

1 *Senate* BILL NO. *137*
 2 INTRODUCED BY *Mathew E. Smith Ferguson Polsted*
 3 *Robert Graham Thomas*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WAIVER OF
 5 FILING OF A MONTHLY SPECIAL FUEL USER'S TAX RETURN FOR A
 6 USER WHO ESTABLISHES THAT HIS ANNUAL TAX LIABILITY WILL BE
 7 \$100 OR LESS; AMENDING SECTION 84-1835, R.C.M. 1947."

8
 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 annual tax liability is
 20 or will be ~~ten dollars (\$10)~~ \$100 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
 6 with a cancellation mark that is illegible, erroneous, or
 7 omitted, shall be deemed filed and received on the date
 8 mailed if the sender establishes by competent evidence that
 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 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.

22 (d) Refusal or failure to file return or pay tax when
 23 due: In case of any special fuel dealer or special fuel user
 24 who refuses or fails to file a return required by this act
 25 within the time prescribed by subsection (a) of this

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

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

18 (f) Deficiency: If it be determined by the department
 19 that the tax reported by any special fuel dealer or special
 20 fuel user is deficient, it shall proceed to assess the
 21 deficiency on the basis of information available to it and
 22 there shall be added to this deficiency interest at the rate
 23 of one per cent (1%) per month or fraction thereof from the
 24 date the return was due.

25 (g) Determination if no return made: If any special

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

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

16 (h) Fraudulent return: If any special fuel dealer or
 17 special fuel user shall file a false or fraudulent return
 18 with intent to evade the tax imposed by this act, there
 19 shall be added to the amount of deficiency determined by the
 20 department a penalty equal to twenty-five per cent (25%) of
 21 the deficiency together with interest at one per cent (1%)
 22 per month, or fraction thereof, on such deficiency from the
 23 date such tax was due to the date of payment, in addition to
 24 all other penalties prescribed by law.

25 (i) Limitation: Except in the case of a fraudulent

1 return or of neglect, or refusal to make a return, every
2 deficiency shall be assessed under subsection (f) above
3 within five (5) years after the twenty-fifth day of the next
4 succeeding calendar month following the monthly period for
5 which the amount is proposed to be determined or within five
6 (5) years after the return is filed, whichever period
7 expires the later."

-End-

Approved by Committee
on Taxation

Senate BILL NO. *137*

INTRODUCED BY *Matthew E. Smith Ferguson Holsted*
Robert Graham Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WAIVER OF FILING OF A MONTHLY SPECIAL FUEL USER'S TAX RETURN FOR A USER WHO ESTABLISHES THAT HIS ANNUAL TAX LIABILITY WILL BE \$100 OR LESS; AMENDING SECTION 84-1835, R.C.M. 1947."

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

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

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

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's ~~monthly annual~~ tax liability is or will be ~~ten-dollars-(5±0)~~ \$100 or less.

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

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

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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
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 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.

22 (d) Refusal or failure to file return or pay tax when
 23 due: In case of any special fuel dealer or special fuel user
 24 who refuses or fails to file a return required by this act
 25 within the time prescribed by subsection (a) of this

1 section, there is hereby imposed a penalty of twenty-five
 2 dollars (\$25) or a sum equal to twenty-five per cent (25%)
 3 of the tax due, whichever is greater, together with interest
 4 at the rate of one per cent (1%) on the tax due, for each
 5 calendar month or fraction thereof during which such refusal
 6 or failure continues; provided, however, that if any such
 7 special fuel dealer or special fuel user shall establish to
 8 the satisfaction of the department that his failure to file
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 11 this subsection.

12 (e) Failure to pay tax: Where a special fuel dealer or
 13 a special fuel user files a return, but fails to pay in
 14 whole or in part the tax due hereunder, there shall be added
 15 to the amount due and unpaid, interest at the rate of one
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18 (f) Deficiency: If it be determined by the department
 19 that the tax reported by any special fuel dealer or special
 20 fuel user is deficient, it shall proceed to assess the
 21 deficiency on the basis of information available to it and
 22 there shall be added to this deficiency interest at the rate
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25 (g) Determination if no return made: If any special

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 12 of the assessment is drawn in question, the burden shall be
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16 (h) Fraudulent return: If any special fuel dealer or
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1 return or of neglect, or refusal to make a return, every
2 deficiency shall be assessed under subsection (f) above
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 7 by the seller thereof as a special fuel dealer, by
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22 (d) Refusal or failure to file return or pay tax when
 23 due: In case of any special fuel dealer or special fuel user
 24 who refuses or fails to file a return required by this act
 25 within the time prescribed by subsection (a) of this

1 section, there is hereby imposed a penalty of twenty-five
 2 dollars (\$25) or a sum equal to twenty-five per cent (25%)
 3 of the tax due, whichever is greater, together with interest
 4 at the rate of one per cent (1%) on the tax due, for each
 5 calendar month or fraction thereof during which such refusal
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12 (e) Failure to pay tax: Where a special fuel dealer or
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 14 whole or in part the tax due hereunder, there shall be added
 15 to the amount due and unpaid, interest at the rate of one
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2 deficiency shall be assessed under subsection (f) above
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6 (5) years after the return is filed, whichever period
7 expires the later."

-End-

SENATE BILL NO. 137

INTRODUCED BY MATHERS, E. SMITH, JERGESON, KOLSTAD,

ETCHART, GRAHAM, THIESSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WAIVER OF FILING OF A MONTHLY SPECIAL FUEL USER'S TAX RETURN FOR A USER WHO ESTABLISHES THAT HIS ANNUAL TAX LIABILITY WILL BE \$100 OR LESS; AMENDING SECTION 84-1835, R.C.M. 1947."

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 22 during the preceding month.

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 8 special fuel dealer or special fuel user shall establish to
 9 the satisfaction of the department that his failure to file
 10 a return within the time prescribed was due to reasonable
 11 cause, the department shall waive the penalty provided by
 12 this subsection.

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

19 (f) Deficiency: If it be determined by the department
 20 that the tax reported by any special fuel dealer or special
 21 fuel user is deficient, it shall proceed to assess the
 22 deficiency on the basis of information available to it and
 23 there shall be added to this deficiency interest at the rate
 24 of one per cent (1%) per month or fraction thereof from the
 25 date the return was due.

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

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

17 (h) Fraudulent return: If any special fuel dealer or
 18 special fuel user shall file a false or fraudulent return
 19 with intent to evade the tax imposed by this act, there
 20 shall be added to the amount of deficiency determined by the
 21 department a penalty equal to twenty-five per cent (25%) of
 22 the deficiency together with interest at one per cent (1%)
 23 per month, or fraction thereof, on such deficiency from the
 24 date such tax was due to the date of payment, in addition to
 25 all other penalties prescribed by law.

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

-End-