amended by Chapter 283, Laws of Utah 1999

15                   **59-13-204**, as enacted by Chapter 6, Laws of Utah 1987

16                   **59-13-301**, as last amended by Chapter 3, Laws of Utah 1997, First Special Session

17 This act enacts uncodified material.

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

19                   Section 1. Section **59-13-201** is amended to read:

20                   **59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the**  
21 **Transportation Fund -- Restricted account for boating uses -- Refunds.**

22                   (1) (a) A tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is  
23 sold, used, or received for sale or used in this state.

24                   (b) A tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a),  
25 rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in  
26 Section 59-13-102 and are sold, used, or received for sale or use in this state.

27                   (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state

28 or sold at refineries in the state on or after the effective date of the rate change.

29 (3) (a) No tax is imposed upon:

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

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

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

36 (iv) motor fuel that is sold to the United States government, this state, or the political  
37 subdivisions of this state where sale and delivery is made in quantities of 750 gallons or more.

38 (b) For purposes of this subsection, the state and its political subdivisions may make  
39 collective purchases for purposes of meeting the 750 gallon requirement, and the state and political  
40 subdivisions may provide for this purchase in any manner approved by the commission.

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

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

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

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

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

56 (7) (a) The United States government or any of its instrumentalities, this state, or a political  
57 subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail  
58 dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled

59 to a refund of the tax and may file with the commission for a quarterly refund.

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

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

65 (i) .5% of the motor fuel tax revenues collected under this section; or

66 (ii) \$850,000.

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

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

69 (9) (a) Beginning on April 1, 2000, a tax imposed under this section on motor fuel that is  
70 sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection  
71 (9)(b) if:

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

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

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

78 (b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

79 (A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that difference  
80 is greater than \$0; and

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

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

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

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

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

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

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

94 (i) may not:

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

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

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

99 (ii) shall:

100 (A) be in writing;

101 (B) be signed by:

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

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

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

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

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

108 Nation; and

109 (iii) may:

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

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

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

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

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

117 (f) (i) If, on or after April 1, 2000, the Navajo Nation changes the tax rate of a tax imposed  
118 on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the  
119 change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period  
120 beginning on the date the commission receives notice:

- 121 (A) from the Navajo Nation; and  
122 (B) meeting the requirements of Subsection (9)(f)(ii).  
123 (ii) The notice described in Subsection (9)(f)(i) shall state:  
124 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on  
125 motor fuel;  
126 (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A);  
127 and  
128 (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).  
129 (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not  
130 permitted under this Subsection (9) beginning on the first day of the calendar quarter after a 30-day  
131 period beginning on the day the agreement terminates.  
132 (h) If there is a conflict between this Subsection (9) and the agreement required by  
133 Subsection (9)(a), this Subsection (9) governs.

134 Section 2. Section **59-13-204** is amended to read:

135 **59-13-204. Distributors liable for tax -- Computations -- Exceptions -- Assumption**  
136 **of liability statements -- Motor fuel received -- Tax to be added to price of motor fuel.**

137 (1) Distributors licensed under this part who receive motor fuel are liable for the tax as  
138 provided by this part, and shall report the receipt of the motor fuel to the commission and pay the  
139 tax as prescribed.

140 (2) (a) Distributors shall compute the tax on the total taxable amount of motor fuel  
141 produced, purchased, received, imported, or refined in this state, and all distributors shipping  
142 motor fuels into this state shall compute the tax on the total taxable amount of motor fuels received  
143 for sale or use in this state.

144 (b) All motor fuel distributed by any distributor to the distributor's branches within this  
145 state is considered to be sold at the time of this distribution and is subject to this part as if actually  
146 sold.

147 (c) Distributors licensed under this part may sell motor fuel to other licensed distributors  
148 without the payment or collection of the tax, if the purchasing distributor furnishes the seller with  
149 an assumption of liability statement indicating the purchasing distributor is a licensed and bonded  
150 Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel  
151 purchased from the seller. The seller shall report each sale to the commission in a monthly report

152 of sales as provided under Section 59-13-206.

