

Amendment - 1st Reading-white - (H) Transportation

- 2023

68th Legislature 2023

Drafter: Sara Hess, (406) 444-4838

HB0823.001.002

1 HOUSE BILL NO. 823
2 INTRODUCED BY D. LOGE
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALTERNATIVE FUEL TAX LAWS; PROVIDING FOR
5 AN ALTERNATIVE FUEL DEALERS LICENSE; PROVIDING FOR A TAX ON HYDROGEN FUEL AND
6 OTHER ALTERNATIVE FUELS EQUAL TO THE GASOLINE GALLON EQUIVALENCY; PROVIDING
7 DEFINITIONS; AMENDING SECTIONS 15-70-123, 15-70-124, 15-70-701, 15-70-702, 15-70-703, 15-70-704,
8 15-70-705, 15-70-706, 15-70-707, 15-70-711, 15-70-712, 15-70-713, 15-70-714, 15-70-715, 15-70-716, 15-70-
9 717, AND 15-70-718, MCA; AND PROVIDING EFFECTIVE DATES."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 15-70-123, MCA, is amended to read:

14 **"15-70-123. Report by unlicensed petroleum-fuel dealer -- definition -- penalty.** (1) The
15 department of transportation may require a petroleum-fuel dealer who is not licensed by the department under
16 Title 15, chapter 70, to file, within 30 days of the end of a quarter, on a form prescribed by the department a
17 report of the amount of fuel received and sold during the quarter. The report must also contain other information
18 as required by the department.

19 (2) As used in this section, "petroleum fuel dealer" means a dealer who:

20 (a) is directly or indirectly engaged in delivering, transporting, or distributing gasoline, aviation
21 gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) or alternative fuel in
22 this state; or

23 (b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special
24 fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) or alternative fuel in this state.

25 (3) A petroleum-fuel dealer who fails to file the report required by subsection (1) shall be fined \$50
26 for the first offense, \$75 for the second offense, and \$100 for the third and each subsequent offense."

27
28 **Section 2.** Section 15-70-124, MCA, is amended to read:

1 **"15-70-124. Agreements with other governmental entities relating to collection of certain fuel**
2 **taxes.** (1) The department of transportation may enter into agreements relating to the administration and
3 taxation of gasoline, special fuels, and ~~liquefied petroleum gas~~ alternative fuels with state agencies of this state
4 and other states, agencies of the federal government, and agencies of foreign governments and provinces.

5 (2) The agreements may cover audits, exchange of information, licensure of sellers and users,
6 distribution, and other matters that the department considers necessary for the administration of the taxation of
7 gasoline, special fuels, and ~~liquefied petroleum gas~~ alternative fuels. In an agreement, the department may not
8 delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow
9 the other governmental entity to revoke or otherwise impair a license or permit issued by the department."
10

11 **Section 3.** Section 15-70-701, MCA, is amended to read:

12 **"15-70-701. Definitions.** As used in this part, the following definitions apply:

13 (1) (a) "Alternative fuel" means a gas, liquid, or other fuel that, with or without adjustment or
14 manipulation such as adjustment or manipulation of pressure or temperature, is capable of being used for the
15 generation of power to propel a motor vehicle. The term includes but is not limited to compressed natural gas,
16 liquefied natural gas, liquefied petroleum gas, hydrogen, or hydrogen compressed natural gas, such as
17 hythane.

18 (b) The term does not include motor fuel, leaded racing fuel, or an excluded liquid.

19 (2) "Alternative fuel dealer" means a person that is licensed or required to be licensed under 15-
20 70-702 that delivers alternative fuel into the fuel supply tank or tanks of a motor vehicle.

21 (4)(3) "Bond" means:

22 (a) a bond executed by a ~~compressed natural gas dealer or a liquefied petroleum gas an~~
23 alternative fuel dealer as principal with a corporate surety qualified under the laws of Montana, payable to the
24 state of Montana, conditioned ~~upon~~ on performance of all requirements of this part, including the payment of all
25 taxes, penalties, and other obligations of the ~~compressed natural gas dealer or the liquefied petroleum gas~~
26 alternative fuel dealer arising out of this part; or

27 (b) a deposit with the department by the ~~compressed natural gas dealer or the liquefied petroleum~~
28 gas alternative fuel dealer, under terms and conditions that the department may prescribe, of certificates of

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1 deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance
2 corporation.

