

MOTOR AND SPECIAL FUEL TAX AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to motor and special fuel.

Highlighted Provisions:

This bill:

- ▶ increases the motor and special fuel tax rate;
- ▶ increases the tax rate imposed on compressed natural gas;
- ▶ provides that the motor fuel and special fuel tax rate shall be increased or decreased every two years based on the actual percentage change in the consumer price index over the previous two calendar years;
- ▶ provides procedures for implementing the motor fuel and special fuel tax rate adjustment;
- ▶ grants the State Tax Commission rulemaking authority to establish rules to implement the motor fuel and special fuel tax rate adjustment provisions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:



28 AMENDS:

29 **59-13-201**, as last amended by Laws of Utah 2010, Chapter 308

30 **59-13-301**, as last amended by Laws of Utah 2008, Chapters 153 and 382

31

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

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

34 **59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the**
35 **Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax**
36 **in limited circumstances.**

37 (1) (a) Subject to the provisions of this section, a tax is imposed at the rate of [~~24~~-1/2]
38 29 1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this
39 state.

40 (b) In lieu of the tax imposed under Subsection (1)(a) and subject to the provisions of
41 this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a),
42 rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in
43 Section 59-13-102 and are sold, used, or received for sale or use in this state.

44 (c) (i) Beginning on or after July 1, 2012, the commission shall, every two years in the
45 even year, increase or decrease the rate imposed under Subsection (1)(a) by an amount equal to
46 the actual percentage change in the Consumer Price Index during the previous two calendar
47 years rounded up to the nearest half penny.

48 (ii) For purposes of Subsection (1)(c)(i), the commission shall calculate the Consumer
49 Price Index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

50 (iii) The adjusted fuel tax rate shall take effect on July 1 in a year that the fuel tax rate
51 is required to be adjusted in accordance with Subsection (1)(c)(i).

52 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
53 the commission shall make rules implementing the provisions of this Subsection (1)(c).

54 (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the
55 state or sold at refineries in the state on or after the effective date of the rate change.

56 (3) (a) No motor fuel tax is imposed upon:

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

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

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

64 (iv) motor fuel that is sold to the United States government, this state, or the political
65 subdivisions of this state.

66 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
67 commission shall make rules governing the procedures for administering the tax exemption
68 provided under Subsection (3)(a)(iv).

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

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

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

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

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

84 (7) (a) The United States government or any of its instrumentalities, this state, or a
85 political subdivision of this state that has purchased motor fuel from a licensed distributor or
86 from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this
87 section is entitled to a refund of the tax and may file with the commission for a quarterly
88 refund.

89 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

90 commission shall make rules governing the application and refund provided for in Subsection
91 (7)(a).

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

- 94 (i) .5% of the motor fuel tax revenues collected under this section; or
- 95 (ii) \$1,050,000.

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

97 (9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that
98 is sold, used, or received for sale or use in this state is reduced to the extent provided in
99 Subsection (9)(b) if:

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

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

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

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

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

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

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

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

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

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

119 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
120 commission shall make rules governing the procedures for administering the reduction of tax

121 provided under this Subsection (9).

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

123 (i) may not:

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

125 (B) provide a reduction of taxes greater than or different from the reduction described

126 in this Subsection (9); or

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

128 (ii) shall:

129 (A) be in writing;

130 (B) be signed by:

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

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

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

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

135 (E) state any accommodation the Navajo Nation makes related to the construction and

136 maintenance of state highways and other infrastructure within the Utah portion of the Navajo

137 Nation; and

138 (iii) may:

139 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the

140 Navajo Nation information that is:

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

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

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

144 (C) provide for inspections or audits of distributors, carriers, or retailers located or

145 doing business within the Utah portion of the Navajo Nation.

146 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax

147 imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a

148 result of the change in the tax rate is not effective until the first day of the calendar quarter after

149 a 60-day period beginning on the date the commission receives notice:

150 (A) from the Navajo Nation; and

151 (B) meeting the requirements of Subsection (9)(f)(ii).

152 (ii) The notice described in Subsection (9)(f)(i) shall state:

153 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
154 motor fuel;

155 (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A);
156 and

157 (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

158 (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not
159 permitted under this Subsection (9) beginning on the first day of the calendar quarter after a
160 30-day period beginning on the day the agreement terminates.

161 (h) If there is a conflict between this Subsection (9) and the agreement required by
162 Subsection (9)(a), this Subsection (9) governs.

