

HOUSE BILL NO. 845  
INTRODUCED BY J. MUSGROVE

A BILL FOR AN ACT ENTITLED: "AN ACT MOVING THE POINT OF TAXATION OF ALL MOTOR FUELS FROM THE WHOLESALE LEVEL TO THE POINT WHEN FUEL IS WITHDRAWN FROM A TERMINAL, REFINERY, OR PIPELINE OR IMPORTED INTO THE STATE; ELIMINATING THE COLLECTION ALLOWANCE; ELIMINATING THE \$100 REISSUE FEE FOR SPECIAL FUEL DISTRIBUTORS; AND AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-205, 15-70-221, 15-70-301, 15-70-341, 15-70-343, 15-70-344, 15-70-356, AND 60-3-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-70-201, MCA, is amended to read:

**"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~———(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~———— (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~———— (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~———— (b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~———— (c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6)(5)~~ "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

~~(b) a person who is a supplier, terminal operator, position holder, or pipeline operator; or~~

~~(b)(c) a person who imports gasoline for sale, use, or distribution;.~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~———— (d) an exporter as defined in subsection (8);~~

~~———— (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~———— (f) a person in Montana who blends alcohol with gasoline.~~

~~(7)(6)~~ "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana. To be considered an export for the gasoline tax exemption, the gasoline must be destined for a location outside of Montana as shown by the bill of lading or invoice.

~~(8)(7)~~ "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

~~(9)(8)~~ "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.

~~(10)(9)~~ (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, gasohol, ethanol and ethanol blended fuel, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of

effectively and efficiently operating internal combustion engines; and

(ii) ~~except for alcohol blended into gasoline~~; any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(11)(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle~~ physically bring gasoline into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle.

~~(12)(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state~~ purchases gasoline outside of this state for the purpose of transporting or delivering, other than in the fuel supply tank of a motor vehicle, the gasoline into this state for sale, use, or distribution within this state.

~~(13)(12) "Improperly imported fuel" means aviation fuel or gasoline fuel as defined in subsections (3) and (10) that:~~

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(15)(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Pipeline" means a fuel distribution system that moves product, in bulk, through a pipe, either from a refinery to a terminal or from a terminal to another terminal.~~

~~(16) "Pipeline operator" means a person who operates a pipeline within the bulk transfer or terminal system.~~

~~(17) "Position holder" means, with respect to gasoline in a terminal, the person that holds the inventory position of the gasoline, as reflected on the records of the terminal operator. A person holds the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal with respect to the gasoline and includes a terminal operator who owns gasoline in the terminal.~~

~~(18) "Rack" is a mechanism used to dispense gasoline from a refinery, terminal, or bulk plant into a~~

transport truck, railroad tank car, or other means of transportation.

(19) "Refinery" is a facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into any accountable product such as gasoline.

(20) "Supplier" means a person required to collect and remit tax on gasoline removed from a terminal or refinery rack.

(21) "Terminal" is a reportable fuel storage and distribution facility that is supplied by pipeline or vessel and from which gasoline may be removed at a rack. The term includes bulk plants that store gasoline fuel for others.

(22) "Terminal operator" means any person that owns, operates, or otherwise controls a terminal.

~~(16)~~(23) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

**Section 2.** Section 15-70-202, MCA, is amended to read:

**"15-70-202. License and security of gasoline distributors -- denial or revocation of license.** (1) (a) Each gasoline distributor, including an ~~exporter and importer, as those terms are defined in 15-70-201,~~ prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports ~~or exports~~ gasoline, ~~or both~~, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

(7) A distributor who ~~blends gasoline~~ produces ethanol must be licensed with the department. ~~If a distributor cannot be licensed, the distributor is required to buy preblended gasoline.~~"

**Section 3.** Section 15-70-204, MCA, is amended to read:

**"15-70-204. (Temporary) Gasoline license tax -- rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel withdrawn from any refinery, terminal, or pipeline or imported into the state, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline ~~distributed~~ withdrawn from any refinery, terminal, or pipeline or imported into the state by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline ~~exported~~ sold for export outside of this state as shown by the bill of lading or invoice may not be included in the measure of the distributor's license tax unless the distributor is ~~not licensed and is~~ not paying the tax to the state the fuel is destined for. If the gasoline is not exported out of state or if there is no verification that the tax in the state of destination is paid, the distributor is liable for the license tax on the

gasoline.

