

HOUSE BILL 1001

Introduced by J. Debruycker

3/19	Introduced
3/19	Referred to Taxation
3/19	First Reading
3/19	Fiscal Note Requested
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3/27	Hearing
	Died in Committee

HOUSE BILL NO. *L1001*

INTRODUCED BY *J. Brubaker*

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENCOURAGE THE PRODUCTION AND USE OF GASOHOL BY PROVIDING A LOWER LICENSE TAX ON GASOHOL THAN GASOLINE; AND AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-203, 15-70-204, 15-70-205, 15-70-206, 15-70-207, 15-70-208, 15-70-209, 15-70-221, 15-70-222, 15-70-223, 15-70-225, 60-3-201, AND 60-3-202, 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 whose major endeavor and primary source of earned income is from the business of farming or ranching.

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

(3) "Aviation gasoline" means gasoline or any other

liquid fuel by whatsoever name such 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 such 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) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to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. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline



1 terminals, shall be deemed to be "distributed" after it has
2 arrived in and is brought to rest in this state.

3 (6) "Distributor" means:

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

7 (b) any person who imports gasoline or gasohol for
8 sale, use, or distribution;

9 (c) any person who engages in the wholesale
10 distribution of gasoline or gasohol in this state and
11 chooses to become licensed to assume the Montana state
12 gasoline and gasohol tax liability;

13 (d) any exporter as defined in subsection (8);

14 (e) any dealer licensed as of January 1, 1969, except a
15 dealer at an established airport;

16 (f) any person in Montana who blends alcohol with
17 gasoline.

18 (7) "Export" means to transport out of Montana, by any
19 means other than in the fuel supply tank of a motor vehicle,
20 gasohol or gasoline received from a refinery or pipeline
21 terminal within Montana.

22 (8) "Exporter" means any person who transports, other
23 than in the fuel supply tank of a motor vehicle, gasohol or
24 gasoline received from a refinery or pipeline terminal in
25 Montana to a destination outside Montana for sale, use, or

1 consumption beyond the boundaries of this state.

2 (9) "Gasohol" means all products commonly or
3 commercially known or sold as gasohol, used for the purpose
4 of effectively and efficiently operating internal combustion
5 engines and consisting of not less than 10% anhydrous
6 ethanol produced in Montana from Montana agricultural
7 products, including Montana wood or wood products.

8 ~~(9)~~(10) "Gasoline" includes all products commonly or
9 commercially known or sold as gasolines, including
10 casinghead gasoline, natural gasoline, aviation gasoline,
11 and all flammable liquids composed of a mixture of selected
12 hydrocarbons expressly manufactured and blended for the
13 purpose of effectively and efficiently operating internal
14 combustion engines. Gasoline does not include special fuels
15 as defined in 15-70-301.

16 ~~(10)~~(11) "Import" includes and means to receive into any
17 person's possession or custody first after its arrival and
18 coming to rest at destination within the state of any
19 gasoline shipped or transported into this state from point
20 of origin without this state other than in the fuel supply
21 tank of a motor vehicle.

22 ~~(11)~~(12) "Motor vehicle" means all vehicles operated or
23 propelled upon the public highways or streets of this state
24 in whole or in part by the combustion of gasoline.

25 ~~(12)~~(13) "Person" means any person, firm, association,

1 joint-stock company, syndicate, or corporation.

2 ~~{13}~~(14) "Use" includes and means the operation of motor
3 vehicles upon the public roads or highways of the state or
4 of any political subdivision thereof."

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

6 "15-70-202. License, fee, and security of gasoline
7 distributors. (1) All ~~gasoline~~ distributors, including
8 exporters as defined in 15-70-201(8), prior to the
9 commencement of doing business, shall file an application
10 for a license with the department of revenue on forms
11 prescribed and furnished by the department setting forth the
12 information as may be requested by the department. Each
13 distributor shall at the same time file security with the
14 department in an amount to be determined by the department.
15 However, the required amount of security may not exceed
16 twice the estimated amount of gasoline taxes the distributor
17 will pay to this state each month. Upon approval of the
18 application, the department shall issue to the distributor a
19 nonassignable license which shall continue in force until
20 surrendered or canceled.

