

HOUSE BILL NO. 539

INTRODUCED BY D. BROWN, LARSON, HARRINGTON, GILBERT, NATHE  
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

IN THE HOUSE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 23, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 2, 1993	PRINTING REPORT.
MARCH 4, 1993	SECOND READING, DO PASS.
MARCH 5, 1993	ENGROSSING REPORT.
MARCH 8, 1993	THIRD READING, PASSED. AYES, 95; NOES, 3.
MARCH 9, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 3, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 12, 1993	SECOND READING, CONCURRED IN.
APRIL 13, 1993	THIRD READING, CONCURRED IN. AYES, 44; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 13, 1993	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *539*  
 2 INTRODUCED BY *Don Brown* *Laura* *Harmon*  
 3 *Don* BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING THE COLLECTION  
 6 OF SPECIAL FUEL TAXATION AT THE DISTRIBUTOR LEVEL RATHER  
 7 THAN THE RETAIL LEVEL; AMENDING SECTIONS 15-70-301,  
 8 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306,  
 9 15-70-307, 15-70-309, 15-70-311, 15-70-312, 15-70-315,  
 10 15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326,  
 11 15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331,  
 12 15-70-332, 15-70-333, AND 20-15-403, MCA; REPEALING SECTIONS  
 13 15-70-316 AND 15-70-322, MCA; AND PROVIDING A DELAYED  
 14 EFFECTIVE DATE."

15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 15-70-301, MCA, is amended to read:

18 "15-70-301. Definitions. As used in this part, the  
 19 following definitions apply:

20 (1) "Agricultural use" means use of special fuel by a  
 21 person whose major endeavor is and primary source of earned  
 22 income is from the business of farming or ranching.

23 (2) "Authorization" means an uncanceled special fuel  
 24 tax prepaid authorization issued by the department.

25 (3) "Bond" means:

1 (a) a bond duly executed by a ~~special-fuel-dealer-or~~  
 2 special fuel user as principal with a corporate surety  
 3 qualified under the laws of Montana, payable to the state of  
 4 Montana, conditioned upon faithful performance of all  
 5 requirements of this part, including the payment of all  
 6 taxes, penalties, and other obligations of the ~~special-fuel~~  
 7 ~~dealer-or~~ special fuel user arising out of this part; or

8 (b) a deposit with the department by the ~~special--fuel~~  
 9 ~~dealer--or~~ special fuel user, under terms and conditions the  
 10 department may prescribe, of certificates of deposit or  
 11 irrevocable letters of credit issued by a bank and insured  
 12 by the federal deposit insurance corporation.

13 (4) "Bulk delivery" means placing special fuel in  
 14 storage or containers. The term does not mean special fuel  
 15 delivered into the supply tank of a motor vehicle.

16 (5) "Cardtrol" or "keylock" means any unique device  
 17 intended to allow access to a special fuel dealer's  
 18 unattended pump or dispensing unit for the purpose of  
 19 delivery of special fuel to an authorized user of the unique  
 20 device.

21 (6) "Department" means the department of  
 22 transportation.

23 (7) (a) "Distributed" means, at the time special fuel  
 24 is withdrawn, the withdrawal from a storage tank, a  
 25 refinery, or a terminal storage in this state for sale or

1 use in this state or for the transportation other than by  
 2 pipeline to another refinery in this state or a pipeline  
 3 terminal in this state of the following:

4 (i) special fuel refined, produced, manufactured, or  
 5 compounded in this state and placed in storage tanks in this  
 6 state;

7 (ii) special fuel transferred from a refinery or  
 8 pipeline terminal in this state and placed in tanks at the  
 9 refinery or terminal; or

10 (iii) special fuel imported into this state and placed  
 11 in storage at a refinery or pipeline terminal.

12 (b) When withdrawn from the storage tanks, refinery, or  
 13 terminal, the special fuel may be distributed only by a  
 14 person who is the holder of a valid distributor's license.

15 (c) Special fuel imported into this state, other than  
 16 that special fuel placed in storage at a refinery or  
 17 pipeline terminal, is considered to be "distributed" after  
 18 it has arrived in and is brought to rest in this state.

19 (8) "Distributor" means:

20 (a) a person who engages in the business in this state  
 21 of producing, refining, manufacturing, or compounding  
 22 special fuel for sale, use, or distribution;

23 (b) an importer who imports special fuel for sale, use,  
 24 or distribution;

25 (c) a person who engages in the wholesale distribution

1 of special fuel in this state and chooses to become licensed  
 2 to assume the Montana state special fuel tax liability; and

3 (d) an exporter as defined in this section.

4 (9) "Export" means to transport out of Montana, by any  
 5 means other than in the fuel supply tank of a motor vehicle,  
 6 special fuel received from a refinery or pipeline terminal  
 7 within Montana.

8 (10) "Exporter" means a person who transports, other  
 9 than in the fuel supply tank of a motor vehicle, special  
 10 fuel received from a refinery or pipeline terminal in  
 11 Montana to a destination outside Montana for sale, use, or  
 12 consumption outside Montana.

13 (11) "Import" means to first receive special fuel into  
 14 possession or custody after its arrival and coming to rest  
 15 at a destination within the state or to first receive any  
 16 special fuel shipped or transported into this state from a  
 17 point of origin outside of this state other than in the fuel  
 18 supply tank of a motor vehicle.

19 (12) "Importer" means a person who transports or  
 20 arranges for the transportation of special fuel into Montana  
 21 for sale, use, or distribution.

22 (13) "Motor vehicle" means any--vehicle--which--is  
 23 self-propelled--upon--the--highways all vehicles that are  
 24 operated upon the public highways or streets of this state  
 25 and that are operated in whole or in part by the combustion

1 of special fuel.

2       †6†(14) "Person" means and includes any person, firm,  
3 association, joint-stock company, syndicate, partnership, or  
4 corporation;--whenever. Whenever the term is used in any  
5 clause prescribing and imposing a fine or imprisonment, or  
6 both, as applied to a firm, association, syndicate, or  
7 partnership, means-and it includes the partners or members  
8 thereof and, as applied to joint-stock companies and  
9 corporations, the officers thereof.

10       †7†(15) "Public roads and highways of this state" means  
11 all streets, roads, highways, and related structures:

12       (a) built and maintained with appropriated funds of the  
13 United States, the state of Montana, or any political  
14 subdivision of the state;

15       (b) dedicated to public use;

16       (c) acquired by eminent domain; or

17       (d) acquired by adverse use by the public, jurisdiction  
18 having been assumed by the state or any political  
19 subdivision of the state.

