

FUEL TAX CREDIT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott K. Jenkins

This act modifies the Revenue and Taxation Code by providing a motor fuel or special fuel retailer, wholesaler, or licensed distributor a tax refund for the portion of an account involving the sale of 4,500 or more gallons of motor fuel that has been discharged in a bankruptcy proceeding. This act provides that the claimant has the burden of proof of establishing a refund claim and provides the evidence that is necessary to receive a refund. This act gives the State Tax Commission rulemaking authority to make rules for allocation of the discharge to maximize the claimant's refund amount. This act takes effect July 1, 2003.

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

AMENDS:

59-13-202.5, as last amended by Chapter 9, Laws of Utah 2001

59-13-322, as last amended by Chapter 9, Laws of Utah 2001

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

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

59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, or discharge in bankruptcy -- 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.

~~[(2)-(a)]~~ (b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

~~[(b)]~~ (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.

~~[(c)]~~ (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.

~~[(d)]~~ (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.

~~[(3)-(a)]~~ (f) (i) The claim shall include an affidavit containing the:

~~[(i)]~~ (A) name of claimant;

~~[(ii)]~~ (B) claimant's address;

~~[(iii)]~~ (C) date, time, and location of the incident;

~~[(iv)]~~ (D) cause of the incident;

~~[(v)]~~ (E) name of the investigating agencies at the scene;

~~[(vi)]~~ (F) number of gallons actually lost from sale; and

~~[(vii)]~~ (G) information on any insurance coverages related to the incident.

~~[(b)]~~ (ii) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

~~[(c)]~~ (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 63, Chapter 46a, 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.

~~[(4)]~~ (3) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

~~[(5)]~~ (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

~~[(6)]~~ (5) 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)]~~ (6) 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. In addition to these penalties, 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)]~~ (7) Any refund or credit made under this section does not affect any deduction allowed under Section 59-13-207.

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

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

(1) (a) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or destruction of 7,000 or more gallons of diesel 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 special 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.

~~[(2)-(a)]~~ (b) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

~~[(b)]~~ (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 special fuel is not eligible for a refund or credit under this section.

~~[(c)]~~ (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.

~~[(d)]~~ (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.

~~[(3)-(a)]~~ (f)(i) The claim shall include an affidavit containing the:

~~[(i)]~~ (A) name of claimant;

~~[(ii)]~~ (B) claimant's address;

~~[(iii)]~~ (C) date, time, and location of the incident;

~~[(iv)]~~ (D) cause of the incident;

~~[(v)]~~ (E) name of the investigating agencies at the scene;

~~[(vi)]~~ (F) number of gallons actually lost from sale; and

~~[(vii)]~~ (G) information on any insurance coverages related to the incident.

~~[(b)]~~ (ii) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

~~[(c)]~~ (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 special 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 special 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 63, Chapter 46a, 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.

~~[(4)]~~ (3) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

~~[(5)]~~ (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

~~[(6)]~~ (5) 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)]~~ (6) 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. In addition to these penalties, 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.

Section 3. **Effective date.**

This act takes effect on July 1, 2003.