21 (2) Any person who engages in the wholesale
22 distribution of gasoline or gasohol in this state exercising
23 the option under 15-70-201(6)(c) shall pay an annual license
24 fee of \$200 and upon renewal of the license shall pay an
25 annual fee of \$200.

1 (3) "Security" means:

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

7 (b) a deposit made by the distributor with the
8 department, under such conditions as the department may
9 prescribe, of certificates of deposit or irrevocable letters
10 of credit issued by a bank and insured by the federal
11 deposit insurance corporation."

12 **Section 3.** Section 15-70-203, MCA, is amended to read:

13 "15-70-203. License to sell gasoline or gasohol on
14 which refund may be claimed. (1) Any person other than a
15 licensed distributor shall obtain a license from the
16 department of revenue prior to selling gasoline or gasohol
17 on which a refund may be claimed. The application for
18 license shall contain the applicant's name, address, place
19 or places of business in the state of Montana, and other
20 information which may be required by the department.
21 Licenses issued shall bear a license number and the date of
22 issuance. The department shall keep a record of all licenses
23 issued, canceled, or suspended. A nontransferable license
24 shall be issued and be effective until canceled or suspended
25 by the department.

(2) Any person failing to comply with this section shall be subject to a fine of not less than \$25 or more than \$200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days or both fine and imprisonment."

Section 4. Section 15-70-204, MCA, is amended to read:

"15-70-204. Gasoline and gasohol license tax -- rate.

(1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported shall not be included in the measure of the distributor's license tax.

(3) ~~Alcohol--that--is--blended--is--to--be--blended--with--gasoline--to--be--sold--as--gasohol--is--subject--to--a--tax--per~~ Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 16 cents for each gallon equal to one license tax imposed on nonaviation gasoline--distributors--under--subsection--(1) of gasohol

distributed by him within the state and upon which the license tax has not been paid by any other distributor."

Section 5. Section 15-70-205, MCA, is amended to read:

"15-70-205. Distributor's statement and payment. (1)

Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the department of revenue of all gasoline and gasohol distributed and received by him in this state during the preceding calendar month and containing such other information as the department may reasonably require in order to administer the gasoline and gasohol license tax law. The statement shall 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 which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline and gasohol distributed by such distributor; provided, however, that no such allowance shall be deducted from the 1 cent tax on aviation gasoline.

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

Section 6. Section 15-70-206, MCA, is amended to read:

"15-70-206. Recordkeeping requirements. Each distributor or any other person dealing in, transporting,

1 receiving, or storing gasoline or gasohol shall keep for a
2 period not to exceed 3 years such records, receipts, and
3 invoices and any other pertinent papers and information as
4 the department of revenue may require."

5 **Section 7.** Section 15-70-207, MCA, is amended to read:

6 "15-70-207. Invoice of distributors and aviation
7 dealers. Each distributor and aviation dealer in this state
8 shall at the time of delivery, except where authorized by
9 the department of revenue, issue to the purchaser an invoice
10 in which shall be stated the number of gallons of gasoline
11 or gasohol covered by such invoice and such other
12 information as the department may require."

13 **Section 8.** Section 15-70-208, MCA, is amended to read:

14 "15-70-208. Examination of records. (1) The department
15 of revenue or its authorized representative is hereby
16 empowered to examine the books, papers, records, and
17 equipment of any ~~gasoline~~ distributor or any person dealing
18 in, transporting, or storing gasoline or gasohol as defined
19 in this part and to investigate the character of the
20 disposition which any person makes of such gasoline or
21 gasohol in order to ascertain and determine whether all
22 license taxes due hereunder are being properly reported and
23 paid. If such books, papers, records, and equipment are not
24 maintained in this state at the time of demand, they must be
25 furnished at the direction of the department for review

1 either in the offices of the department or at the business
2 location of the taxpayer.