20       †8†(16) "Special fuel" means those combustible gases and  
21 liquids commonly referred to as diesel fuel or any other  
22 volatile liquid of less than 46 degrees A.P.I. (American  
23 petroleum institute) gravity test, except liquid petroleum  
24 gas, when actually sold for use in motor vehicles propelled  
25 operating upon the public roads and highways within the

1 state of Montana. ~~The term includes compressed natural gas.~~

2       †9†(17) †a† "Special fuel dealer" means:

3       †i†(a) any person in the business of handling special  
4 fuel who delivers any part of the fuel into the fuel supply  
5 tank or tanks of a motor vehicle not then owned or  
6 controlled by him the person;

7       †ii†(b) any person who sells special fuel at a location  
8 unattended by the dealer through an unattended pump by use  
9 of a cardtrol, keylock, or similar device; or

10       †iii†(c) any person who provides any facility, with or  
11 without attended services, from which more than one special  
12 fuel user obtains special fuel for use in the fuel supply  
13 tank of a motor vehicle not then controlled by the dealer.

14       †b†--~~For purposes of subsection (9)-(a), the term--"fuel~~  
15 ~~supply--tank--or--tanks"--does not include cargo tanks, even~~  
16 ~~though fuel is--withdrawn--directly--from--cargo--tanks--for~~  
17 ~~propulsion of the vehicle.~~

18       †10†(18) "Special fuel user" means any person other than  
19 a county, incorporated city or town, or school district of  
20 this state who consumes in this state special fuel for the  
21 propulsion operation of motor vehicles owned or controlled  
22 by him the person upon the highways of this state.

23       †ii†(19) "Use", when the term relates to a special fuel  
24 user, means:

25       †a†--~~the--receipt, delivery, or placing of special fuels~~

by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or

(b) the consumption by a special fuel user of special fuels in propulsion the operation of a motor vehicle on the highways of this state."

**Section 2.** Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel dealer's licenses and special fuel user's permits required -- exceptions. (1) A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2)(1) A special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion operation of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection (5)(3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by him the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any checking station officer motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and

legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods, provided the person purchases special fuel tax paid, except special fuel brought into this state in the fuel supply tank of the vehicle, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4)(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits ~~will~~ must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not

1 been paid.

2 {5}{3} A special fuel user need not display the  
3 original or reproduced copy of the special fuel user's  
4 permit as required by subsection {2}{1} if:

5 {a} ~~he is the special fuel user is~~ registered and  
6 licensed pursuant to the International Fuel Tax Agreement as  
7 authorized by 15-70-121 and the vehicle displays a license  
8 or decal issued pursuant to the agreement; ~~or,~~

9 {b} ~~the motor vehicle operated by him is a vehicle that~~  
10 ~~is part of a motor vehicle fleet based in Montana that is~~  
11 ~~proportionally registered under the provisions of 61-3-711~~  
12 ~~through 61-3-733;~~

13 {c} ~~he obtains a registration card issued by the~~  
14 ~~department indicating the special fuel user's permit number;~~  
15 ~~and~~

16 {d} ~~the registration card indicating the special fuel~~  
17 ~~user's permit number is carried in the vehicle and is~~  
18 ~~available for inspection;~~

19 {6}{4} A person whose use of special fuel is  
20 predominantly ~~for agricultural and nonhighway use but who~~  
21 ~~owns or operates one or more passenger cars or light trucks~~  
22 may in special fuel vehicles up to 26,000 pounds gross  
23 vehicle weight or registered gross vehicle weight shall  
24 obtain annually from the department an authorization, as  
25 provided in 15-70-309, if the special fuel is not subject to

1 taxation under [section 26]."

2 **Section 3.** Section 15-70-303, MCA, is amended to read:

3 "15-70-303. Application for license, permit, or  
4 authorization. (1) Application for a ~~special fuel dealer's~~  
5 ~~license, special fuel user's permit, or authorization shall~~  
6 must be made to the department unless otherwise provided in  
7 this part.

8 (2) The application ~~shall~~ must be filed upon a form  
9 prepared and furnished by the department. The application  
10 must contain information the department considers  
11 necessary."

12 **Section 4.** Section 15-70-304, MCA, is amended to read:

13 "15-70-304. Bonding, release of surety, and additional  
14 bond. (1) Except as provided in this section, a ~~special fuel~~  
15 ~~dealer's license or special fuel user's permit~~ may not be  
16 issued to a person or continued in force unless the person  
17 has furnished bond, as defined in 15-70-301 and in a form as  
18 the department may require, to secure its compliance with  
19 this part and the payment of any taxes, interest, and  
20 penalties due and to become due under this part. The  
21 department shall waive the bond requirement of a special  
22 fuel user not subject to subsection (2)(a) or (2)(b). Upon  
23 ~~application, the department shall waive the bond requirement~~  
24 ~~of a public contractor licensed under Title 15, chapter 50,~~  
25 ~~who has posted a performance bond conditioned on payment of~~

~~all-lawful-taxes-with-the-contracting-entity.~~

(2) The total amount of the bond or bonds required of a ~~special-fuel-dealer-must-be-equivalent-to-twice-his~~ estimated ~~monthly-tax-payments-and-the-total-amount-of-the~~ bond or bonds required of a special fuel user must be equivalent to twice his the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327; ~~and~~

~~(\$1,000-for-a-special-fuel-dealer.~~

(3) A surety on a bond furnished by a ~~special-fuel-dealer-or~~ special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that

accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the ~~special-fuel-dealer-or~~ special fuel user who furnished the bond, and unless the ~~special-fuel-dealer-or~~ special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(2)~~(3), the department shall cancel the ~~special-fuel-dealer's-license-or~~ special fuel user's permit.

(4) The department may require a ~~special-fuel-dealer-or~~ special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(2)~~(3) if, in its opinion, the security of the surety bond previously filed by the ~~special-fuel-dealer-or~~ special fuel user or the market value of the properties deposited as security by the ~~special-fuel-dealer-or~~ special fuel user becomes impaired or inadequate. Upon failure of the ~~special-fuel-dealer-or~~ special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel ~~his-license~~ the permit."

**Section 5.** Section 15-70-305, MCA, is amended to read:

"15-70-305. Issuance of ~~license, permit, or~~ authorization -- grounds for refusal -- bearing. (1) Except

as provided in subsection ~~(3)~~(4), upon receipt of the application and bond in proper form, the department shall issue to the applicant a license or permit to act operate as a ~~special--fuel--dealer--or~~ special fuel user. Each ~~special fuel-dealer's--license--or~~ special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) Except as provided in subsection ~~(3)~~(4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled.

