

FUEL TAX REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David E. Lifferth

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Motor and Special Fuel Tax Act by amending provisions relating to taxes imposed on fuels.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ repeals the requirement for a person who sells motor fuel or undyed special fuel in a retail sale to post a tax rate decal on each motor fuel or undyed special fuel pump or dispensing device;
- ▶ increases the tax rate of the special fuel tax imposed on compressed natural gas and liquified natural gas;
- ▶ imposes a special fuel tax on hydrogen used to operate or propel a motor vehicle on a public highway; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



28 **59-13-102**, as last amended by Laws of Utah 2012, Chapter 369

29 **59-13-301**, as last amended by Laws of Utah 2011, Chapter 259

30 REPEALS:

31 **59-13-104**, as enacted by Laws of Utah 1998, Chapter 253



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

34 Section 1. Section **59-13-102** is amended to read:

35 **59-13-102. Definitions.**

36 As used in this chapter:

37 (1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the
38 operation of aircraft.

39 (2) "Clean fuel" means:

40 (a) the following special fuels:

41 (i) propane;

42 (ii) compressed natural gas;

43 (iii) liquified natural gas; [~~or~~]

44 (iv) electricity; or

45 (v) hydrogen; or

46 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal
47 Clean Air Act Amendments of 1990, Title II.

48 (3) "Commission" means the State Tax Commission.

49 (4) (a) "Diesel fuel" means any liquid that is commonly or commercially known,
50 offered for sale, or used as a fuel in diesel engines.

51 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be
52 known or sold, when the liquid is used in an internal combustion engine for the generation of
53 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject
54 to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

55 (5) "Diesel gallon equivalent" means 6.06 pounds of liquified natural gas.

56 [~~(5)~~] (6) "Distributor" means any person in this state who:

57 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at
58 retail or wholesale;

59 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,
60 distribution, or sale in this state;

61 (c) is engaged in the business of purchasing motor fuel for resale in wholesale
62 quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;
63 or

64 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

65 (i) federally certificated air carriers; and

66 (ii) other persons.

67 ~~[(6)]~~ (7) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C.
68 Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service
69 regulations and that is considered destined for nontaxable off-highway use.

70 ~~[(7)]~~ (8) "Exchange agreement" means an agreement between licensed suppliers where
71 one is a position holder in a terminal who agrees to deliver taxable special fuel to the other
72 supplier or the other supplier's customer at the loading rack of the terminal where the delivering
73 supplier holds an inventory position.

74 ~~[(8)]~~ (9) "Federally certificated air carrier" means a person who holds a certificate
75 issued by the Federal Aviation Administration authorizing the person to conduct an all-cargo
76 operation or scheduled operation, as defined in 14 C.F.R. Sec. 110.2.

77 ~~[(9)]~~ (10) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is
78 generally used in an engine or motor for the generation of power, including aviation fuel, clean
79 fuel, diesel fuel, motor fuel, and special fuel.

80 (11) "Gasoline gallon equivalent" means:

81 (a) 5.660 pounds of compressed natural gas; or

82 (b) 2.198 pounds of hydrogen.

83 ~~[(10)]~~ (12) "Highway" means every way or place, of whatever nature, generally open to
84 the use of the public for the purpose of vehicular travel notwithstanding that the way or place
85 may be temporarily closed for the purpose of construction, maintenance, or repair.

86 ~~[(11)]~~ (13) "Motor fuel" means fuel that is commonly or commercially known or sold
87 as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

88 ~~[(12)]~~ (14) "Motor fuels received" means:

89 (a) motor fuels that have been loaded at the refinery or other place into tank cars,

90 placed in any tank at the refinery from which any withdrawals are made directly into tank
91 trucks, tank wagons, or other types of transportation equipment, containers, or facilities other
92 than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not
93 involving transportation are made directly; or

94 (b) motor fuels that have been imported by any person into the state from any other
95 state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when,
96 and the place where, the interstate transportation of the motor fuel is completed within the state
97 by the person who at the time of the delivery is the owner of the motor fuel.

98 ~~[(13)]~~ (15) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle
99 used, designed, or maintained for transportation of persons or property which:

100 (i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000
101 pounds;

102 (ii) has three or more axles regardless of weight; or

103 (iii) is used in a combination of vehicles when the weight of the combination of
104 vehicles exceeds 26,000 pounds gross vehicle weight.

105 (b) "Qualified motor vehicle" does not include a recreational vehicle not used in
106 connection with any business activity.

107 ~~[(14)]~~ (16) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay
108 which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel
109 from a refinery or terminal into a motor vehicle, rail car, or vessel.

110 ~~[(15)]~~ (17) "Removal," as used in Part 3, Special Fuel, means the physical transfer of
111 diesel fuel from a production, manufacturing, terminal, or refinery facility and includes use of
112 diesel fuel. Removal does not include:

113 (a) loss by evaporation or destruction; or

114 (b) transfers between refineries, racks, or terminals.

115 ~~[(16)]~~ (18) (a) "Special fuel" means any fuel regardless of name or character that:

116 (i) is usable as fuel to operate or propel a motor vehicle upon the public highways of
117 the state; and

118 (ii) is not taxed under the category of aviation or motor fuel.

119 (b) Special fuel includes:

120 (i) fuels that are not conveniently measurable on a gallonage basis; and

121 (ii) diesel fuel.

122 [~~(17)~~] (19) "Supplier," as used in Part 3, Special Fuel, means a person who:

123 (a) imports or acquires immediately upon importation into this state diesel fuel from
124 within or without a state, territory, or possession of the United States or the District of
125 Columbia;

126 (b) produces, manufactures, refines, or blends diesel fuel in this state;

127 (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to
128 which there has been no previous taxable sale or use; or

129 (d) is in a two party exchange where the receiving party is deemed to be the supplier.

