

HOUSE BILL NO. 490

INTRODUCED BY ORR
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 16, 1993	THIRD READING, PASSED. AYES, 93; NOES, 6.
FEBRUARY 17, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1993	SECOND READING, CONCURRED IN.
MARCH 18, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 1.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 490
 2 INTRODUCED BY ORR
 3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE
 6 STATE GASOLINE TAX IS IMPOSED UPON ALL GASOLINE IMPORTED
 7 INTO MONTANA; AND AMENDING SECTIONS 15-70-202, 15-70-204,
 8 15-70-209, AND 15-70-221, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 **Section 1.** Section 15-70-202, MCA, is amended to read:
 12 "15-70-202. License, fee, and security of gasoline
 13 distributors. (1) All gasoline distributors, including
 14 exporters, as defined in 15-70-201(8), and a person who
 15 imports, as defined in 15-70-201, prior to the commencement
 16 of doing business, shall file an application for a license
 17 with the department of transportation on forms prescribed
 18 and furnished by the department setting forth the
 19 information as may be requested by the department. Each
 20 distributor shall at the same time file security with the
 21 department in an amount to be determined by the department.
 22 However, the required amount of security may not exceed
 23 twice the estimated amount of gasoline taxes the distributor
 24 will pay to this state each month. Upon approval of the
 25 application, the department shall issue to the distributor a

1 nonassignable license which ~~shall continue~~ that is in force
 2 until surrendered or canceled.

3 (2) Any person who engages in the wholesale
 4 distribution of gasoline in this state exercising the option
 5 under 15-70-201(6)(c) shall pay an annual license fee of
 6 \$200 ~~and upon renewal of the license shall pay an annual fee~~
 7 ~~of \$200.~~

8 (3) "Security" means:

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

14 (b) a deposit made by the distributor with the
 15 department, under such conditions as the department may
 16 prescribe, of certificates of deposit or irrevocable letters
 17 of credit issued by a bank and insured by the federal
 18 deposit insurance corporation."

19 **Section 2.** Section 15-70-204, MCA, is amended to read:

20 "15-70-204. Gasoline license tax -- rate. (1) Every
 21 distributor shall pay to the department of transportation a
 22 license tax for the privilege of engaging in and carrying on
 23 business in this state in an amount equal to 1 cent for each
 24 gallon of aviation gasoline, which ~~shall be~~ is allocated to
 25 the department of transportation as provided by 67-1-301, as



1 amended, and 20 cents for each gallon of all other gasoline
2 distributed by him the distributor within the state and upon
3 which the gasoline license tax has not been paid by any
4 other distributor.

5 (2) Gasoline exported ~~shall~~ may not be included in the
6 measure of the distributor's license tax unless the
7 distributor is not licensed and is not paying the tax to the
8 state the fuel is destined for.

9 (3) Alcohol that is blended or is to be blended with
10 gasoline to be sold as gasohol is subject to a tax per
11 gallon equal to the license tax imposed on nonaviation
12 gasoline distributors under subsection (1)."

13 **Section 3.** Section 15-70-209, MCA, is amended to read:

14 "15-70-209. Information reports -- confidentiality. (1)

15 A person receiving gasoline, including every exporter,
16 importer, common carrier, private carrier, and contract
17 carrier of property who hauls, receives, transports, or
18 ships gasoline from any other state or foreign country into
19 this state or from this state to any other state or foreign
20 country or from any refinery or pipeline terminal in this
21 state to another point within this state, shall submit to
22 the department of transportation, upon its request and
23 within the time specified, a statement showing the number of
24 gallons of gasoline contained in each shipment in interstate
25 commerce and the movement of the products from any refinery

1 or pipeline terminal located within this state to another
2 point within this state during the preceding calendar month,
3 the names and addresses of the consignor and the consignee,
4 and the date of delivery to the consignee.

5 (2) A person, except a licensed distributor or
6 exporter, who refuses or fails to file a statement as
7 required in this section is subject to a penalty of \$25 for
8 each failure or refusal;--however,--~~if~~. If a person
9 establishes to the satisfaction of the department that ~~his~~
10 the failure to file a statement as prescribed by the
11 department was due to reasonable cause, the department shall
12 waive the penalty.