(3) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of \$100.

~~(3)~~(4) The department may refuse to issue a ~~special fuel--dealer's--license,~~ special fuel user's permit, or authorization to any person:

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

(b) who is not the real party in interest and the

license, permit, or authorization of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

~~(4)~~(5) Before refusal to issue a license, permit, or authorization, the department shall grant the applicant a hearing and shall grant him the applicant at least 10 days' written notice of the time and place of hearing.

~~(5)~~(6) A ~~special--fuel--dealer's--license,~~ special fuel user's permit, or authorization is not transferable."

**Section 6.** Section 15-70-306, MCA, is amended to read:

"15-70-306. Revocation, suspension, and cancellation.

(1) The department may revoke the license, permit, or authorization of any ~~special--fuel--dealer--or~~ special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a license, permit, or authorization, the department shall notify the licensee or permittee of its intention, by certified mail addressed to his the permittee's last-known address shown in the files of the department, requiring him the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the license, permit, or authorization should not be revoked; provided, however, that at any time prior to and pending the hearing, the department



may in the exercise of reasonable discretion suspend the license, permit, or authorization.

(2) Upon revocation by the department of any license, permit, or authorization, the holder shall immediately surrender the license, permit, or authorization to the department for cancellation."

**Section 7.** Section 15-70-307, MCA, is amended to read:

"15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any license to act as a special fuel dealer or any special fuel user permit immediately upon surrender thereof by the holder."

**Section 8.** Section 15-70-309, MCA, is amended to read:

"15-70-309. Authorization for certain uses -- disposition of proceeds -- penalties. (1) (a) A person who purchases, tax-free, special fuel in bulk and whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or pickups, each having a licensed gross vehicle weight of 10,000 pounds or less and powered by special fuel, may elect to apply to the department, as provided in 15-70-303, for an authorization. The authorization requires the holder to prepay an annual tax on the special fuel placed in bulk storage and used, in part, in the holder's special fuel-powered vehicles, rather than apply for a special fuel user's permit special fuel vehicles

26,000 pounds or less gross vehicle weight or registered gross vehicle weight shall pay an authorization fee as follows:

(i) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 10,000 pounds or less, \$150;

(ii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, \$225;

(iii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 18,000 pounds or more and up to 26,000 pounds, \$500.

(b) If a holder elects to obtain an authorization, he shall prepay the tax at the rate of \$120 for each passenger car or pickup within the weight limit specified in subsection (1)(a). The tax must be paid on a calendar year basis and must be prorated from the date of authorization for each vehicle. A person whose purchases of special fuel are predominantly for highway or nonagricultural use does not qualify for the special fuel tax.

(b) The authorization fee for vehicles under 10,000 pounds gross vehicle weight or registered gross vehicle weight purchased during the calendar year must be computed at one-twelfth of the applicable fee for each month or fraction of a month. The authorization fee for vehicles

10,000 pounds or more and up to 26,000 pounds gross vehicle weight or registered gross vehicle weight must be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually.

(c) Whenever the holder of an authorization ceases to farm operate within this state, he the holder shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to him the holder by the department. The department shall refund the portion of the prepaid-tax authorization fee attributable to the remaining portion of the calendar year applicable period.

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter."

**Section 9.** Section 15-70-311, MCA, is amended to read:

"15-70-311. Special fuel user's temporary trip permits -- nonresident agricultural harvesting equipment special

fuel permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit ~~or--registration card--indicating--the--special--fuel--use--permit-number~~, as provided by 15-70-302, ~~shall-be~~ is required to purchase a special fuel user's temporary trip permit. The permits ~~will~~ must be issued by ~~state--house--personnel--gross--vehicle-weight--patrol--crews~~ motor carrier services division employees, Montana highway patrol officers, and such other enforcing agents as that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, ~~shall--be~~ is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit ~~will~~ must be issued by ~~state-house-personnel--gross-vehicle-weight-patrol-crews~~ motor carrier services division employees, Montana highway patrol officers, and such other enforcing agents as

that the department may prescribe by order or rule.

(3) A resident or nonresident operating a special fuel-powered vehicle up to 26,000 pounds gross vehicle weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase.

**Section 10.** Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits -- duration of temporary permits. (1) ~~The temporary~~ Temporary special fuel permits shall cost ~~the special fuel vehicle user a fee of~~ \$30. The permit ~~shall be~~ is valid for a period of time not to exceed 72 hours and ~~will be~~ is automatically void ~~should~~ if the vehicle ~~leave~~ leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment ~~shall cost~~ costs \$30 per unit for the calendar year in which the fee is collected. The permit ~~shall~~ is not be transferable. A unit ~~shall be~~ is defined as:

- (a) one truck suitable for hauling produce commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) All fees collected ~~shall~~ must be remitted to the department or deposited directly in the state special revenue fund for the department."

**Section 11.** Section 15-70-315, MCA, is amended to read:

"15-70-315. Affidavit required of cardtrol or keylock purchaser -- inspection by department. ~~{1}~~ A person who uses a cardtrol, keylock, or similar device to obtain delivery of special fuel tax-free from an unattended pump or dispensing unit shall sign and furnish to the special fuel dealer an affidavit exemption certificate, on a form prescribed and furnished by the department, stating the type-of-equipment ~~in which the special fuel will be placed and stating that no special fuel will be placed into the supply tank of a motor vehicle to be operated on the public roads and highways of this state.~~

~~{2}~~ The special fuel dealer shall keep all such affidavits and make them available for inspection by the department sale of special fuel that is not subject to taxation under [section 26]."

**Section 12.** Section 15-70-321, MCA, is amended to read:

"15-70-321. Tax on diesel fuel and volatile liquids. The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 20 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to ~~propel~~

operate motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions."