3 (2) The records, receipts, and invoices and any other
4 pertinent papers supporting sales of every distributor or
5 any person dealing in, transporting, or storing gasoline or
6 gasohol must be open and subject to inspection by the
7 department or any of its employees or assistants during
8 business hours in order to ascertain the amount of license
9 tax due."

10 **Section 9.** Section 15-70-209, MCA, is amended to read:

11 "15-70-209. Information reports. (1) Any person
12 receiving gasoline or gasohol, including every exporter,
13 common carrier, private carrier, and contract carrier of
14 property who shall haul, receive, transport, or ship any
15 gasoline or gasohol from any other state or foreign country
16 into this state or from this state to any other state or
17 foreign country or from any refinery or pipeline terminal in
18 this state to another point within this state, shall submit
19 to the department of revenue, upon its request and within
20 the time specified, a statement showing the number of
21 gallons of gasoline or gasohol contained in each shipment in
22 interstate commerce and the movement of such products from
23 any refinery or pipeline terminal located within this state
24 to another point within this state during the preceding
25 calendar month, the names and addresses of the consignor and

1 the consignee, and the date of delivery to the consignee.

2 (2) In case of any person, except licensed distributors
3 or exporters, who refuses or fails to file a statement as
4 herein provided for, there is hereby imposed a penalty of
5 \$25 for each failure or refusal; provided, however, that if
6 any person shall establish to the satisfaction of the
7 department that his failure to file a statement as
8 prescribed by the department was due to reasonable cause,
9 the department shall waive the penalty."

10 **Section 10.** Section 15-70-221, MCA, is amended to read:

11 "15-70-221. Refund or credit authorized. (1) Any person
12 who shall purchase and use any gasoline or gasohol on which
13 the Montana gasoline license tax has been paid for
14 ~~denaturing-alcohol-to-be-used-in-gasohol--or~~ operating or
15 propelling stationary gasoline engines, tractors used off
16 the public highways and streets, or for any commercial use
17 other than propelling vehicles upon any of the public
18 highways or streets of this state shall be allowed a refund
19 of the amount of tax paid directly or indirectly on the
20 gasoline or gasohol so used. Such refund or drawback should
21 in no instance exceed the tax paid or to be paid to the
22 state and no refund shall be allowed of that portion of the
23 tax per gallon upon aviation gasoline allocated to the
24 department of commerce by 67-1-301.

25 (2) Any distributor paying the gasoline license tax to

1 this state erroneously shall be allowed a credit or refund
2 of the amount of tax so paid.

3 (3) (a) A distributor is entitled to a credit for the
4 tax paid to the department on those sales of gasoline or
5 gasohol for which the distributor has received no
6 consideration from or on behalf of the purchaser. The
7 distributor shall have declared the accounts of the
8 purchaser worthless and claimed those accounts as bad debts
9 for federal income tax purposes.

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

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

17 (4) Any person who purchases and exports for sale, use,
18 or consumption outside Montana any gasoline or gasohol on
19 which the Montana gasoline license tax has been paid is
20 entitled to a credit or refund of the amount of tax so paid
21 upon completion of the information reports required under
22 15-70-209 and presentation to the department of such other
23 proof of delivery outside Montana as it may by rule
24 require."

25 **Section 11.** Section 15-70-222, MCA, is amended to read:

1 **"15-70-222. Required records.** (1) Gasoline or gasohol
 2 purchased and delivered into bulk storage for use in motor
 3 vehicles on public roads and nonhighway use must be fully
 4 accounted for by detailed withdrawal records to accurately
 5 show the manner in which used. Gasoline or gasohol on hand,
 6 determined by actual measurement, shall be deducted from a
 7 claim and shall be reported as an opening inventory on the
 8 next claim.

9 (2) If separate storage tanks are maintained on
 10 claimant's premises for use in licensed vehicles and in
 11 unlicensed equipment, the bulk delivery invoices shall be so
 12 marked by the dealer at the time of delivery. No further
 13 record is required, provided refunds are claimed only on the
 14 number of gallons delivered into the unlicensed equipment
 15 tank. Withdrawal of gasoline or gasohol from the unlicensed
 16 vehicle tank for licensed vehicles will invalidate this
 17 method of determining refundable gallonage.