13 (3) The department or a deputy, assistant, agent,
14 clerk, or other employee of the department may not publish
15 or otherwise disseminate information contained in a
16 statement required under this section in a form that allows
17 identification of a distributor or a purchaser of gasoline.
18 Nothing in this section may be construed to prohibit:

19 (a) the delivery to a person or his the person's
20 authorized representative of a certified copy of any report
21 filed under subsection (1);

22 (b) the inspection by the attorney general or other
23 legal representative of the state of the report or statement
24 of a person if a person or distributor brings an action to
25 set aside or review the tax based on the report or statement

or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

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

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or his a representative of the officer 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 4. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) Any A person who ~~shall-purchase-and-use~~ purchases and uses any gasoline on which the Montana gasoline license tax has been

paid for denaturing alcohol to be used in gasohol, or for operating or propelling stationary gasoline engines, or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall-be~~ is allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such The refund ~~or drawback--should--in-no-instance~~ may not exceed the tax paid or to be paid to the state and ~~no a refund shall~~ may not be allowed of for that portion of the tax per gallon upon aviation gasoline allocated to the department of transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall--be~~ is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has not received no consideration from or on behalf of the purchaser. The distributor ~~shall~~ must have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal 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

1 on the collected amount must be paid to the department.

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

5 (4) Any person who purchases and exports for sale, use,
6 or consumption outside Montana any gasoline on which the
7 Montana gasoline tax has been paid is entitled to a credit
8 or refund of the amount of tax so paid unless the person is
9 not licensed and is not paying the tax to the state the fuel
10 is destined for. upon The credit or refund will be made upon
11 completion of the information reports required under
12 15-70-209 and presentation to the department of such other
13 proof of delivery outside Montana as it may by rule
14 require."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0490, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that the state gasoline tax is imposed upon all gasoline imported into Montana.

ASSUMPTIONS:

1. The definition of importers and exporters clarifies the Department of Transportation (DOT) field of distributors to investigate import and export activities between states and foreign countries.
2. The DOT would require 1.00 FTE revenue agent I (grade 13) to perform additional audits and investigations; and 1.00 FTE tax examiner I (grade 11) to perform statistical analysis and gather information for investigative purposes reporting importing and exporting with other states and foreign countries.
3. The additional FTEs will provide fuel tax evasion compliance and compliance with reporting and tax payments.
4. It is anticipated that this legislation will result in increased revenue to the state special revenue fund; however, without reliable data on the level of evasion - either current or past - it is difficult to evaluate the effect at this time.

FISCAL IMPACT:

General Operations Div. (Pg 01)

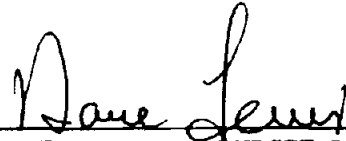
	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	190.08	192.08	2.00	190.08	192.08	2.00
Personal Services	\$ 6,164,720	\$ 6,219,831	\$ 55,111	\$ 6,184,495	\$ 6,239,685	\$ 55,190
Operating	4,912,089	4,936,793	24,704	4,650,929	4,672,913	21,984
Equipment	280,426	280,426	0	892,400	892,400	0
Debt Service	<u>12,641</u>	<u>12,641</u>	<u>0</u>	<u>12,641</u>	<u>12,641</u>	<u>0</u>
Total	\$11,369,876	\$ 11,449,691	\$ 79,815	\$11,740,465	\$ 11,817,639	\$ 77,174

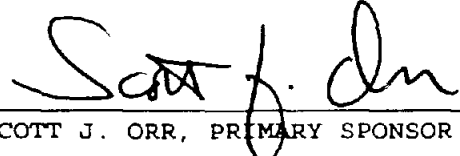
Funding:

State Special Revenue	\$ 8,546,828	\$ 8,626,643	\$ 79,815	\$ 8,904,517	\$ 8,981,691	\$ 77,174
Federal Special Revenue	<u>2,823,048</u>	<u>2,823,048</u>	<u>0</u>	<u>2,835,948</u>	<u>2,835,948</u>	<u>0</u>
Total	\$11,369,876	\$ 11,449,691	\$ 79,815	\$11,740,465	\$ 11,817,639	\$ 77,174

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill will enable the Montana Department of Transportation to ensure compliance with the Motor Fuel Tax laws, and reduce the revenue losses to the state through motor fuel tax evasion.

 2-11-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-12-93
SCOTT J. ORR, PRIMARY SPONSOR DATE

Fiscal Note for HB0490, as introduced

HB 490

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 490

INTRODUCED BY ORR

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE
STATE GASOLINE TAX IS IMPOSED UPON ALL GASOLINE IMPORTED
INTO MONTANA; DEFINING "IMPORTER"; AND AMENDING SECTIONS
15-70-201, 15-70-202, 15-70-204, 15-70-209, AND 15-70-221,
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
terminals, shall be deemed to be "distributed" after it has

1 arrived in and is brought to rest in this state.

2 (6) "Distributor" means:

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

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

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

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

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

14 (f) any person in Montana who blends alcohol with
15 gasoline.