**Section 13.** Section 15-70-323, MCA, is amended to read:

"15-70-323. Special ~~fuel--dealer's--and--special~~ fuel user's records. (1) Every ~~special-fuel-dealer,~~ special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep such records, receipts, and invoices and other pertinent papers ~~with--respect--thereto--as~~ that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

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

**Section 14.** Section 15-70-324, MCA, is amended to read:

"15-70-324. Examination of records -- enforcement of

part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative ~~is hereby--empowered--to~~ may examine the books, papers, records, and equipment of any ~~special-fuel--dealer--or~~ special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If ~~such~~ the books, papers, records, and equipment are not maintained in this state at the time of demand, they ~~shall~~ must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and ~~shall~~ must be, if requested by the department, accompanied by the ~~special-fuel dealer--or~~ special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that ~~a-special-fuel-dealer--or~~ a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles ~~shall~~ be is prima facie evidence that all of ~~such~~ the special fuel has been delivered by the ~~special--fuel--dealer--or~~ special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion operation of motor vehicles upon

the highways ~~as-herein-defined~~ unless the contrary ~~shall-be~~ is established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of ~~the-Dominion-of~~ Canada, forward to ~~such~~ the officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any ~~special-fuel-dealer-or~~ special fuel user, provided ~~such~~ the other state or states furnish like information to this state."

**Section 15.** Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the special fuel tax herein imposed, ~~each--special--fuel--dealer--shall--file--with--the~~ department--a--monthly-tax-return-and each special fuel user shall file with the department, on forms prescribed by ~~said~~ the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that ~~such~~ the user's annual tax liability is or will be \$200 or less.

(3) ~~Such~~ The user shall make an annual report and return to the department on forms prescribed by ~~said~~ the

department, on or before January 31 of each year. ~~Should~~ If the department ~~determine~~ determines that a user filing annual returns ~~as-herein-provided~~ is delinquent in making reports and payments, it shall require ~~such~~ the person to file quarterly returns ~~as-herein-provided~~. ~~Such~~ A return, annual or quarterly, ~~shall~~ must contain a declaration by the person making the ~~same~~ return to the effect that the statements contained in the return are true and are made under penalties of perjury, ~~which~~. The declarations ~~shall~~ have the same force and effect as a verification. The return ~~shall~~ must show ~~such~~ the information as ~~that~~ the department may reasonably require for the proper administration and enforcement of this part.

~~(4)--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-return-to-the--department--need~~  
~~not--include--inventory--control--data-covering-bulk-storage~~  
~~from-which-wholesale-distribution-of-special-fuel-is-made--~~

~~(5)~~(4) The ~~special-fuel-dealer--or~~ special fuel user shall file the return on or before the last day of the next succeeding calendar month following the 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 30 days."

**Section 16.** Section 15-70-326, MCA, is amended to read:

"15-70-326. **Computation.** The tax imposed by this part shall must be computed, as follows:

{1}--with-respect-to-special-fuel--used--by--the--seller thereof--as--a--special--fuel--dealer,--by-multiplying-the-tax rate-per-gallon-provided-in--this--part--by--the--number--of gallons--of-special-fuel-delivered-or-placed-by-him-into-the supply-tank-or-tanks-of-a-motor-vehicle;

{2} with respect to special fuel as to for which the tax has not been paid to a special fuel dealer in this state and which that has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by him the special fuel user in the propulsion operation of motor vehicles on the highways of this state."

**Section 17.** Section 15-70-327, MCA, is amended to read:

"15-70-327. **Payment -- deductions.** The tax return shall must be accompanied by remittance covering the tax due hereunder under this part for on--account--of the use, as defined in 15-70-301, of special fuels during the preceding period. A--licensed--special--fuel--dealer--is--allowed--a deduction-equal-to-14-of-the-first-6-cents-per-gallon-of-the taxes-paid-by-the-dealer-under-15-70-321-as-an-allowance-for

shrinkage,--spillage,--and--evaporation-of-special-fuels-and other-losses-beyond-the-dealer's-control."

**Section 18.** Section 15-70-328, MCA, is amended to read:

"15-70-328. **Credits.** {1} Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased shall must receive credit in the amount of any tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state or for any overpayment of special fuel taxes not due to the state. Special-fuel-carried-from-this-state-in-the fuel-tank-of-a-motor-vehicle-is-deemed-to-be--exported--from this-state;

{2}--Any--licensed--special--fuel--user--who-purchases-a temporary-special-fuel-permit-and-thereafter-applies--for--a special--fuel--vehicle--permit--for-the-same-vehicle-in-less than-11-days-after-the-temporary-permit-is-issued--shall receive-credit-in-the-amount-of-the-temporary-permit-fee;

{3}--{a}--A--special--fuel--dealer-who-has-paid-a-special fuel-tax-is-entitled-to-a-credit-of--the--tax--paid--to--the department--on--those--sales--of-special-fuels-for-which-the dealer-has-received-no-consideration-from-or--on--behalf--of the--purchaser,--The-dealer-shall-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--dealer--to-submit  
 periodic-reports-listing-accounts-that-are-delinquent-for-90  
 days-or-more--"

**Section 19.** Section 15-70-329, MCA, is amended to read:

"15-70-329. Procedures for credits -- deadline. (1)  
 Should If a licensed special fuel user or-licensed-special  
 fuel-dealer-desire wants to receive a refund of special fuel  
 taxes or of the temporary permit fee, the user or--dealer  
 shall make a signed and written request to the department  
 requesting those amounts then due. Any amount determined to  
 be creditable by the department under 15-70-328 shall must  
 first be credited on any amounts then due and payable from  
 the special--fuel--dealer--or special fuel user to whom the  
 refund is due, and the department shall then certify the  
 balance to the credit of the dealer-or user. A warrant shall  
must be drawn upon the state treasurer for the amount of  
 such the claim, and same-shall the claim must be paid in the  
 same manner as other claims against the state are paid.

(2) In case any a special fuel user or--special--fuel  
 dealer fails or neglects to file a request for refund of  
 special fuel taxes within 12 months from the date his the

user's special fuel license became canceled, the department  
~~shall-be~~ is under no obligation to make a refund.

(3) A request for refund or credit under this section  
must be made within 3 years from the date of the payment for  
which a refund or credit is claimed."

**Section 20.** Section 15-70-330, MCA, is amended to read:

"15-70-330. Penalties for refusal or failure to file  
 return or pay tax when due. (1) In case of any special--fuel  
dealer--or special fuel user who refuses or fails to file a  
 return required by this part within the time prescribed by  
 15-70-103 and 15-70-325, there is hereby imposed a penalty  
 of \$25 or a sum equal to 10% of the tax due, whichever is  
 greater, together with interest at the rate of 1% on the tax  
 due for each calendar month or fraction thereof of a month  
 during which such the refusal or failure continues;  
 provided, however, that if any such-special-fuel-dealer-or  
 special fuel user shall--establish establishes to the  
 satisfaction of the department that his the failure to file  
 a return within the time prescribed was due to reasonable  
 cause, the department shall waive the penalty provided by  
 this section.