163 Section 2. Section **59-13-301** is amended to read:

164 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**
165 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

166 (1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section
167 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)[~~(a)~~] on
168 the:

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

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

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

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

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

176 (vi) use of untaxed special fuel other than propane or electricity.

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

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

180 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon
181 the public highways of the state, but this exemption applies only in those cases where the
182 purchasers or the users of special fuel establish to the satisfaction of the commission that the

183 special fuel was used for purposes other than to operate a motor vehicle upon the public
184 highways of the state; or

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

186 (b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that:

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

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

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

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

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

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

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

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

199 (a) (i) purchased for business use in machinery and equipment not registered and not
200 required to be registered for highway use; and

201 (ii) used pursuant to the conditions of a state implementation plan approved under Title
202 19, Chapter 2, Air Conservation Act; or

203 (b) propane or electricity.

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

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

207 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
208 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

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

211 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
212 commission from taxes and license fees under this part shall be deposited daily with the state
213 treasurer and credited to the Transportation Fund.

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

217 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
218 may be used by the commission as a dedicated credit to cover the costs of electronic
219 credentialing as provided in Section 41-1a-303.

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

222 (9) (a) The United States government or any of its instrumentalities, this state, or a
223 political subdivision of this state that has purchased special fuel from a supplier or from a retail
224 dealer of special fuel and has paid the tax on the special fuel as provided in this section is
225 entitled to a refund of the tax and may file with the commission for a quarterly refund in a
226 manner prescribed by the commission.

227 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
228 commission shall make rules governing the application and refund provided for in Subsection
229 (9)(a).

230 (10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses
231 under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid
232 as provided in Subsection (9) and this Subsection (10).

233 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
234 commission shall make rules governing the application and refund for off-highway and
235 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

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

238 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is
239 reduced to the extent provided in Subsection (11)(b) if:

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

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

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

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

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

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

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

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

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

255 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on
256 the special fuel does not include any interest or penalties a taxpayer may be required to pay to
257 the Navajo Nation.

258 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
259 commission shall make rules governing the procedures for administering the reduction of tax
260 provided under this Subsection (11).

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

262 (i) may not:

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

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

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

267 (ii) shall:

268 (A) be in writing;

269 (B) be signed by:

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

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

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

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

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

276 Nation; and

277 (iii) may:

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

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

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

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

283 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers

284 located or doing business within the Utah portion of the Navajo Nation.

285 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax
286 imposed on special fuel, any change in the amount of the reduction of taxes under this

287 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the
288 calendar quarter after a 60-day period beginning on the date the commission receives notice:

289 (A) from the Navajo Nation; and

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

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

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

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

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

297 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
298 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
299 30-day period beginning on the day the agreement terminates.

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

302 (12) Beginning on [~~January 1, 2009~~] July 1, 2011, a tax imposed under this section on
303 compressed natural gas is imposed at a reduced rate of [~~8-1/2~~] 10 cents per gasoline gallon
304 equivalent [~~to be increased or decreased proportionately with any increase or decrease in the~~
305 ~~rate in Subsection 59-13-201(1)(a)~~].

306 Section 3. **Effective date.**

307

This bill takes effect on July 1, 2011.

Legislative Review Note
as of 2-24-11 8:52 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 239

SHORT TITLE: Motor and Special Fuel Tax Amendments

SPONSOR: Van Tassell, K.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

By increasing the tax rate on motor fuel, special fuel, and compressed natural gas, enactment of this bill increases revenue to the Transportation Fund by \$74,491,500 in FY 2012 and \$78,298,700 in FY 2013. Also, by including a CPI adjustment, this bill increases the tax rate by 3.9% in FY 2014.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Transportation Fund	\$0	\$78,598,700	\$78,598,700
Transportation Fund, One-time	\$0	(\$3,807,200)	\$0
Total Revenue	\$0	\$74,791,500	\$78,598,700
Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$74,791,500	\$78,598,700
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Local governments with B & C roads can expect to see an increase in revenue by 30% of the total revenue increase to the Transportation Fund, or \$22,347,500 in FY 2012 and \$23,489,600 in FY 2013. When the tax rate increases in FY 2014, local governments can also expect to see an increase in revenue by a minimum of 3.9%.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Individuals and businesses purchasing motor fuel, special fuel, or compressed natural gas can expect to see an increase in the amount of tax paid by \$74,491,500 in FY 2012 and \$78,298,700 in FY 2013.