153 (3) If motor fuels have been purchased outside of this state and brought into this state in  
154 original packages from a distributor for the use of the consumer, then the tax shall be imposed  
155 when the motor fuel is received.

156 (4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes  
157 levied and assessed by this part to the price of the motor fuels. [~~This provision]~~

158 (b) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this part  
159 do not include the amount of the reduction of tax under Subsection 59-3-201(9).

160 (c) This Subsection (4) in no way affects the method of the collection of the taxes as  
161 specified in this part.

162 Section 3. Section **59-13-301** is amended to read:

163 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and**  
164 **credited to Transportation Fund.**

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

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

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

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

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

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

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

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

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

177 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the  
178 public highways of the state, but this exemption applies only in those cases where the purchasers

179 or the users of special fuel establish to the satisfaction of the commission that the special fuel was  
180 used for purposes other than to operate a motor vehicle upon the public highways of the state; or

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

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

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

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

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

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

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

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

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

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

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

197 (b) used pursuant to the conditions of a state implementation plan approved under Title  
198 19, Chapter 2, Air Conservation Act.

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

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

202 (6) (a) The special fuel tax shall be paid by every user who is required by Sections  
203 59-13-303 and 59-13-305 to obtain a special fuel permit and file special fuel tax reports.

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

206 (7) (a) All revenue received by the commission from taxes and license fees under this part  
207 shall be deposited daily with the state treasurer and credited to the Transportation Fund.

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

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

213 (9) (a) The United States government or any of its instrumentalities, this state, or a political

214 subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of  
215 special fuel and has paid the tax on the special fuel as provided in this section is entitled to a  
216 refund of the tax and may file with the commission for a quarterly refund.

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

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

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

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

228 (11) (a) Beginning on April 1, 2000, a tax imposed under this section on special fuel is  
229 reduced to the extent provided in Subsection (11)(b) if:

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

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

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

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

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

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

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

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

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

244 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the

245 special fuel does not include any interest or penalties a taxpayer may be required to pay to the  
246 Navajo Nation.

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

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

251 (i) may not:

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

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

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

256 (ii) shall:

257 (A) be in writing;

258 (B) be signed by:

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

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

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

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

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

266 (iii) may:

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

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

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

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

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

274 (f) (i) If, on or after April 1, 2000, the Navajo Nation changes the tax rate of a tax imposed  
275 on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as

276 a result of the change in the tax rate is not effective until the first day of the calendar quarter after  
277 a 60-day period beginning on the date the commission receives notice:

278 (A) from the Navajo Nation; and

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

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

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

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

284 and

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

286 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not  
287 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a  
288 30-day period beginning on the day the agreement terminates.

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

291 **Section 4. Effective date.**

292 If approved by two-thirds of all the members elected to each house, this act takes effect  
293 upon approval by the governor, or the day following the constitutional time limit of Utah  
294 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the  
295 date of veto override.

296 **Section 5. Enrolling.**

297 If this bill is passed by the Legislature but is not approved by two-thirds of all the members  
298 elected to each house, it is the intent of the Legislature that in enrolling this bill the Office of  
299 Legislative Research and General Counsel change the date of "April 1, 2000" to "May 1, 2000"  
300 in Subsection 59-13-201(9) and Subsection 59-13-301(11).

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**Legislative Review Note**

**as of 2-7-00 9:37 AM**

This legislation raises the following constitutional or statutory concerns:

This bill amends tax provisions to reflect specific negotiations with the Navajo Nation. Under the federal and state constitutions, there are some limits on a legislature's ability to legislate on the basis of classifications if those classifications are improperly narrow. A court may find that the tribe-specific classification in this legislation may be permissible because it is consistent with the government-to-government relationship between the state and tribes.

**Office of Legislative Research and General Counsel**