(2) Where-a-special-fuel-dealer-or Whenever a special  
 fuel user files a return but fails to pay in whole or in  
 part the tax due hereunder under this part, there shall must  
 be added to the amount due and unpaid interest at the rate

of 1% per month or fraction thereof of a month from the date such the tax was due to the date of payment in full thereof."

**Section 21.** Section 15-70-331, MCA, is amended to read:

"15-70-331. **Deficiency.** If it be determined by the department that the tax reported by any ~~special-fuel-dealer~~ or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction thereof of a month from the date the return was due."

**Section 22.** Section 15-70-332, MCA, is amended to read:

"15-70-332. **Determination if no return made.** (1) If any ~~special-fuel-dealer-or~~ special fuel user, whether or not he the user is licensed as such a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the ~~special fuel-dealer-or~~ special fuel user for the period during which no a return was not filed, and to the tax as thus determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 ~~shall-be~~ is presumed to be correct, and in any case where in which the validity of the

assessment is drawn in question, the burden ~~shall-be~~ is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be."

**Section 23.** Section 15-70-333, MCA, is amended to read:

"15-70-333. **Fraudulent return -- penalty.** If any ~~special--fuel-dealer-or~~ a special fuel user ~~shall-file~~ files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there ~~shall~~ must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction thereof of a month on such the deficiency from the date such the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

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

**NEW SECTION. Section 24.** License, fee, and security of

special fuel distributors. (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, 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 that 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 special fuel 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 that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(8)(c) and not already licensed under 15-70-202 shall pay an annual license fee of \$200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(4) As used in this section, "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) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of

credit issued by a bank and insured by the federal deposit insurance corporation.

**NEW SECTION. Section 25. License to sell special fuel on which refund may be claimed.** (1) A person other than a licensed distributor shall obtain a license from the department of transportation prior to selling special fuel on which a refund may be claimed. The application for a license must contain the applicant's name, address, place or places of business in the state of Montana, and other information that may be required by the department. Licenses issued must bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license must be issued and is effective until canceled or suspended by the department.

(2) Any person failing to comply with this section is subject to a fine of not less than \$50 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 the fine and imprisonment.

**NEW SECTION. Section 26. Special fuel license tax -- rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount of 20 cents for each gallon of special fuel

1 that is distributed by the distributor within the state and  
2 upon which the special fuel license tax has not been paid by  
3 any other distributor.

4 (2) Special fuel may not be included in the measure of  
5 the distributor's license tax if sold:

6 (a) to the United States government, state of Montana,  
7 any other state, and any county, incorporated city, town,  
8 and school district of this state;

9 (b) in bulk delivery quantities of 200 gallons or more;  
10 or

11 (c) for export, unless the distributor is not licensed  
12 and is not paying the tax to the state where the fuel is  
13 destined.

14 **NEW SECTION. Section 27. Distributor's statement and**  
15 **payment -- confidentiality.** (1) Each distributor shall, not  
16 later than the 25th day of each calendar month, render to  
17 the department of transportation a signed statement that  
18 specifies all special fuel distributed and received by the  
19 distributor in this state during the preceding calendar  
20 month and that contains other information the department may  
21 reasonably require in order to administer the special fuel  
22 license tax law. The statement must be accompanied by a  
23 payment in an amount equal to the tax imposed by [section  
24 26], less any refund credit issued under [section 36] and  
25 less 1% of the total tax that may be deducted by the

1 distributor as an allowance for collection.

2 (2) A distributor engaged in or carrying on a business  
3 at more than one location in this state may include all  
4 places of business in one statement.

5 (3) The department or a deputy, assistant, agent,  
6 clerk, or other employee of the department may not publish  
7 or otherwise disseminate information contained in a  
8 statement required under this section in a form that allows  
9 identification of a distributor or a purchaser of special  
10 fuel. This section may not be construed to prohibit:

11 (a) the delivery to a distributor or a distributor's  
12 authorized representative of a certified copy of any return  
13 or report filed in connection with the distributor's tax;

14 (b) the inspection by the attorney general or by  
15 another legal representative of the state of the report or  
16 return of a distributor who brings an action to set aside or  
17 review the tax based on the report or return or against whom  
18 an action or proceeding has been instituted in accordance  
19 with the provisions of Title 15;

20 (c) the publication of statistics classified to prevent  
21 the identification of particular reports or returns and the  
22 items in the reports or returns;

23 (d) the inspection by the commissioner of internal  
24 revenue of the United States or by the proper officer of any  
25 state imposing a tax on special fuel or by any

representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative 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.

**NEW SECTION. Section 28. Recordkeeping requirements.**

Each distributor or any other person dealing in, transporting, receiving, or storing special fuel shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require.

**NEW SECTION. Section 29. Invoice of distributors.** Each

distributor in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of special fuel covered by the invoice and other information the department may require.

**NEW SECTION. Section 30. Examination of records.** (1)

The department of transportation or its authorized

representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

**NEW SECTION. Section 31. Information reports** --

**penalty -- confidentiality.** (1) A person receiving special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships special fuel 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

1 or pipeline terminal in this state to another point within  
 2 this state shall submit to the department of transportation,  
 3 upon its request and within the time specified, a statement  
 4 showing the number of gallons of special fuel contained in  
 5 each shipment in interstate commerce and the movement of the  
 6 products from any refinery or pipeline terminal located  
 7 within this state to another point within this state during  
 8 the preceding calendar month, the names and addresses of the  
 9 consignor and the consignee, and the date of delivery to the  
 10 consignee.

11 (2) A person, except a licensed distributor, importer,  
 12 or exporter, who refuses or fails to file a statement as  
 13 required in this section is subject to a penalty of \$100 for  
 14 each failure or refusal.

15 (3) The department or a deputy, assistant, agent,  
 16 clerk, or other employee of the department may not publish  
 17 or otherwise disseminate information contained in a  
 18 statement required under this section in a form that allows  
 19 identification of a distributor or a purchaser of special  
 20 fuel. This section may not be construed to prohibit:

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

24 (b) the inspection by the attorney general or other  
 25 legal representative of the state of the report or statement

1 of a person if a person or distributor brings an action to  
 2 set aside or review the tax based on the report or statement  
 3 or if an action or proceeding has been instituted in  
 4 accordance with the provisions of Title 15 against that  
 5 person or distributor;

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

9 (d) the inspection by the commissioner of internal  
 10 revenue of the United States or by the proper officer of any  
 11 state imposing a tax on special fuel or by the authorized  
 12 representative of either officer of the report or statement  
 13 of any person or the furnishing to the officer or authorized  
 14 representative of an abstract of the report or statement,  
 15 but permission may be granted or information may be  
 16 furnished to the officer or the officer's representative  
 17 only if the statutes of the United States or the other state  
 18 grant substantially similar privileges to the proper officer  
 19 of this state charged with the administration of this  
 20 chapter or in compliance with 15-70-121 and 15-70-122; or

21 (e) the compliance of the department with any order of  
 22 a court of competent jurisdiction.