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

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

25 (9) "Gasoline" includes all products commonly or

1 commercially known or sold as gasolines, including
2 casinghead gasoline, natural gasoline, aviation gasoline,
3 and all flammable liquids composed of a mixture of selected
4 hydrocarbons expressly manufactured and blended for the
5 purpose of effectively and efficiently operating internal
6 combustion engines. Gasoline does not include special fuels
7 as defined in 15-70-301.

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

14 (11) "Importer" means a person who transports or
15 arranges for the transportation of gasoline into Montana for
16 sale, use, or distribution in this state.

17 ~~(12)~~ (12) "Motor vehicle" means all vehicles operated or
18 propelled upon the public highways or streets of this state
19 in whole or in part by the combustion of gasoline.

20 ~~(13)~~ (13) "Person" means any person, firm, association,
21 joint-stock company, syndicate, or corporation.

22 ~~(14)~~ (14) "Use" includes and means the operation of motor
23 vehicles upon the public roads or highways of the state or
24 of any political subdivision thereof."

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

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

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

(3) "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 such conditions as 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."

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

"15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of transportation 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~~ is allocated to the department of transportation as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by ~~him~~ the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported ~~shall~~ 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.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation

gasoline distributors under subsection (1)."

Section 4. Section 15-70-209, MCA, is amended to read:

"15-70-209. Information reports -- confidentiality. (1)

A person receiving gasoline, including every exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of \$25 for each failure or refusal;--however,--if. If a person establishes to the satisfaction of the department that his the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall

waive the penalty.

(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. Nothing in this section may be construed to prohibit:

(a) the delivery to a person or his the person's authorized representative of a certified copy of any report filed under subsection (1);

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

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

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized

representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or his a representative of the officer 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 5. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) Any A person who ~~shall-purchase-and-use~~ purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, or for operating or propelling stationary gasoline engines, or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall-be~~ is allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such The refund or ~~drawback--should--in-no-instance~~ may not exceed the tax paid or to be paid to the state and no a refund ~~shall~~ may not be allowed of for that portion of the tax per gallon upon aviation gasoline allocated to the department of

transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall--be~~ is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has not received no consideration from or on behalf of the purchaser. The distributor ~~shall~~ must have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal 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 on the collected amount 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) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax so paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. upon The credit or refund will be made upon completion of the information reports required under

HB 0490/02

1 15-70-209 and presentation to the department of such other
2 proof of delivery outside Montana as it may by rule
3 require."

-End-

HOUSE BILL NO. 490

INTRODUCED BY ORR

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE STATE GASOLINE TAX IS IMPOSED UPON ALL GASOLINE IMPORTED INTO MONTANA; DEFINING "IMPORTER"; AND AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-209, AND 15-70-221, 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 terminals, shall be deemed to be "distributed" after it has

arrived in and is brought to rest in this state.

(6) "Distributor" means:

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

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

(c) any 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) any exporter as defined in subsection (8);

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

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

(7) "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.

(8) "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) "Gasoline" includes all products commonly or

commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, 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. Gasoline does not include special fuels as defined in 15-70-301.

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

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(12)~~ (12) "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.

~~(13)~~ (13) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

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

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

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

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

(3) "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 such conditions as 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."

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

"15-70-204. Gasoline license tax -- rate. (1) Every distributor shall pay to the department of transportation 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~~ is allocated to the department of transportation as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by ~~him~~ the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported ~~shall~~ 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.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation

gasoline distributors under subsection (1)."

Section 4. Section 15-70-209, MCA, is amended to read:

"15-70-209. Information reports -- confidentiality. (1)

A person receiving gasoline, including every exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of \$25 for each failure or refusal;--however,--if, if a person establishes to the satisfaction of the department that his the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall

waive the penalty.

(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. Nothing in this section may be construed to prohibit:

(a) the delivery to a person or his the person's authorized representative of a certified copy of any report filed under subsection (1);

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

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

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized

representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or his a representative of the officer 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 5. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) Any A person who ~~shall-purchase-and-use~~ purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, or for operating or propelling stationary gasoline engines, or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall-be~~ is allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such The refund or drawback--~~should--in-no-instance~~ may not exceed the tax paid or to be paid to the state and no a refund ~~shall~~ may not be allowed of for that portion of the tax per gallon upon aviation gasoline allocated to the department of

transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall--be~~ is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has not received no consideration from or on behalf of the purchaser. The distributor ~~shall~~ must have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal 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 on the collected amount 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) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax so paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. upon The credit or refund will be made upon completion of the information reports required under

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1 15-70-209 and presentation to the department of such other
2 proof of delivery outside Montana as it may by rule
3 require."

-End-

HOUSE BILL NO. 490

INTRODUCED BY ORR

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE STATE GASOLINE TAX IS IMPOSED UPON ALL GASOLINE IMPORTED INTO MONTANA; DEFINING "IMPORTER"; AND AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-209, AND 15-70-221, 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 terminals, shall be deemed to be "distributed" after it has

1 arrived in and is brought to rest in this state.