3 ~~(2)~~(4) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or
4 hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and
5 up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on
6 the public roads and highways of this state.

7 ~~(3)~~—"Compressed natural gas dealer" or "dealer" means a person who delivers any part of
8 compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

9 (4)(5) "Department" means the department of transportation.

10 (6) "Hydrogen fuel" means fuel that produces electricity energy by combining hydrogen and
11 oxygen atoms.

12 ~~(5)~~(7) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles
13 and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

- 14 (a) propane;
15 (b) propylene;
16 (c) butane, including normal butane or isobutane; or
17 (d) butylene.

18 ~~(6)~~—"Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied
19 petroleum gas into the fuel supply tank or tanks of a motor vehicle.

20 ~~(7)~~(8) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by
21 liquefied petroleum gas alternative fuel and that is driven upon on the public roads and highways of this state.

22 ~~(8)~~(9) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or
23 corporation.

24 (b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied
25 to a firm, association, syndicate, or partnership, person means the partners or members of a firm, association,
26 syndicate, or partnership. As applied to a joint-stock company or corporation, the term means the officers of the
27 joint-stock company or corporation.

28 (9)(10) "Public roads and highways of this state" means all streets, roads, highways, and related

1 structures that are:

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

8

9 **Section 4.** Section 15-70-702, MCA, is amended to read:

10 **"15-70-702. ~~Compressed natural gas dealer's or liquefied petroleum gas~~ Alternative fuel**
 11 **dealer's license.** A person may not act as a ~~compressed natural gas dealer or as a liquefied petroleum gas an~~
 12 ~~alternative fuel~~ dealer in this state unless the person holds a valid ~~compressed natural gas dealer's license or a~~
 13 ~~valid liquefied petroleum gas~~ alternative fuel dealer's license issued by the department."

14

15 **Section 5.** Section 15-70-703, MCA, is amended to read:

16 **"15-70-703. Application for license.** An application for a ~~compressed natural gas dealer's license or~~
 17 ~~a liquefied petroleum gas an alternative fuel~~ dealer's license must be filed on a form prescribed by the
 18 department. The application must contain information that the department considers necessary."

19

20 **Section 6.** Section 15-70-704, MCA, is amended to read:

21 **"15-70-704. Bonding, release of surety, and additional bond.** (1) Except as provided in this
 22 section, a ~~compressed natural gas dealer's license or a liquefied petroleum gas an alternative fuel~~ dealer's
 23 license may not be issued to a person and may not be continued in force unless the person has furnished a
 24 bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all
 25 taxes, interest, and penalties due under this part. The department shall waive the bond requirement of a
 26 ~~compressed natural gas dealer or a liquefied petroleum gas an alternative fuel~~ dealer who is not subject to the
 27 provisions of subsection (2)(a) or (2)(b).

28 (2) The total amount of the bond or bonds required must be equivalent to twice the ~~compressed~~

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1 natural gas dealer's or the liquefied petroleum gas alternative fuel dealer's estimated quarterly tax payments but
2 may not be less than \$1,000 for any ~~compressed natural gas dealer or liquefied petroleum gas~~ alternative fuel
3 dealer who:

4 (a) requests a ~~compressed natural gas dealer's or a liquefied petroleum gas~~ an alternative fuel
5 dealer's license to be reissued after the license was canceled for cause; or

6 (b) fails to file timely reports and pay the tax due as required by 15-70-714.

7 (3) A surety on a bond furnished as provided in this section must be released and discharged from
8 any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the
9 department a written request to be released and discharged. However, this provision may not operate to
10 relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration
11 of the 30-day period. ~~Upon~~ On receiving a release request, the department shall promptly notify the
12 ~~compressed natural gas dealer or the liquefied petroleum gas~~ alternative fuel dealer who furnished the bond,
13 and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the
14 requirements of this section or makes a deposit in lieu of a bond as described in ~~15-70-701(1)(b)~~ 15-70-
15 701(3)(b), the department shall cancel the dealer's license.