(3) Gasohol, ~~as defined in 15-70-201,~~ is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning the date that the requirement for use of gasohol contained in 82-15-121 occurs, gasohol is subject to the tax imposed in subsection (1)(b).

(5) The tax imposed in subsections (1)(a) and (1)(b) is imposed when:

(a) the gasoline is removed from any refinery;

(b) the gasoline is removed from any terminal;

(c) the gasoline is removed from any pipeline; or

(d) the gasoline arrives in this state from a location outside this state. (Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)

**15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate.** (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel withdrawn from any refinery, terminal, or pipeline or imported into the state, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline ~~distributed~~ withdrawn from any refinery, terminal, or pipeline or imported into the state by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline ~~exported~~ sold for export outside of this state as shown by the bill of lading or invoice may not be included in the measure of the distributor's license tax unless the distributor is ~~not licensed and is not~~ paying the tax to the state the fuel is destined for. If the gasoline is not exported out of state or if there is no verification that the tax in the state of destination is paid, the distributor is liable for the license tax on the gasoline.

(3) Gasohol, ~~as defined in 15-70-201,~~ is subject to 85% of the tax imposed in subsection (1)(b).

(4) The tax imposed in subsections (1)(a) and (1)(b) is imposed when:

(a) the gasoline is removed from any refinery;

(b) the gasoline is removed from any terminal;

(c) the gasoline is removed from any pipeline; or

(d) the gasoline arrives in this state from a location outside this state."

**Section 4.** Section 15-70-205, MCA, is amended to read:

**"15-70-205. Distributor's statement and payment -- confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline ~~distributed and received~~ withdrawn from any refinery, terminal, or pipeline or imported by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 ~~and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 4-cent tax on aviation fuel.~~

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

**Section 5.** Section 15-70-221, MCA, is amended to read:

**"15-70-221. Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which

the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is ~~not licensed and is not paying the tax to the state~~ the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

**Section 6.** Section 15-70-301, MCA, is amended to read:

**"15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United



States internal revenue service.

(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.

(b) Biodiesel is also known as "B-100".

(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.

(4) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(6) "Cardrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(7) "Department" means the department of transportation.

~~(8) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:~~

~~—— (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;~~

~~—— (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or~~

~~—— (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.~~

~~—— (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.~~

~~\_\_\_\_\_ (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(9)(8) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;~~

~~(b) a person who is a supplier, terminal operator, position holder, or pipeline operator; and~~

~~(b)(c) an importer who imports special fuel for sale, use, or distribution;\_~~

~~(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and~~

~~\_\_\_\_\_ (d) an exporter.~~

~~(10)(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana. To be considered an export for the special fuel tax exemption, the special fuel must be destined for a location outside of Montana as shown by the bill of lading or invoice.~~

~~(11)(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.~~

~~(12)(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle physically bring special fuel into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle.~~

~~(13)(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution purchases special fuel outside of this state for the purpose of transporting or delivering, other than in the fuel supply tank of a motor vehicle, the special fuel into this state for sale, use, or distribution within this state.~~

~~(14)(13) "Improperly imported fuel" means special fuel that is:~~

~~(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or~~

~~(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(15)(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this~~

state and that are operated in whole or in part by the combustion of special fuel.

~~(16)~~(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(16) "Pipeline operator" means a person who operates a pipeline within the bulk transfer or terminal system.

(17) "Position holder" means, with respect to special fuel in a terminal, the person that holds the inventory position of the special fuel, as reflected on the records of the terminal operator. A person holds the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal with respect to the special fuel and includes a terminal operator who owns special fuel in the terminal.

~~(17)~~(18) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

- (a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;
- (b) dedicated to public use;
- (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or
- (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(19) "Rack" is a mechanism used to dispense accountable product or motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transportation.

(20) "Refinery" is a facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into any accountable product such as motor fuel.

~~(18)~~(21) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(19)~~(22) "Special fuel dealer" means:

- (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply

tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(20)~~(23) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(24) "Supplier" means a person required to collect and remit tax on special fuel removed from a terminal or refinery rack.

(25) "Terminal" is a reportable fuel storage and distribution facility that is supplied by pipeline or vessel and from which reportable fuel may be removed at a rack. The term includes bulk plants that store reportable fuel for others.

(26) "Terminal operator" means any person that owns, operates, or otherwise controls a terminal.