23 **NEW SECTION. Section 32. Penalties for delinquency.**

24 (1) Any license tax not paid within the time provided in  
 25 [section 27] is delinquent, a penalty of 10% is added to the

1 tax, and the tax bears interest at the rate of 1% on the tax  
2 due for each calendar month or fraction of a month. Upon a  
3 showing of good cause by the distributor, the department of  
4 transportation may waive penalty.

5 (2) If any distributor or other person subject to the  
6 payment of the license tax willfully fails, neglects, or  
7 refuses to make any statement required by this part or  
8 willfully fails to make payment of the license tax within  
9 the time provided, the department may revoke any license  
10 issued under this part.

11 (3) The department shall set forth the information it  
12 requires in the statement and determine the amount of the  
13 license tax due from the distributor and shall add a penalty  
14 of \$25 or 10% of the amount due, whichever is greater,  
15 together with an interest rate of 1% per month or fraction  
16 of a month from the date the statements should have been  
17 made and the license tax should have been paid.

18 (4) The department shall proceed to collect the license  
19 tax, with penalties and interest. At the request of the  
20 department, the attorney general shall commence and  
21 prosecute to final determination in any court of competent  
22 jurisdiction an action to collect the license tax.

23 NEW SECTION. Section 33. Fraudulent returns --  
24 penalty. If a special fuel distributor files a false or  
25 fraudulent return with intent to evade the tax imposed by

1 this part, there is added to the amount of deficiency  
2 determined by the department of transportation a penalty  
3 equal to 25% of the deficiency, together with interest at 1%  
4 per month or fraction of a month on the deficiency from the  
5 date the tax was due to the date of payment, in addition to  
6 all other penalties prescribed by law.

7 NEW SECTION. Section 34. Warrant for distraint. If all  
8 or part of the tax imposed by this part is not paid when  
9 due, the department of transportation may issue a warrant  
10 for distraint as provided in Title 15, chapter 1, part 7.  
11 The resulting lien has precedence over any other claim,  
12 lien, or demand filed or recorded thereafter. An action may  
13 not be maintained to enjoin the collection of all or any  
14 part of the license tax.

15 NEW SECTION. Section 35. Statute of limitations.  
16 Except in the case of a fraudulent return or of neglect or  
17 refusal to make a return, every deficiency must be assessed  
18 within 3 years from the due date of the return or the date  
19 of filing the return, whichever period expires later.

20 NEW SECTION. Section 36. Refund or credit authorized.  
21 (1) A person who purchases and uses any special fuel on  
22 which the Montana special fuel license tax has been paid for  
23 operating stationary special fuel engines, tractors used off  
24 the public highways and streets, or for any commercial use  
25 other than operating vehicles upon any of the public

1 highways or streets of this state is allowed a refund of the  
2 amount of tax paid directly or indirectly on the special  
3 fuel so used. The refund may not exceed the tax paid or to  
4 be paid to the state.

5 (2) A distributor who pays the special fuel license tax  
6 to this state erroneously is allowed a credit or refund of  
7 the amount of tax paid.

8 (3) A distributor who sells special fuel that is not  
9 subject to taxation under [section 26] shall complete an  
10 exemption certificate for each sale and submit the  
11 certificate with the distributor's monthly report.

12 (4) (a) A distributor is entitled to a credit for the  
13 tax paid to the department of transportation on those sales  
14 of special fuel with a tax liability of \$200 or greater for  
15 which the distributor has not received consideration from or  
16 on behalf of the purchaser and for which the distributor has  
17 not forgiven any liability. The distributor shall have  
18 declared the accounts of the purchaser worthless not more  
19 than once during a 3-year period and claimed those accounts  
20 as bad debts for federal income tax purposes.

21 (b) If a credit has been granted under subsection (3),  
22 any amount collected on the accounts declared worthless must  
23 be reported to the department and the tax due must be  
24 prorated on the collected amount and must be paid to the  
25 department.

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

4 (5) A person who purchases and exports for sale, use,  
5 or consumption outside Montana any special fuel on which the  
6 Montana special fuel tax has been paid is entitled to a  
7 credit or refund of the amount of tax paid unless the person  
8 is not licensed and is not paying the tax to the state where  
9 fuel is destined. Upon completion of the reports required  
10 under [section 31], the department shall authorize the  
11 credit or refund.

12 **NEW SECTION. Section 37. Required records.** (1) Special  
13 fuel purchased and delivered into bulk storage for use in  
14 motor vehicles on public roads and nonhighway use must be  
15 fully accounted for by detailed withdrawal records to  
16 accurately show the manner in which it was used. Special  
17 fuel on hand, determined by actual measurement, must be  
18 deducted from a claim and must be reported as an opening  
19 inventory on the next claim.

20 (2) Service stations, bulk dealers, and marinas shall  
21 prepare a separate and complete invoice for each withdrawal  
22 of special fuel for own use upon which a refund is to be  
23 claimed.

24 (3) When a highway use of special fuel is not deducted  
25 from the claim, the applicant shall substantiate purchases

of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

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

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

**NEW SECTION. Section 38. Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtrol purchases.** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of special fuel as

indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence as may be required by the department of transportation.

(3) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by [section 37].

**NEW SECTION. Section 39. Determination of highway use.** Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads.

**NEW SECTION. Section 40. Application for refund or credit -- filing -- correction by department.** (1) The application for a refund must be a signed statement on a form furnished by the department of transportation. Except for a claim for a credit for taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on

which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

**NEW SECTION. Section 41. Approval or rejection of claim.** (1) The department of transportation has 120 working days after receiving the claim to approve or reject it. If

approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

**NEW SECTION. Section 42. Penalties.** A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

**Section 43.** Section 20-15-403, MCA, is amended to read:



"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

**NEW SECTION. Section 44. Repealer.** Sections 15-70-316 and 15-70-322, MCA, are repealed.

**NEW SECTION. Section 45. Codification instruction.**

[Sections 24 through 42] are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [sections 24 through 42].