16 (4) The department may require a ~~compressed natural gas dealer or a liquefied petroleum gas~~ an
17 alternative fuel dealer to give a new or additional surety bond or to deposit additional securities pursuant to ~~15-~~
18 ~~70-701(1)(b)~~ 15-70-701(3)(b) if the department determines that the security of the surety bond previously filed
19 by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate.
20 If the ~~compressed natural gas dealer or the liquefied petroleum gas~~ alternative fuel dealer fails to give an
21 additional surety bond or to deposit additional securities within 30 days after being requested to do so by the
22 department, the department shall cancel the dealer's license."

23

24 **Section 7.** Section 15-70-705, MCA, is amended to read:

25 **"15-70-705. Issuance of license -- grounds for refusal -- hearing.** (1) Except as provided in
26 subsection (2), ~~upon~~ on receipt of the application and bond in proper form, the department shall issue to the
27 applicant a license to act as a ~~compressed natural gas dealer or as a liquefied petroleum gas~~ an alternative fuel
28 dealer. A license is valid until suspended, revoked for cause, or otherwise canceled.

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1 (2) The department may refuse to issue ~~a compressed natural gas dealer's license or a liquefied~~
2 ~~petroleum gas~~ an alternative fuel dealer's license to any person:

3 (a) who formerly held a license that, prior to the time of filing the application, has been revoked for
4 cause;

5 (b) who is not the real party in interest, and the license of the real party in interest has been
6 revoked for cause prior to the time of filing the application; or

7 (c) ~~upon~~ on other sufficient cause being shown.

8 (3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall
9 provide the dealer with at least 10 days' written notice of the time and place of hearing.

10 (4) ~~A compressed natural gas dealer's license or a liquefied petroleum gas~~ An alternative fuel
11 dealer's license is not transferable."

12

13 **Section 8.** Section 15-70-706, MCA, is amended to read:

14 **"15-70-706. Revocation of license -- notice.** (1) The department may revoke the license of any
15 ~~compressed natural gas dealer or liquefied petroleum gas~~ alternative fuel dealer for reasonable cause. Before
16 revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The
17 notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the
18 department. The notice must include a statement that the licensee has the right to appear before the
19 department at a time specified in the notice and to show cause, if any, why the license should not be revoked.
20 The time specified by the department may not be more than 30 days or less than 10 days from the date of the
21 notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion
22 suspend the license.

23 (2) ~~Upon~~ On revocation of a license, the licensee shall immediately surrender the license to the
24 department for cancellation."

25

26 **Section 9.** Section 15-70-707, MCA, is amended to read:

27 **"15-70-707. Cancellation of license upon surrender.** The department shall cancel a license to
28 act as a ~~compressed natural gas dealer or as a liquefied petroleum gas~~ an alternative fuel dealer immediately

1 upon ~~on~~ surrender of the license by the licensee."

2

3 **Section 10.** Section 15-70-711, MCA, is amended to read:

4 **"15-70-711. Tax on compressed natural gas, hydrogen fuel, ~~tax on liquefied petroleum gas,~~**
5 **and alternative fuels.** (1) ~~Each compressed natural gas~~ An alternative fuel dealer shall collect the tax on
6 compressed natural gas from the user at the time that the compressed natural gas is placed into the supply
7 tank of a motor vehicle.

8 (2) (a) The total tax due on compressed natural gas is computed according to the formula provided
9 in subsection (2)(b).

10 (b) $T = (R/V) \times TV$, where:

11 (i) T is the total tax due;

12 (ii) R is 7 cents;

13 (iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base
14 pressure; and

15 (iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor
16 vehicle.

17 (3) ~~The compressed natural gas~~ alternative fuel dealer shall pay the tax to the department as
18 provided in 15-70-714.

19 (4) ~~Each liquefied petroleum gas~~ An alternative fuel dealer shall collect the tax on liquefied
20 petroleum gas from the user at the time that the liquefied petroleum gas is placed into the supply tank of a
21 motor vehicle.