2 (6) "Distributor" means:

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

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

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

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

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

14 (f) any person in Montana who blends alcohol with
15 gasoline.

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

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

25 (9) "Gasoline" includes all products commonly or

1 commercially known or sold as gasolines, including
2 casinghead gasoline, natural gasoline, aviation gasoline,
3 and all flammable liquids composed of a mixture of selected
4 hydrocarbons expressly manufactured and blended for the
5 purpose of effectively and efficiently operating internal
6 combustion engines. Gasoline does not include special fuels
7 as defined in 15-70-301.

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

14 (11) "Importer" means a person who transports or
15 arranges for the transportation of gasoline into Montana for
16 sale, use, or distribution in this state.

17 ~~(12)~~ (12) "Motor vehicle" means all vehicles operated or
18 propelled upon the public highways or streets of this state
19 in whole or in part by the combustion of gasoline.

20 ~~(13)~~ (13) "Person" means any person, firm, association,
21 joint-stock company, syndicate, or corporation.

22 ~~(14)~~ (14) "Use" includes and means the operation of motor
23 vehicles upon the public roads or highways of the state or
24 of any political subdivision thereof."

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

"15-70-202. License, fee, and security of gasoline distributors. (1) All gasoline distributors, including exporters, as defined in 15-70-201(8), and a person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license which shall continue that is in force until surrendered or canceled.

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

(3) "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 such conditions as 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."

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

"15-70-204. Gasoline license tax -- rate. (1) Every distributor shall pay to the department of transportation 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 is allocated to the department of transportation as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by him the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported shall 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.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation

1 gasoline distributors under subsection (1)."

2 **Section 4.** Section 15-70-209, MCA, is amended to read:

3 "15-70-209. Information reports -- confidentiality. (1)

4 A person receiving gasoline, including every exporter,
5 importer, common carrier, private carrier, and contract
6 carrier of property who hauls, receives, transports, or
7 ships gasoline from any other state or foreign country into
8 this state or from this state to any other state or foreign
9 country or from any refinery or pipeline terminal in this
10 state to another point within this state, shall submit to
11 the department of transportation, upon its request and
12 within the time specified, a statement showing the number of
13 gallons of gasoline contained in each shipment in interstate
14 commerce and the movement of the products from any refinery
15 or pipeline terminal located within this state to another
16 point within this state during the preceding calendar month,
17 the names and addresses of the consignor and the consignee,
18 and the date of delivery to the consignee.

19 (2) A person, except a licensed distributor or
20 exporter, who refuses or fails to file a statement as
21 required in this section is subject to a penalty of \$25 for
22 each failure or refusal;--however,--if, if a person
23 establishes to the satisfaction of the department that his
24 the failure to file a statement as prescribed by the
25 department was due to reasonable cause, the department shall

1 waive the penalty.

2 (3) The department or a deputy, assistant, agent,
3 clerk, or other employee of the department may not publish
4 or otherwise disseminate information contained in a
5 statement required under this section in a form that allows
6 identification of a distributor or a purchaser of gasoline.
7 Nothing in this section may be construed to prohibit:

8 (a) the delivery to a person or his the person's
9 authorized representative of a certified copy of any report
10 filed under subsection (1);

11 (b) the inspection by the attorney general or other
12 legal representative of the state of the report or statement
13 of a person if a person or distributor brings an action to
14 set aside or review the tax based on the report or statement
15 or if an action or proceeding has been instituted in
16 accordance with the provisions of Title 15 against that
17 person or distributor;

18 (c) the publication of statistics classified to prevent
19 the identification of particular reports or statements and
20 the items in the reports or statements;

21 (d) the inspection by the commissioner of internal
22 revenue of the United States or the proper officer of any
23 state imposing a tax on motor fuels or the authorized
24 representative of either officer of the report or statement
25 of any person or the furnishing to the officer or authorized

representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or his a representative of the officer 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 5. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) Any A person who ~~shall-purchase-and-use~~ purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, or for operating or propelling stationary gasoline engines, or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall-be~~ is allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such ~~The~~ refund or ~~drawback--should--in-no-instance~~ may not exceed the tax paid or to be paid to the state and ~~no a refund shall~~ may not be allowed of for that portion of the tax per gallon upon aviation gasoline allocated to the department of

transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall--be~~ is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has not received no consideration from or on behalf of the purchaser. The distributor ~~shall~~ must have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal 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 on the collected amount 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) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax so paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. upon The credit or refund will be made upon completion of the information reports required under

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1 15-70-209 and presentation to the department of such other
2 proof of delivery outside Montana as it may by rule
3 require."

-End-