

1 House BILL NO. 637
 2 INTRODUCED BY Sejat Tower Lisa Johnson
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
 5 84-1835, R.C.M. 1947, TO PROVIDE FOR A 2% CREDIT TO SPECIAL
 6 FUEL DEALERS FOR SHRINKAGE, SPILLAGE, AND LEAKAGE OF SPECIAL
 7 FUELS."

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

10 Section 1. Section 84-1835, R.C.M. 1947, is amended to
 11 read as follows:

12 "84-1835. Returns and payments. (a) Returns: For the
 13 purpose of determining the amount of his liability for the
 14 tax herein imposed, each special fuel dealer and each
 15 special fuel user shall file with the department, on forms
 16 prescribed by said department, a monthly tax return.

17 Upon annual application the department shall waive the
 18 filing of a monthly tax return of any special fuel user who
 19 establishes that such user's monthly tax liability is or
 20 will be ten dollars (\$10) or less.

21 Such user shall make an annual report and return to the
 22 department, on forms prescribed by said department on or
 23 before the 25th day of January of each year hereafter.
 24 Should the department determine that a user filing annual
 25 returns as herein provided is delinquent in making reports

1 and payments, it shall require such person to file monthly
 2 returns as herein provided. Such return, annual or monthly,
 3 shall contain a declaration by the person making the same,
 4 to the effect that the statements contained are true and are
 5 made under penalties of perjury, which declarations shall
 6 have the same force and effect as a verification. The return
 7 shall show such information as the department may reasonably
 8 require for the proper administration and enforcement of
 9 this act; provided, however, that if a special fuel dealer
 10 or user is also a wholesale distributor of special fuel at a
 11 location where special fuel is delivered into the supply
 12 tank of a motor vehicle, and if separate storage is provided
 13 thereat from which special fuel is delivered or placed into
 14 fuel supply tanks of motor vehicles, the monthly return to
 15 the department need not include inventory control data
 16 covering bulk storage from which wholesale distribution of
 17 special fuel is made. The special fuel dealer or special
 18 fuel user shall file the return on or before the
 19 twenty-fifth (25th) day of the next succeeding calendar
 20 month following the monthly period to which it relates;
 21 provided, however, that for good cause the department may
 22 grant a taxpayer a reasonable extension of time for filing,
 23 but not to exceed thirty (30) days.

24 Any claim, statement, remittance, or other document
 25 which is transmitted to this state through the United States

1 mail, shall be deemed filed and received by this state on
 2 the date shown by the post office cancellation mark stamped
 3 upon the envelope or other appropriate wrapper containing
 4 it. Any claim, statement, remittance or other document which
 5 is mailed but not received by this state or where received
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 12 statement, remittance, or other document, the sender must
 13 file with the state a duplicate within thirty (30) days
 14 after written notification is given to the sender by the
 15 state of its nonreceipt of such claim, statement,
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17 If any claim, statement, remittance or other document
 18 is sent by United States registered mail, certified mail or
 19 certificate of mailing, a record authenticated by the United
 20 States Post Office of such registration, certification or
 21 certificate shall be considered competent evidence that the
 22 report, claim, tax return, statement, remittance or other
 23 document was mailed to the addressee, and the date of
 24 registration, certification or certificate shall be deemed
 25 the postmarked date.

1 If the final filing date falls on a Saturday, Sunday or
 2 legal holiday, the next secular or business day shall be the
 3 final filing date. Such reports shall be considered filed or
 4 received on the date or as provided in this chapter.

5 (b) Computation: The tax imposed by this act shall be
 6 computed as follows: (1) with respect to special fuel used
 7 by the seller thereof as a special fuel dealer, by
 8 multiplying the tax rate per gallon provided in this act by
 9 the number of gallons of special fuel delivered or placed by
 10 him into the supply tank or tanks of a motor vehicle, (2)
 11 with respect to special fuel as to which the tax has not
 12 been paid to a special fuel dealer in this state and which
 13 has been consumed by the purchaser thereof as a special fuel
 14 user, by multiplying the tax rate per gallon provided in
 15 this act by the number of gallons of special fuel consumed
 16 by him in the propulsion of motor vehicles on the highways
 17 of this state.

18 (c) Payments: The monthly tax return shall be
 19 accompanied by remittance covering the tax due hereunder on
 20 account of the use as defined in 84-1831(f) of special fuels
 21 during the preceding month. A licensed special fuel dealer
 22 is allowed a deduction equal to 2% of the taxes paid by the
 23 dealer under 84-1832.1 as an allowance for shrinkage,
 24 spillage, and evaporation of special fuels and other losses
 25 beyond the dealer's control.

