

MOTOR AND SPECIAL FUEL TAX

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to refunds or credits of motor fuel and special fuel taxes.

Highlighted Provisions:

This bill:

- ▶ authorizes the State Tax Commission to refund or credit motor fuel or special fuel tax paid on motor fuel or special fuel that is mixed with dyed diesel fuel or special fuel and is required to be re-refined;
- ▶ provides that a claimant of a refund or credit has the burden of proof to establish a claim for a refund or credit;
- ▶ specifies the evidence that is necessary to receive a refund or credit; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.

Utah Code Sections Affected:

AMENDS:

59-13-202.5, as last amended by Laws of Utah 2003, Chapter 178

59-13-322, as last amended by Laws of Utah 2003, Chapter 178

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

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

32 **59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, discharge in**
33 **bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval --**
34 **Rulemaking -- Appeals -- Penalties.**

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

40 (b) The claimant shall file a claim for a refund or credit with the commission within 90
41 days of the incident.

42 (c) Any part of a loss or destruction eligible for indemnification under an insurance
43 policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a
44 refund or credit under this section.

45 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
46 information outlined in this section upon request of the commission.

47 (e) The burden of proof of loss or destruction is on the claimant who shall provide
48 evidence of loss or destruction to the satisfaction of the commission.

49 (f) (i) The claim shall include an affidavit containing the:

50 (A) name of claimant;

51 (B) claimant's address;

52 (C) date, time, and location of the incident;

53 (D) cause of the incident;

54 (E) name of the investigating agencies at the scene;

55 (F) number of gallons actually lost from sale; and

56 (G) information on any insurance coverages related to the incident.

57 (ii) The claimant shall support the claim by submitting the original invoices or copy of

58 the original invoices.

59 (iii) This original claim and all information contained in it constitutes a permanent file
60 with the commission in the name of the claimant.

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

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

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

66 (b) The claimant shall file a claim for refund with the commission within 90 days from
67 the date of the discharge.

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

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

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

73 (i) the name of the claimant;

74 (ii) the claimant's address;

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

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

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

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

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

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

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

85 (3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler, or

86 licensed distributor is entitled to a refund or credit of motor fuel tax if:

87 (i) dyed diesel fuel or special fuel is mixed with motor fuel; and

88 (ii) the retailer, wholesaler, or licensed distributor:

89 (A) returns the mixed motor fuel to the refinery for re-refining; and

90 (B) has paid the tax on the motor fuel as provided by this part.

91 (b) The claimant shall file a claim for a refund or credit with the commission within 90

92 days of the date the motor fuel was returned to the refinery for re-refinement.

93 (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the

94 information outlined in this section upon request of the commission.

95 (d) The burden of proof that the motor fuel was returned to the refinery for

96 re-refinement is on the claimant who shall provide evidence to the satisfaction of the

97 commission that the motor fuel was returned to the refinery for re-refinement.

98 (e) (i) The claim shall include an affidavit containing the:

99 (A) name of claimant;

100 (B) claimant's address;

101 (C) date, time, and location of the incident;

102 (D) nature of the incident; and

103 (E) number of gallons actually required to be re-refined.

104 (ii) The claimant shall support the claim by submitting written verification from a

105 refinery that:

106 (A) the motor fuel mixed with the dyed diesel fuel or special fuel was returned to the

107 refinery for re-refinement; and

108 (B) motor fuel tax was paid on the returned motor fuel.

109 (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it

110 constitutes a permanent file with the commission in the name of the claimant.

111 ~~[(3)]~~ (4) (a) Upon commission approval of the claim for a refund, the commission shall

112 pay the amount found due to the claimant.

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

114 [~~(4)~~] (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
115 Act, the commission may:

- 116 (i) promulgate rules to enforce this part~~;~~; and [~~may~~]
- 117 (ii) refuse to accept unsubstantiated evidence for the claim.

118 (b) If the commission is not satisfied with the evidence submitted in connection with the
119 claim, it may:

- 120 (i) reject the claim; or
- 121 (ii) require additional evidence.

122 [~~(5)~~] (6) Any person aggrieved by the decision of the commission with respect to a
123 refund or credit may file a request for agency action, requesting a hearing before the
124 commission.

125 [~~(6)~~] (7) (a) Any person who makes any false claim, report, or statement, either as
126 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
127 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
128 and the commission shall initiate the filing of a complaint for alleged violations of this part.

129 (b) In addition to [~~these~~] the penalties under Subsection (7)(a), the person may not
130 receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a
131 period of five years.

132 [~~(7)~~] (8) Any refund or credit made under this section does not affect any deduction
133 allowed under Section 59-13-207.