22 (5) (a) The total tax due on liquefied petroleum gas is computed according to the formula provided
23 in subsection (5)(b).

24 (b) $T = (C/G) \times TG$, where:

25 (i) T is the total tax due;

26 (ii) C is 5.18 cents;

27 (iii) G is 1 gallon of liquefied petroleum gas; and

28 (iv) TG is the total gallons of liquefied petroleum gas placed into the supply tank of a motor vehicle.

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1 (6) The liquefied petroleum gas alternative fuel dealer shall pay the tax to the department as
2 provided in 15-70-714.

3 (7) (a) The total tax due on hydrogen fuel is computed according to the formula provided in
4 subsection (7)(b).

5 (b) T = KG x R, where:

6 (i) T is the total tax due;

7 (ii) KG is the total kilograms of hydrogen placed in the supply tank of a motor vehicle; and

8 (iii) R is the gasoline tax rate provided for in 15-70-403.

9 (8) The alternative fuel dealer shall pay the tax to the department as provided in 15-70-714.

10 ~~(7)~~(9) A tax is imposed on alternative fuels not listed in subsection (2), (5), or (7). The tax due on
11 other alternative fuels is computed according to the gasoline gallon equivalency by type of alternative fuel
12 based on the current fuel properties comparison chart published by the U.S. department of energy multiplied by
13 the gasoline tax rate provided for in 15-70-403.

14 (10) The United States, the state of Montana, and any political subdivision of this state are exempt
15 from the levy and imposition of this tax."

16

17 **Section 11.** Section 15-70-712, MCA, is amended to read:

18 **"15-70-712. Recordkeeping.** (1) ~~Each compressed natural gas dealer, each liquefied petroleum gas~~
19 ~~alternative fuel~~ dealer, and each person importing, manufacturing, refining, dealing in, transporting, or storing
20 ~~compressed natural gas or liquefied petroleum gas alternative fuel~~ in this state shall keep all records, receipts,
21 invoices, and other pertinent documents that the department may require and shall produce them for the
22 inspection of the department at any time during regular business hours.

23 (2) The records, receipts, invoices, and other pertinent documents must be kept for a period of at
24 least 3 years from the date on which the return to which they relate was required to have been made."

25

26 **Section 12.** Section 15-70-713, MCA, is amended to read:

27 **"15-70-713. Examination of records -- enforcement -- reciprocity.** (1) The department shall
28 enforce the provisions of this part.

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1 (2) The department or its authorized representative may examine the records, receipts, invoices,
2 documents, and equipment of any ~~compressed natural gas dealer, any liquefied petroleum gas dealer,~~
3 alternative fuel dealer or any person importing, manufacturing, refining, dealing in, transporting, or storing
4 ~~compressed natural gas or liquefied petroleum gas~~ alternative fuel and may investigate the character of the
5 disposition that any person makes of ~~compressed natural gas or liquefied petroleum gas~~ alternative fuel in
6 order to determine whether all taxes due under this part are being properly reported and paid. If the records,
7 receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must
8 be furnished at the direction of the department or at the business location of the dealer or other person and
9 must, if requested by the department, be accompanied by the dealer or other person.

10 (3) The department shall, ~~upon~~ on request from an official who is responsible for the enforcement
11 of the ~~compressed natural gas tax law or the liquefied petroleum gas~~ alternative fuel tax law of any other state,
12 the District of Columbia, the United States, a territory or possession of the United States, or a province of
13 Canada, forward to the official any information that it has relative to the receipt, storage, delivery, sale, use, or
14 other disposition of ~~compressed natural gas or liquefied petroleum gas~~ alternative fuel by any ~~compressed~~
15 ~~natural gas dealer or liquefied petroleum gas~~ alternative fuel dealer if the other governmental entity furnishes
16 similar information to the department."
17

18 **Section 13.** Section 15-70-714, MCA, is amended to read:

19 **"15-70-714. Returns required -- payment.** (1) For the purpose of determining the amount of liability
20 for the tax due under this part, ~~a compressed natural gas dealer and a liquefied petroleum gas~~ an alternative
21 fuel dealer shall file with the department a quarterly tax return on forms prescribed by the department.