18 (3) Special storage facilities used for certain periods
 19 must be identified and explained. If such storage is used
 20 entirely for off-highway purposes and is not used in
 21 licensed vehicles, no records will be required other than
 22 purchase invoices showing the delivery into such storage.

23 (4) Service stations, bulk dealers, and marinas must
 24 prepare a separate and complete invoice for each withdrawal
 25 of gasoline or gasohol for their own use upon which a refund

1 is to be claimed.

2 (5) When no highway use of gasoline or gasohol is
 3 deducted from the claim, the applicant must substantiate
 4 purchases of gasoline or gasohol and miles traveled for
 5 licensed motor vehicles upon request of the department of
 6 revenue.

7 (6) Any person who operates a licensed motor vehicle on
 8 and off the public roads for commercial purposes may claim
 9 refund of the state license tax on the gasoline or gasohol
 10 used to operate the vehicle on roads or property in private
 11 ownership if such person has maintained the following
 12 records:

13 (a) the total number of miles traveled on and off
 14 public roads by each licensed vehicle;

15 (b) total gallons of gasoline or gasohol used in each
 16 vehicle;

17 (c) purchase invoices supporting all gasoline or
 18 gasohol handled through bulk storage, as well as all fuels
 19 purchased at service stations or received from other
 20 sources.

21 (7) An exporter or any other person who transports
 22 gasoline or gasohol out of Montana for sale, use, or
 23 consumption outside of Montana shall maintain detailed and
 24 contemporaneous records of withdrawal, transportation,
 25 ownership, and delivery of the gasoline or gasohol to

1 destinations outside of Montana as required by the
2 department of revenue."

3 **Section 12.** Section 15-70-223, MCA, is amended to read:

4 "15-70-223. Estimate allowed for agricultural use. (1)

5 An applicant whose use qualifies as agricultural use may
6 apply for a refund of 60% of the applicable tax on the
7 gallons of gasoline or gasohol as indicated by bulk delivery
8 invoices or by evidence of keylock or cardrol purchases as
9 an estimate of off-roadway use.

10 (2) If any invoice or evidence is either lost or
11 destroyed, the purchaser may support his claim for refund by
12 submitting an affidavit relating the circumstances of such
13 loss or destruction and by producing such other evidence as
14 may be required by the department of revenue.

15 (3) An applicant whose use does not qualify as
16 agricultural use may not estimate and must maintain records
17 as required by 15-70-222."

18 **Section 13.** Section 15-70-225, MCA, is amended to read:

19 "15-70-225. Application for refund or credit -- filing
20 -- correction by department. (1) The application for refund
21 shall be a signed statement, on a form furnished by the
22 department of revenue. Except for a claim for a credit of
23 taxes paid on unpaid accounts, the form must be accompanied
24 by the original bulk delivery invoice or invoices issued to
25 the claimant at the time of each purchase and delivery,

1 showing the total amount of gasoline or gasohol purchased,
2 the total amount of gasoline or gasohol on which a refund is
3 claimed, and the amount of the tax claimed for refund. A
4 claim for a credit for taxes paid on accounts for which the
5 distributor received no compensation must be accompanied by
6 documents or copies of documents showing that the accounts
7 were worthless and claimed as bad debts on the distributor's
8 federal income tax return. Any further information
9 pertaining to a claim shall be furnished as required by the
10 department.

11 (2) A bulk delivery invoice issued by a dealer for a
12 sale that does not qualify as a bulk delivery under
13 15-70-201 is not valid for refund purposes.

14 (3) All applications for refunds shall be filed with
15 the department within 14 months after the date on which the
16 gasoline or gasohol was purchased as shown by invoices or
17 after the date on which the tax was erroneously paid. A
18 distributor may file a claim for refund of taxes erroneously
19 paid or for a credit for taxes paid by him on unpaid
20 accounts within 3 years after the date of payment.

21 (4) Should the department find that the statement
22 contains errors which are not fraudulently inserted, it may
23 correct the statement and approve it as corrected or the
24 department may require the claimant to file an amended
25 statement."