1 (d) Refusal or failure to file return or pay tax when
 2 due: In case of any special fuel dealer or special fuel user
 3 who refuses or fails to file a return required by this act
 4 within the time prescribed by subsection (a) of this
 5 section, there is hereby imposed a penalty of twenty-five
 6 dollars (\$25) or a sum equal to twenty-five per cent (25%)
 7 of the tax due, whichever is greater, together with interest
 8 at the rate of one per cent (1%) on the tax due, for each
 9 calendar month or fraction thereof during which such refusal
 10 or failure continues; provided, however, that if any such
 11 special fuel dealer or special fuel user shall establish to
 12 the satisfaction of the department that his failure to file
 13 a return within the time prescribed was due to reasonable
 14 cause, the department shall waive the penalty provided by
 15 this subsection.

16 (e) Failure to pay tax: Where a special fuel dealer or
 17 a special fuel user files a return, but fails to pay in
 18 whole or in part the tax due hereunder, there shall be added
 19 to the amount due and unpaid, interest at the rate of one
 20 per cent (1%) per month or fraction thereof, from the date
 21 such tax was due to the date of payment in full thereof.

22 (f) Deficiency: If it be determined by the department
 23 that the tax reported by any special fuel dealer or special
 24 fuel user is deficient, it shall proceed to assess the
 25 deficiency on the basis of information available to it and

1 there shall be added to this deficiency interest at the rate
 2 of one per cent (1%) per month or fraction thereof from the
 3 date the return was due.

4 (g) Determination if no return made: If any special
 5 fuel dealer or special fuel user, whether or not he is
 6 licensed as such, fails, neglects, or refuses to file a
 7 special fuel tax return when due, the department shall, on
 8 the basis of information available, to it, determine the tax
 9 liability of the special fuel dealer or special fuel user
 10 for the period during which no return was filed, and to the
 11 tax as thus determined, the department shall add the penalty
 12 and interest provided in subsection (d) above.

13 An assessment made by the department pursuant to this
 14 subsection or to subsection (f) of this section shall be
 15 presumed to be correct, and in any case where the validity
 16 of the assessment is drawn in question, the burden shall be
 17 on the person who challenges the assessment to establish by
 18 a fair preponderance of the evidence that it is erroneous or
 19 excessive as the case may be.

20 (h) Fraudulent return: If any special fuel dealer or
 21 special fuel user shall file a false or fraudulent return
 22 with intent to evade the tax imposed by this act, there
 23 shall be added to the amount of deficiency determined by the
 24 department a penalty equal to twenty-five per cent (25%) of
 25 the deficiency together with interest at one per cent (1%)

1 per month, or fraction thereof, on such deficiency from the
2 date such tax was due to the date of payment, in addition to
3 all other penalties prescribed by law.

4 (i) Limitation: Except in the case of a fraudulent
5 return or of neglect, or refusal to make a return, every
6 deficiency shall be assessed under subsection (f) above
7 within five (5) years after the twenty-fifth day of the next
8 succeeding calendar month following the monthly period for
9 which the amount is proposed to be determined or within five
10 (5) years after the return is filed, whichever period
11 expires the later."

-End-

STATE OF MONTANA

REQUEST NO. 354-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 3, 19 77, there is hereby submitted a Fiscal Note for House Bill 637 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This bill provides for a 2% credit to special fuel dealers for shrinkage, spillage, and leakage of special fuels.

ASSUMPTIONS

1. The growth rate in diesel fuel dealers' taxable gallons would be 2-3%/year.
2. The current rate of 9 3/4¢/gallon would remain constant throughout the biennium.
3. Administrative costs would remain unchanged.

FISCAL IMPACT

	<u>FY 78</u>	<u>FY 79</u>
Diesel Fuel Dealers tax (gross collections) - current law	\$4.786M-\$4.880M	\$4.882M-\$5.027M
Diesel Fuel Dealers tax (gross collections) - proposed law	<u>\$4.690M-\$4.782M</u>	<u>\$4.784M-\$4.926M</u>
TOTAL DECREASE	<u>\$96,000-\$98,000</u>	<u>\$98,000-\$101,000</u>

LONG-RANGE EFFECT

State revenues could experience a larger decrease if diesel consumption increases by larger amounts.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Drangor
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 2-3-77

Approved by Committee
on Taxation

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 9 the claim, statement, remittance, or other document was
 10 deposited in the United States mail on or before the date
 11 due for filing. In cases of such nonreceipt of a claim,
 12 statement, remittance, or other document, the sender must
 13 file with the state a duplicate within thirty (30) days
 14 after written notification is given to the sender by the
 15 state of its nonreceipt of such claim, statement,
 16 remittance, or other document.