~~(21)~~(27) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

**Section 7.** Section 15-70-341, MCA, is amended to read:

**"15-70-341. License and security of special fuel distributors -- denial or revocation of license -- reissuance fee.** (1) (a) Each special fuel distributor, including an ~~exporter and importer, as those terms are defined in 15-70-304,~~ prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports ~~or exports~~ special fuel, ~~or both~~, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

~~(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.~~

~~(5)~~(4) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

~~(6)~~(5) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(7)~~(6) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

~~(8)~~(7) A distributor who ~~blends~~ produces biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy biodiesel fuel on which the tax has been paid."

**Section 8.** Section 15-70-343, MCA, is amended to read:

**"15-70-343. Special fuel license tax -- rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is ~~distributed~~ withdrawn from any

refinery, terminal, or pipeline or imported by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed by injector at a refinery or terminal for off-highway use; or

(b) sold for export outside of this state as shown by the bill of lading or invoice, unless the distributor is ~~not licensed and is~~ not paying the tax to the state where the fuel is destined.

(3) If the special fuel is not exported out of state or there is no verification that the tax in the state of destination is paid, the distributor is liable for the license tax on the special fuel.

(4) The tax imposed in subsection (1) is imposed when:

(a) the special fuel is removed from any refinery;

(b) the special fuel is removed from any terminal;

(c) the special fuel is removed from any pipeline; or

(d) the special fuel arrives in this state from a location outside this state."

**Section 9.** Section 15-70-344, MCA, is amended to read:

**"15-70-344. Distributor's statement and payment -- confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the department of transportation a signed statement that specifies all special fuel ~~distributed and received~~ withdrawn from any refinery, terminal, or pipeline or imported by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 ~~and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.~~

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section does not prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or

return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

**Section 10.** Section 15-70-356, MCA, is amended to read:

**"15-70-356. Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used if the person has records, as provided in 15-70-323, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the

accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is ~~not licensed and is~~ not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

**Section 11.** Section 60-3-206, MCA, is amended to read:

**"60-3-206. Apportionment of funds to secondary highway system.** (1) (a) Each fiscal year the department shall apportion at least 65% of the federal-aid highway funds allocated for the secondary highway system among the districts for capital construction needs. The remainder of the funds must be used by the department for secondary highway system pavement preservation. The proportion that each district receives is computed on the following basis:

~~(a)~~(i) 30% in the ratio of land area in each district to the total land area in the state;  
~~(b)~~(ii) 35% in the ratio of the rural population in each district to the total rural population in the state;  
~~(c)~~(iii) 30% in the ratio of the rural road mileage in each district to the total rural road mileage in the state;  
~~(d)~~(iv) 5% in the ratio of the rural bridge square footage in each district to the total rural bridge square footage in the state.

(b) The department shall obligate \$2,066,100 annually from the amount appropriated for the state-funded construction program to be expended solely on secondary roads of Montana.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in a district may exceed the amount apportioned to that district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount. The amount of excess obligations must be deducted from future apportionments to that recipient district and returned to the donor district.

(3) For the purposes of this section, terms are defined as follows:

(a) "Capital construction" means a highway or bridge project undertaken to improve structural strength,



increase capacity, or eliminate hazardous design features. A capital construction project may include paved or gravel road reconstruction and rehabilitation.

(b) "District" means the transportation commission districts identified in 2-15-2502.

(c) "Pavement preservation" means a project undertaken to extend the useful life of a paved road.

(d) "Rural bridge square footage" means the total square footage of all deck areas of structures 20 feet long or longer located on the roadways that are used to calculate rural road mileage as provided in subsection (3)(f).

(e) "Rural population" means the total population of all of the counties in a district as reported in the latest decennial federal census less the population in cities over 5,000 persons and their unincorporated fringe urban areas as determined by the department, using the latest decennial federal census.

(f) (i) "Rural road mileage" means all road mileage on roads functionally classified and approved by the transportation commission as major collectors or minor arterials, exclusive of road mileage on the primary highway system.

(ii) Road mileage within national parks or road mileage that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.

(iii) Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

(4) For the purpose of determining secondary highway capital construction priorities within a district, each board of county commissioners in a district has one vote and the department has two votes. An existing paved secondary highway may not be converted to a graveled surface without the concurrence of the board of county commissioners in the county where the road is located."

- END -

