

1 **FUEL TAX CREDIT**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Scott K. Jenkins**

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

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

14 AMENDS:

15 **59-13-202.5**, as last amended by Chapter 9, Laws of Utah 2001

16 **59-13-322**, as last amended by Chapter 9, Laws of Utah 2001

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

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

19 **59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, or discharge**
20 **in bankruptcy -- Filing claims and affidavits -- Commission approval -- Rulemaking --**
21 **Appeals -- Penalties.**

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

27 [~~(2)(a)~~] (b) The claimant shall file a claim for a refund or credit with the commission



28 within 90 days of the incident.

29 ~~[(b)]~~ (c) Any part of a loss or destruction eligible for indemnification under an
30 insurance policy for the taxes paid or required on the loss or destruction of motor fuel is not
31 eligible for a refund or credit under this section.

32 ~~[(c)]~~ (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
33 information outlined in this section upon request of the commission.

34 ~~[(d)]~~ (e) The burden of proof of loss or destruction is on the claimant who shall provide
35 evidence of loss or destruction to the satisfaction of the commission.

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

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

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

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

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

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

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

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

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

46 ~~[(c)]~~ (iii) This original claim and all information contained in it constitutes a permanent
47 file with the commission in the name of the claimant.

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

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

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

53 (b) The claimant shall file a claim for refund with the commission within 90 days from
54 receipt of the notice of discharge.

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

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

- 59 (e) The claim shall include an affidavit containing the following:
60 (i) the name of the claimant;
61 (ii) the claimant's address;
62 (iii) the name of the debtor that received a discharge in bankruptcy; and
63 (iv) the portion of the account that is subject to an order granting a discharge.
64 (f) The claimant shall support the claim by submitting:
65 (i) the original invoices or a copy of the original invoices; and
66 (ii) a certified copy of the notice of discharge.
67 (g) This original claim and all information contained in it constitutes a permanent file
68 with the commission in the name of the claimant.
69 (h) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
70 commission shall promulgate rules for the allocation of a refund under this Subsection (2) to
71 maximize the claimant's refund amount.
- 72 ~~[(4)]~~ (3) Upon commission approval of the claim for a refund, the commission shall
73 pay the amount found due to the claimant. The total amount of claims for refunds shall be paid
74 from the Transportation Fund.
- 75 ~~[(5)]~~ (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
76 Act, the commission may promulgate rules to enforce this part, and may refuse to accept
77 unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence
78 submitted in connection with the claim, it may reject the claim or require additional evidence.
- 79 ~~[(6)]~~ (5) Any person aggrieved by the decision of the commission with respect to a
80 refund or credit may file a request for agency action, requesting a hearing before the
81 commission.
- 82 ~~[(7)]~~ (6) Any person who makes any false claim, report, or statement, either as
83 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
84 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
85 and the commission shall initiate the filing of a complaint for alleged violations of this part. In
86 addition to these penalties, the person may not receive any refund or credit as a claimant or as a
87 creditor of a claimant for refund or credit for a period of five years.
- 88 ~~[(8)]~~ (7) Any refund or credit made under this section does not affect any deduction
89 allowed under Section 59-13-207.

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

91 **59-13-322. Refunds of tax due to fire, flood, storm, accident, crime, or discharge**
92 **in bankruptcy -- Filing claims and affidavits -- Commission approval -- Rulemaking --**
93 **Appeals -- Penalties.**

94 (1) (a) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or
95 destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm,
96 accident, or the commission of a crime and who has paid or is required to pay the tax on the
97 special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the
98 conditions and limitations provided under this section.

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

101 ~~[(b)]~~ (c) Any part of a loss or destruction eligible for indemnification under an
102 insurance policy for the taxes paid or required on the loss or destruction of special fuel is not
103 eligible for a refund or credit under this section.

104 ~~[(c)]~~ (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
105 information outlined in this section upon request of the commission.

106 ~~[(d)]~~ (e) The burden of proof of loss or destruction is on the claimant who shall provide
107 evidence of loss or destruction to the satisfaction of the commission.

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

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

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

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

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

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

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

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

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

118 ~~[(c)]~~ (iii) This original claim and all information contained in it constitutes a permanent
119 file with the commission in the name of the claimant.

120 (2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on special

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

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

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

126 (b) The claimant shall file a claim for refund with the commission within 90 days from
127 receipt of the notice of discharge.

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

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

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

133 (i) the name of the claimant;

134 (ii) the claimant's address;

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

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

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

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

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

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

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

145 ~~[(4)]~~ (3) Upon commission approval of the claim for a refund, the commission shall
146 pay the amount found due to the claimant. The total amount of claims for refunds shall be paid
147 from the Transportation Fund.

148 ~~[(5)]~~ (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
149 Act, the commission may promulgate rules to enforce this part, and may refuse to accept
150 unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence
151 submitted in connection with the claim, it may reject the claim or require additional evidence.

152 [~~(6)~~] (5) Any person aggrieved by the decision of the commission with respect to a
153 refund or credit may file a request for agency action, requesting a hearing before the
154 commission.

155 [~~(7)~~] (6) Any person who makes any false claim, report, or statement, either as
156 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
157 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
158 and the commission shall initiate the filing of a complaint for alleged violations of this part. In
159 addition to these penalties, the person may not receive any refund or credit as a claimant or as a
160 creditor of a claimant for refund or credit for a period of five years.

161 Section 3. **Effective date.**

162 This act takes effect on July 1, 2003.

Legislative Review Note
as of **2-14-03 10:03 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could result in a loss of Transportation Fund of approximately \$100,000 annually.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Transportation Fund	\$0	\$0	(\$100,000)	(\$100,000)
TOTAL	\$0	\$0	(\$100,000)	(\$100,000)

Individual and Business Impact

Eligible individuals could receive motor fuel tax refunds.

Office of the Legislative Fiscal Analyst