**NEW SECTION. Section 46. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 47. Effective date.** [This act] is effective January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0539, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing the collection of special fuel taxation at the distributor level rather than the retail level and providing a delayed effective date.

ASSUMPTIONS:

1. More gallons of special fuels are likely to be taxed by changing the point of taxation from the retail dealer's level to the distributor's level. Similar legislation enacted by the state of Missouri increased taxable gallons of special fuels by 52% and increased refunds by 93%, resulting in a net revenue increase. Using these results, at least a 15% increase in taxable gallons of special fuels and a worst case of 100% increase in refunds is anticipated.
2. This bill will result in a change in taxation effective January 1, 1994, and a reduction of motor fuels tax accounts. The phase-out of the special fuel dealer license will result in 470 fewer accounts. The returns to be processed will drop by 5640 per year.
3. Current gasoline distributors will also be special fuel distributors. An incremental increase in the work load of the work group currently working with the gasoline taxes would occur due to the increased number special fuel and special authorization refunds requested, and the extra work to process and desk audit the returns.
4. Motor fuels forms will be modified. Gasoline distributor forms will be modified to include special fuel distributors. Gasoline refund forms will be modified to include special fuel refunds. The special fuels user tax return will be modified to exclude reporting requirements for vehicles weighing less than 26,000 pounds.
5. The number of refund requests and dollars refunded will increase.
6. There will be an increase in the number of special authorizations per 15-70-309, MCA, issued under this bill. The motor fuels licensing system will be modified to accommodate the new special authorizations (15-70-309, MCA). There will be more special fuel authorizations issued.
7. DOT does not expect the amount received from the reapplication fee for special fuel users to be material.
8. A mass mailing will be done to inform the taxpayers of the changes resulting from this bill.
9. Audits will be performed on special fuel dealers for three years after passage of this bill.
10. The scope of the DOT audits will be expanded to include: comparison of bulk fuel sales to Division of Motor Vehicle records to ensure compliance with 15-70-309, MCA; verification of vehicle weights for special authorizations under 15-70-309, MCA; and increased audits of fuel imports.
11. The executive budget recommendation for an additional 5.00 FTE for compliance review staff would not be continued in the 1997 biennium.
12. The department will contract much of the programming work needed to update the DOT system to handle the distributor level taxation rather than the current retail level.

(continued)

 2-16-93

DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

 2-17-93

DAVE BROWN, PRIMARY SPONSOR DATE

Fiscal Note for HB0539, as introduced

HB 539

FISCAL IMPACT:

	<u>FY '94</u>			<u>FY '95</u>		
<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	190.08	0	190.08	190.08	0
Personal Services	\$ 6,164,720	\$ 6,164,720	\$ 0	\$ 6,184,495	\$ 6,184,495	\$ 0
Operating	4,912,089	5,016,089	104,000	4,650,929	4,650,929	0
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	\$ 11,473,876	\$ 104,000	\$11,740,465	\$ 11,740,465	\$ 0
<u>Funding:</u>						
State Special Revenue	\$ 8,546,828	\$ 8,650,828	\$ 104,000	\$ 8,904,517	\$ 8,904,517	\$ 0
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 Funding	\$11,369,876	\$ 11,473,876	\$ 104,000	\$11,740,465	\$ 11,740,465	\$ 0
<u>Revenues:</u>						
Diesel Fuel Lic. Tax (02)	\$25,997,851	\$ 27,689,036	\$1,691,185	\$26,475,822	\$ 29,920,378	\$3,444,556
<u>Net Impact:</u>						
Highway Special Revenue (02)			\$1,587,185			\$3,444,556

HB539

APPROVED BY COMMITTEE  
ON TAXATION

## HOUSE BILL NO. 539

INTRODUCED BY D. BROWN, LARSON, HARRINGTON, GILBERT, NATHE  
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING THE COLLECTION  
OF SPECIAL FUEL TAXATION AT THE DISTRIBUTOR LEVEL RATHER  
THAN THE RETAIL LEVEL; AMENDING SECTIONS 15-70-301,  
15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306,  
15-70-307, 15-70-309, 15-70-311, 15-70-312, 15-70-315,  
15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326,  
15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331,  
15-70-332, 15-70-333, AND 20-15-403, MCA; REPEALING SECTIONS  
15-70-316 AND 15-70-322, MCA; AND PROVIDING A DELAYED  
EFFECTIVE DATE."

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

**Section 1.** Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the  
following definitions apply:

(1) "Agricultural use" means use of special fuel by a  
person whose major endeavor is and primary source of earned  
income is from the business of farming or ranching.

(2) "Authorization" means an uncanceled special fuel  
tax prepaid authorization issued by the department.

(3) "Bond" means:

(a) a bond duly executed by a ~~special-fuel-dealer-or~~  
special fuel user as principal with a corporate surety  
qualified under the laws of Montana, payable to the state of  
Montana, conditioned upon faithful performance of all  
requirements of this part, including the payment of all  
taxes, penalties, and other obligations of the ~~special-fuel~~  
~~dealer-or~~ special fuel user arising out of this part; or

(b) a deposit with the department by the ~~special--fuel~~  
dealer--or special fuel user, under terms and conditions 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.

(4) "Bulk delivery" means placing special fuel NOT  
INTENDED FOR RESALE in storage or containers. The term does  
not mean special fuel delivered into the supply tank of a  
motor vehicle.

(5) "Cardtrol" or "keylock" means any unique device  
intended to allow access to a special fuel dealer's  
unattended pump or dispensing unit for the purpose of  
delivery of special fuel to an authorized user of the unique  
device.

(6) "Department" means the department of  
transportation.

(7) (a) "Distributed" means, at the time special fuel  
is withdrawn, the withdrawal from a storage tank, a

1 refinery, or a terminal storage in this state for sale or  
 2 use in this state or for the transportation other than by  
 3 pipeline to another refinery in this state or a pipeline  
 4 terminal in this state of the following:

5 (i) special fuel refined, produced, manufactured, or  
 6 compounded in this state and placed in storage tanks in this  
 7 state;

8 (ii) special fuel transferred from a refinery or  
 9 pipeline terminal in this state and placed in tanks at the  
 10 refinery or terminal; or

11 (iii) special fuel imported into this state and placed  
 12 in storage at a refinery or pipeline terminal.

13 (b) When withdrawn from the storage tanks, refinery, or  
 14 terminal, the special fuel may be distributed only by a  
 15 person who is the holder of a valid distributor's license.