1 **Section 14.** Section 60-3-201, MCA, is amended to read:

2 **"60-3-201. Distribution and use of proceeds of gasoline**
 3 **dealers' license tax.** (1) All money received in payment of
 4 license taxes under ~~the Distributor's Gasoline License Tax~~
 5 ~~Act Title 15, chapter 70, part 2,~~ except those amounts paid
 6 out of the department of revenue's suspense account for
 7 ~~gasoline~~ tax refund, shall be used and expended as provided
 8 in this section. So much of that money on hand at any time
 9 as may be needed to pay highway bonds and interest thereon
 10 when due and to accumulate and maintain a reserve therefor,
 11 as provided in laws and in resolutions of the state board of
 12 examiners authorizing such bonds, shall be deposited in the
 13 highway bond account in the debt service fund established by
 14 17-2-102. Subject to that provision, 9/10 of 1% of all money
 15 shall be deposited in the state park account, 1/2 of 1% of
 16 all money shall be deposited in a snowmobile account in the
 17 state special revenue fund, and 1/25 of 1% of all money
 18 shall be deposited in the aeronautics revenue fund of the
 19 department of commerce under the provisions of 67-1-301. The
 20 remainder of the money shall be used by the department of
 21 highways on the federal-aid highways in this state selected
 22 and designated under Title 23, U.S.C., and on highways
 23 leading from each county seat in the state to the federal
 24 highway system of federal-aid roads where the county seat is
 25 not on the system and on the other roads which have been or

1 may be authorized by the laws of Montana and for collection
 2 of the license taxes and the enforcement of the Montana
 3 highway code under Article VIII, section 6, of the
 4 constitution of this state.

5 (2) The department shall, in expending this money,
 6 carry forward construction from year to year, using the
 7 money expended through the matching up of federal-aid
 8 allotments to Montana upon the federal highway system in the
 9 various parts of the state in accordance with 60-3-204
 10 through 60-3-206. Nothing in this title conflicts with Title
 11 23, U.S.C., and the rules by which it is administered.

12 (3) The department may enter into cooperative
 13 agreements with the national park service and the federal
 14 highway administration for the purpose of maintaining
 15 national park approach roads in Montana.

16 (4) Money credited to the state park account in the
 17 state special revenue fund shall be used only for the
 18 creation, improvement, and maintenance of state parks where
 19 motorboating is allowed, except for the payment of refunds
 20 under 15-70-221 through 15-70-226. The legislature finds
 21 that of all the fuel sold in the state for consumption in
 22 internal combustion engines, not less than 9/10 of 1% is
 23 used for propelling boats on waterways of this state.

24 (5) Money credited to the snowmobile account may be
 25 used only to develop and maintain facilities open to the

1 general public at no admission cost and to promote
2 snowmobile safety. For the 2 years following July 1, 1977,
3 15% of the amount deposited in the snowmobile account each
4 year shall be used to promote snowmobile safety. Thereafter,
5 10% of the amount deposited in the snowmobile account shall
6 be used to promote snowmobile safety. The legislature finds
7 that of all fuels sold in this state for consumption in
8 internal combustion engines, not less than 1/2 of 1% is used
9 for propelling snowmobiles on public lands of this state.

10 (6) Money credited to the aeronautics account of the
11 department of commerce shall be used only to develop,
12 improve, and maintain facilities open to the public at no
13 admission cost and to promote aviation safety. The
14 legislature finds that of all the fuel sold in this state
15 for consumption in internal combustion engines, not less
16 than 1/25 of 1% is used for propelling aircraft in this
17 state."

18 **Section 15.** Section 60-3-202, MCA, is amended to read:

19 "60-3-202. Funding highway system maintenance. For the
20 purpose of funding the increased cost of maintaining the
21 state highway system as designated in 60-2-105, 1/4 cent per
22 gallon of the special fuel tax collected under 15-70-321 and
23 1/4 cent per gallon of the gasoline license tax collected
24 under 15-70-204 are allocated therefor."

-End-