17 if any claim, statement, remittance or other document
 18 is sent by United States registered mail, certified mail or
 19 certificate of mailing, a record authenticated by the United
 20 States Post Office of such registration, certification or
 21 certificate shall be considered competent evidence that the
 22 report, claim, tax return, statement, remittance or other
 23 document was mailed to the addressee, and the date of
 24 registration, certification or certificate shall be deemed
 25 the postmarked date.

1 if the final filing date falls on a Saturday, Sunday or
 2 legal holiday, the next secular or business day shall be the
 3 final filing date. Such reports shall be considered filed or
 4 received on the date or as provided in this chapter.

5 (b) Computation: The tax imposed by this act shall be
 6 computed as follows: (1) with respect to special fuel used
 7 by the seller thereof as a special fuel dealer, by
 8 multiplying the tax rate per gallon provided in this act by
 9 the number of gallons of special fuel delivered or placed by
 10 him into the supply tank or tanks of a motor vehicle, (2)
 11 with respect to special fuel as to which the tax has not
 12 been paid to a special fuel dealer in this state and which
 13 has been consumed by the purchaser thereof as a special fuel
 14 user, by multiplying the tax rate per gallon provided in
 15 this act by the number of gallons of special fuel consumed
 16 by him in the propulsion of motor vehicles on the highways
 17 or this state.

18 (c) Payments: The monthly tax return shall be
 19 accompanied by remittance covering the tax due hereunder on
 20 account of the use as defined in 84-1831(f) of special fuels
 21 during the preceding month. A licensed special fuel dealer
 22 is allowed a deduction equal to 2% 1% OF THE FIRST 6 CENTS
 23 PER GALLON of the taxes paid by the dealer under 84-1832.1
 24 as an allowance for shrinkage, spillage, and evaporation of
 25 special fuels and other losses beyond the dealer's control.

1 (d) Refusal or failure to file return or pay tax when
 2 due: in case of any special fuel dealer or special fuel user
 3 who refuses or fails to file a return required by this act
 4 within the time prescribed by subsection (a) of this
 5 section, there is hereby imposed a penalty of twenty-five
 6 dollars (\$25) or a sum equal to twenty-five per cent (25%)
 7 of the tax due, whichever is greater, together with interest
 8 at the rate of one per cent (1%) on the tax due, for each
 9 calendar month or fraction thereof during which such refusal
 10 or failure continues; provided, however, that if any such
 11 special fuel dealer or special fuel user shall establish to
 12 the satisfaction of the department that his failure to file
 13 a return within the time prescribed was due to reasonable
 14 cause, the department shall waive the penalty provided by
 15 this subsection.

16 (e) Failure to pay tax: Where a special fuel dealer or
 17 a special fuel user files a return, but fails to pay in
 18 whole or in part the tax due hereunder, there shall be added
 19 to the amount due and unpaid, interest at the rate of one
 20 per cent (1%) per month or fraction thereof, from the date
 21 such tax was due to the date of payment in full thereof.

22 (f) Deficiency: If it be determined by the department
 23 that the tax reported by any special fuel dealer or special
 24 fuel user is deficient, it shall proceed to assess the
 25 deficiency on the basis of information available to it and

1 there shall be added to this deficiency interest at the rate
 2 of one per cent (1%) per month or fraction thereof from the
 3 date the return was due.

4 (g) Determination if no return made: If any special
 5 fuel dealer or special fuel user, whether or not he is
 6 licensed as such, fails, neglects, or refuses to file a
 7 special fuel tax return when due, the department shall, on
 8 the basis of information available, to it, determine the tax
 9 liability of the special fuel dealer or special fuel user
 10 for the period during which no return was filed, and to the
 11 tax as thus determined, the department shall add the penalty
 12 and interest provided in subsection (d) above.

13 An assessment made by the department pursuant to this
 14 subsection or to subsection (f) of this section shall be
 15 presumed to be correct, and in any case where the validity
 16 of the assessment is drawn in question, the burden shall be
 17 on the person who challenges the assessment to establish by
 18 a fair preponderance of the evidence that it is erroneous or
 19 excessive as the case may be.

20 (h) Fraudulent return: If any special fuel dealer or
 21 special fuel user shall file a false or fraudulent return
 22 with intent to evade the tax imposed by this act, there
 23 shall be added to the amount of deficiency determined by the
 24 department a penalty equal to twenty-five per cent (25%) of
 25 the deficiency together with interest at one per cent (1%)

1 per month, or fraction thereof, on such deficiency from the
2 date such tax was due to the date of payment, in addition to
3 all other penalties prescribed by law.

4 (i) Limitation: Except in the case of a fraudulent
5 return or of neglect, or refusal to make a return, every
6 deficiency shall be assessed under subsection (f) above
7 within five (5) years after the twenty-fifth day of the next
8 succeeding calendar month following the monthly period for
9 which the amount is proposed to be determined or within five
10 (5) years after the return is filed, whichever period
11 expires the later."

-End-