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

135 **59-13-322. Refunds of tax due to fire, flood, storm, accident, crime, discharge in**
136 **bankruptcy, or mixing of fuels -- Filing claims and affidavits -- Commission approval --**
137 **Rulemaking -- Appeals -- Penalties.**

138 (1) (a) A retailer, wholesaler, licensed distributor, or licensed supplier, who without
139 fault, sustains a loss or destruction of 7,000 or more gallons of diesel fuel in a single incident
140 due to fire, flood, storm, accident, or the commission of a crime and who has paid or is required
141 to pay the tax on the special fuel as provided by this part, is entitled to a refund or credit of the

142 tax subject to the conditions and limitations provided under this section.

143 (b) The claimant shall file a claim for a refund or credit with the commission within 90
144 days of the incident.

145 (c) Any part of a loss or destruction eligible for indemnification under an insurance
146 policy for the taxes paid or required on the loss or destruction of special fuel is not eligible for a
147 refund or credit under this section.

148 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
149 information outlined in this section upon request of the commission.

150 (e) The burden of proof of loss or destruction is on the claimant who shall provide
151 evidence of loss or destruction to the satisfaction of the commission.

152 (f) (i) The claim shall include an affidavit containing the:

153 (A) name of claimant;

154 (B) claimant's address;

155 (C) date, time, and location of the incident;

156 (D) cause of the incident;

157 (E) name of the investigating agencies at the scene;

158 (F) number of gallons actually lost from sale; and

159 (G) information on any insurance coverages related to the incident.

160 (ii) The claimant shall support the claim by submitting the original invoices or copy of
161 the original invoices.

162 (iii) This original claim and all information contained in it constitutes a permanent file
163 with the commission in the name of the claimant.

164 (2) (a) A retailer, wholesaler, [or] licensed distributor, or licensed supplier who has paid
165 the tax on special fuel as provided by this part is entitled to a refund for taxes paid on that
166 portion of an account that:

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

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

170 (b) The claimant shall file a claim for refund with the commission within 90 days from
171 the date of the discharge.

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

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

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

177 (i) the name of the claimant;

178 (ii) the claimant's address;

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

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

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

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

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

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

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

189 (3) (a) Subject to the conditions and limitations of this section, a retailer, wholesaler,
190 licensed distributor, or licensed supplier is entitled to a refund or credit of special fuel tax if:

191 (i) dyed diesel fuel or special fuel is mixed with special fuel; and

192 (ii) the retailer, wholesaler, licensed distributor, or licensed supplier:

193 (A) returns the mixed special fuel to the refinery for re-refining; and

194 (B) has paid the tax on the special fuel as provided by this part.

195 (b) The claimant shall file a claim for a refund or credit with the commission within 90
196 days of the date the special fuel was returned to the refinery for re-refinement.

197 (c) Any claimant filing a claim for a refund or credit shall furnish any or all of the

198 information outlined in this section upon request of the commission.

199 (d) The burden of proof that the special fuel was returned to the refinery for
200 re-refinement is on the claimant who shall provide evidence to the satisfaction of the
201 commission that the special fuel was returned to the refinery for re-refinement.

202 (e) (i) The claim shall include an affidavit containing the:

203 (A) name of claimant;

204 (B) claimant's address;

205 (C) date, time, and location of the incident;

206 (D) nature of the incident; and

207 (E) number of gallons of special fuel actually required to be re-refined.

208 (ii) The claimant shall support the claim by submitting written verification from a
209 refinery that:

210 (A) the special fuel mixed with the dyed diesel fuel or special fuel was returned to the
211 refinery for re-refinement; and

212 (B) special fuel tax was paid on the returned special fuel.

213 (iii) The claim filed pursuant to Subsection (3)(b) and all information contained in it
214 constitutes a permanent file with the commission in the name of the claimant.

215 ~~[(3)]~~ (4) (a) Upon commission approval of the claim for a refund, the commission shall
216 pay the amount found due to the claimant.

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

218 ~~[(4)]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
219 Act, the commission may:

220 (i) promulgate rules to enforce this part~~[-];~~ and ~~[may]~~

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

222 (b) If the commission is not satisfied with the evidence submitted in connection with the
223 claim, it may:

224 (i) reject the claim; or

225 (ii) require additional evidence.

226 [~~(5)~~] (6) Any person aggrieved by the decision of the commission with respect to a
227 refund or credit may file a request for agency action, requesting a hearing before the
228 commission.

229 [~~(6)~~] (7) (a) Any person who makes any false claim, report, or statement, either as
230 claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the
231 claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401,
232 and the commission shall initiate the filing of a complaint for alleged violations of this part.

233 (b) In addition to [~~these~~] the penalties under Subsection (7)(a), the person may not
234 receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a
235 period of five years.

236 Section 3. **Effective date.**

237 This bill takes effect on July 1, 2008.