22 (2) The dealer shall file the return on or before the last day of the next calendar month following
23 the quarter to which it relates. For good cause, the department may grant a taxpayer a reasonable extension of
24 time for filing, but the extension may not exceed 30 days.

25 (3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for
26 ~~compressed natural gas or liquefied petroleum gas~~ alternative fuel sold during the preceding quarter."
27

28 **Section 14.** Section 15-70-715, MCA, is amended to read:

1 **"15-70-715. Penalties for refusal or failure to file return or pay tax when due.** (1) If a ~~compressed~~
 2 ~~natural gas dealer or a liquefied petroleum gas~~ an alternative fuel dealer refuses or fails to file a return required
 3 by this part within the time prescribed by 15-70-103 and 15-70-714, there is imposed a penalty of \$25 or a sum
 4 equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for
 5 each calendar month or fraction of a month during which the refusal or failure continues. If a ~~compressed~~
 6 ~~natural gas dealer or a liquefied petroleum gas~~ an alternative fuel dealer establishes to the satisfaction of the
 7 department that the failure to file a return within the time prescribed was due to reasonable cause, the
 8 department shall waive the penalty imposed by this section.

9 (2) Whenever a ~~compressed natural gas dealer or a liquefied petroleum gas~~ an alternative fuel
 10 dealer files a return but fails to pay in whole or in part the tax due under this part, there must be added to the
 11 unpaid amount due interest at the rate of 1% a month or fraction of a month from the date on which the tax was
 12 due to the date of payment in full."

14 **Section 15.** Section 15-70-716, MCA, is amended to read:

15 **"15-70-716. Deficiency -- penalty.** If the department determines that the tax reported by a
 16 ~~compressed natural gas dealer or a liquefied petroleum gas~~ an alternative fuel dealer is deficient, the
 17 department shall assess the deficiency on the basis of information available to the department. There must be
 18 added to the deficiency interest on the deficient amount at the rate of 1% a month or fraction of a month from
 19 the date on which the return was due."

21 **Section 16.** Section 15-70-717, MCA, is amended to read:

22 **"15-70-717. Determination if no return made -- penalty -- presumption.** (1) If a ~~compressed~~
 23 ~~natural gas dealer or a liquefied petroleum gas~~ an alternative dealer, whether or not the dealer is licensed, fails,
 24 neglects, or refuses to file a ~~compressed natural gas tax return or a liquefied petroleum gas~~ an alternative fuel
 25 tax return when due, the department shall, on the basis of information available to the department, determine
 26 the tax liability of the ~~compressed natural gas dealer or the liquefied petroleum gas~~ alternative fuel dealer for
 27 the period during which a return was not filed and add to the tax determined the penalty and interest provided
 28 for in 15-70-715.

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1 (2) An assessment made by the department pursuant to 15-70-715, 15-70-716, or this section is
2 presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person
3 who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or
4 excessive."

5

6 **Section 17.** Section 15-70-718, MCA, is amended to read:

7 "**15-70-718. Fraudulent return -- penalty.** If ~~a compressed natural gas dealer or a liquefied~~
8 ~~petroleum gas an alternative fuel~~ dealer files a fraudulent return with intent to evade the tax imposed by this
9 part:

10 (1) there must be added to the amount of deficiency determined by the department a penalty equal
11 to 25% of the deficiency, together with interest at the rate of 1% a month or fraction of a month on the
12 deficiency from the date on which the tax was due to the date of payment. The penalty and interest are in
13 addition to all other penalties prescribed by law.

14 (2) the person is guilty of a misdemeanor and ~~upon~~on conviction shall be punishable by a fine of
15 not less than \$100 or more than \$2,000 or imprisonment of not less than 30 days or more than 6 months, or
16 both."

17

18 NEW SECTION. **Section 18. Transition.** Compressed natural gas dealer licenses and liquefied
19 petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for
20 an alternative fuel dealer's license before the date established by the department of transportation.

21

22 NEW SECTION. **Section 19. Effective date.** (1) Except as provided in subsection (2), [this act] is
23 effective January 1, 2024.

24 (2) [Section 18] and this section are effective October 1, 2023.

25

- END -