130 [~~(18)~~] (20) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage
131 of diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel
132 fuel is removed for distribution at a rack.

133 [~~(19)~~] (21) "Two party exchange" means a transaction in which special fuel is
134 transferred between licensed suppliers pursuant to an exchange agreement.

135 [~~(20)~~] (22) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing
136 requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental
137 Protection Agency or Internal Revenue Service regulations.

138 [~~(21)~~] (23) "Use," as used in Part 3, Special Fuel, means the consumption of special
139 fuel for the operation or propulsion of a motor vehicle upon the public highways of the state
140 and includes the reception of special fuel into the fuel supply tank of a motor vehicle.

141 [~~(22)~~] (24) "User," as used in Part 3, Special Fuel, means any person who uses special
142 fuel within this state in an engine or motor for the generation of power to operate or propel a
143 motor vehicle upon the public highways of the state.

144 [~~(23)~~] (25) "Ute tribal member" means an enrolled member of the Ute tribe.

145 [~~(24)~~] (26) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
146 Reservation.

147 [~~(25)~~] (27) "Ute trust land" means the lands:

148 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for
149 the benefit of:

150 (i) the Ute tribe;

151 (ii) an individual; or

152 (iii) a group of individuals; or
153 (b) specified as trust land by agreement between the governor and the Ute tribe meeting
154 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

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

156 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**
157 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

158 (1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section
159 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

- 160 (i) removal of undyed diesel fuel from any refinery;
- 161 (ii) removal of undyed diesel fuel from any terminal;
- 162 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or
163 warehousing;

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

- 166 (v) any untaxed special fuel blended with undyed diesel fuel; or
- 167 (vi) use of untaxed special fuel other than propane or electricity.

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

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

- 171 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon
172 the public highways of the state, but this exemption applies only in those cases where the
173 purchasers or the users of special fuel establish to the satisfaction of the commission that the
174 special fuel was used for purposes other than to operate a motor vehicle upon the public
175 highways of the state; or

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

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

- 178 (i) sold to the United States government or any of its instrumentalities or to this state or
179 any of its political subdivisions;
- 180 (ii) exported from this state if proof of actual exportation on forms prescribed by the
181 commission is made within 180 days after exportation;
- 182 (iii) used in a vehicle off-highway;

- 183 (iv) used to operate a power take-off unit of a vehicle;
- 184 (v) used for off-highway agricultural uses;
- 185 (vi) used in a separately fueled engine on a vehicle that does not propel the vehicle
186 upon the highways of the state; or
- 187 (vii) used in machinery and equipment not registered and not required to be registered
188 for highway use.
- 189 (3) No tax is imposed or collected on special fuel if it is:
- 190 (a) (i) purchased for business use in machinery and equipment not registered and not
191 required to be registered for highway use; and
- 192 (ii) used pursuant to the conditions of a state implementation plan approved under Title
193 19, Chapter 2, Air Conservation Act; or
- 194 (b) propane or electricity.
- 195 (4) Upon request of a buyer meeting the requirements under Subsection (3), the
196 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.
- 197 (5) The special fuel tax shall be paid by the supplier.
- 198 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
199 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.
- 200 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases
201 which are delivered into vehicles and for which special fuel tax liability is reported.
- 202 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
203 commission from taxes and license fees under this part shall be deposited daily with the state
204 treasurer and credited to the Transportation Fund.
- 205 (b) An appropriation from the Transportation Fund shall be made to the commission to
206 cover expenses incurred in the administration and enforcement of this part and the collection of
207 the special fuel tax.
- 208 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
209 may be used by the commission as a dedicated credit to cover the costs of electronic
210 credentialing as provided in Section 41-1a-303.
- 211 (8) The commission may either collect no tax on special fuel exported from the state
212 or, upon application, refund the tax paid.
- 213 (9) (a) The United States government or any of its instrumentalities, this state, or a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

253 (i) may not:

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

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

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

258 (ii) shall:

259 (A) be in writing;

260 (B) be signed by:

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

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

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

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

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

268 (iii) may:

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

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

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

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

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

276 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax
277 imposed on special fuel, any change in the amount of the reduction of taxes under this
278 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the
279 calendar quarter after a 60-day period beginning on the date the commission receives notice:

280 (A) from the Navajo Nation; and

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

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

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

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

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

288 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
289 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
290 30-day period beginning on the day the agreement terminates.

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

293 (12) (a) Beginning on [~~January~~] July 1, [2009] 2015, a tax imposed under this section
294 on compressed natural gas is imposed at [~~a reduced rate of 8-1/2 cents~~] the same rate imposed
295 under Subsection (1)(a) per gasoline gallon equivalent [~~to be increased or decreased~~
296 ~~proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a)].~~

297 (b) Beginning on July 1, [~~2011~~] 2015, a tax imposed under this section on liquified
298 natural gas is imposed at [~~a reduced rate of 8-1/2 cents~~] the same rate imposed under
299 Subsection (1)(a) per [gasoline] diesel gallon equivalent [~~to be increased or decreased~~
300 ~~proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a)].~~

301 (c) Beginning on July 1, 2015, a tax imposed under this section on hydrogen used to
302 operate or propel a motor vehicle upon the public highways of the state is imposed at the same
303 rate imposed under Subsection (1)(a) per gasoline gallon equivalent.

304 Section 3. **Repealer.**

305 This bill repeals:

306 Section **59-13-104, Tax rate decals -- Posted on pump.**

307 Section 4. **Effective date.**

308 This bill takes effect July 1, 2015.

Legislative Review Note
as of 2-5-15 3:14 PM

Office of Legislative Research and General Counsel