16 (c) Special fuel imported into this state, other than  
 17 that special fuel placed in storage at a refinery or  
 18 pipeline terminal, is considered to be "distributed" after  
 19 it has arrived in and is brought to rest in this state.

20 (8) "Distributor" means:

21 (a) a person who engages in the business in this state  
 22 of producing, refining, manufacturing, or compounding  
 23 special fuel for sale, use, or distribution;

24 (b) an importer who imports special fuel for sale, use,  
 25 or distribution;

1 (c) a person who engages in the wholesale distribution  
 2 of special fuel in this state and chooses to become licensed  
 3 to assume the Montana state special fuel tax liability; and

4 (d) an exporter as defined in this section.

5 (9) "Export" means to transport out of Montana, by any  
 6 means other than in the fuel supply tank of a motor vehicle,  
 7 special fuel received from a refinery or pipeline terminal  
 8 within Montana.

9 (10) "Exporter" means a person who transports, other  
 10 than in the fuel supply tank of a motor vehicle, special  
 11 fuel received from a refinery or pipeline terminal in  
 12 Montana to a destination outside Montana for sale, use, or  
 13 consumption outside Montana.

14 (11) "Import" means to first receive special fuel into  
 15 possession or custody after its arrival and coming to rest  
 16 at a destination within the state or to first receive any  
 17 special fuel shipped or transported into this state from a  
 18 point of origin outside of this state other than in the fuel  
 19 supply tank of a motor vehicle.

20 (12) "Importer" means a person who transports or  
 21 arranges for the transportation of special fuel into Montana  
 22 for sale, use, or distribution.

23 ~~(5)~~ (13) "Motor vehicle" means any--vehicle--which--is  
 24 self-propelled--upon--the--highways all vehicles that are  
 25 operated upon the public highways or streets of this state

1 and that are operated in whole or in part by the combustion  
2 of special fuel.

3 {6}(14) "Person" means-and includes any person, firm,  
4 association, joint-stock company, syndicate, partnership, or  
5 corporation--whenever. Whenever the term is used in any  
6 clause prescribing and imposing a fine or imprisonment, or  
7 both, as applied to a firm, association, syndicate, or  
8 partnership, means-and it includes the partners or members  
9 thereof and, as applied to joint-stock companies and  
10 corporations, the officers thereof.

11 {7}(15) "Public roads and highways of this state" means  
12 all streets, roads, highways, and related structures:

13 (a) built and maintained with appropriated funds of the  
14 United States, the state of Montana, or any political  
15 subdivision of the state;

16 (b) dedicated to public use;

17 (c) acquired by eminent domain; or

18 (d) acquired by adverse use by the public, jurisdiction  
19 having been assumed by the state or any political  
20 subdivision of the state.

21 {8}(16) "Special fuel" means those combustible gases and  
22 liquids commonly referred to as diesel fuel or any other  
23 volatile liquid of less than 46 degrees A.P.I. (American  
24 petroleum institute) gravity test, except liquid petroleum  
25 gas, when actually sold for use in motor vehicles propelled

1 operating upon the public roads and highways within the  
2 state of Montana. The-term-includes-compressed-natural-gas-

3 {9}(17) {a} "Special fuel dealer" means:

4 {i}(a) any person in the business of handling special  
5 fuel who delivers any part of the fuel into the fuel supply  
6 tank or tanks of a motor vehicle not then owned or  
7 controlled by him the person;

8 {ii}(b) any person who sells special fuel at a location  
9 unattended by the dealer through an unattended pump by use  
10 of a cardrol, keylock, or similar device; or

11 {iii}(c) any person who provides any facility, with or  
12 without attended services, from which more than one special  
13 fuel user obtains special fuel for use in the fuel supply  
14 tank of a motor vehicle not then controlled by the dealer.

15 {b}--For purposes of subsection {9}-{a}, the term--"fuel  
16 supply--tank--or--tanks"--does not include cargo tanks, even  
17 though fuel is--withdrawn--directly--from--cargo--tanks--for  
18 propulsion of the vehicle.

19 {10}(18) "Special fuel user" means any person other than  
20 a county, incorporated city or town, or school district of  
21 this state who consumes in this state special fuel for the  
22 propulsion operation of motor vehicles owned or controlled  
23 by him the person upon the highways of this state.

24 {iii}(19) "Use", when the term relates to a special fuel  
25 user, means:

~~{a}--the--receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or~~

{b} the consumption by a special fuel user of special fuels in propulsion the operation of a motor vehicle on the highways of this state."

**Section 2.** Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel dealer's licenses and special fuel user's permits required -- exceptions. {1} A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department.

{2}(1) A special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion operation of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection {5}(3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by him the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any checking station officer motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The

special fuel user is responsible for reproducing clear and legible copies of the permit.

{3} A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods, provided the person purchases special fuel, tax paid, except special fuel brought into this state in the fuel supply tank of the vehicle, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

{4}(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits ~~will~~ must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and

1 pay the tax on fuel used in Montana on which the tax has not  
2 been paid.

3 {5}{3} A special fuel user need not display the  
4 original or reproduced copy of the special fuel user's  
5 permit as required by subsection {2}{1} if:

6 {a} ~~he is the special fuel user is~~ registered and  
7 licensed pursuant to the International Fuel Tax Agreement as  
8 authorized by 15-70-121 and the vehicle displays a license  
9 or decal issued pursuant to the agreement; ~~or,~~

10 {b} ~~the motor vehicle operated by him is a vehicle that~~  
11 ~~is part of a motor vehicle fleet based in Montana that is~~  
12 ~~proportionally registered under the provisions of 61-3-711~~  
13 ~~through 61-3-733;~~

14 {c} ~~he obtains a registration card issued by the~~  
15 ~~department indicating the special fuel user's permit number;~~  
16 and

17 {d} ~~the registration card indicating the special fuel~~  
18 ~~user's permit number is carried in the vehicle and is~~  
19 ~~available for inspection;~~

20 {6}{4} A person whose use of special fuel is  
21 predominantly ~~for agricultural and nonhighway use but who~~  
22 ~~owns or operates one or more passenger cars or light trucks~~  
23 may in special fuel vehicles up to 26,000 pounds gross  
24 vehicle weight or registered gross vehicle weight shall  
25 obtain annually from the department an authorization, as

1 provided in 15-70-309, if the special fuel is not subject to  
2 taxation under [section 26]."

3 **Section 3.** Section 15-70-303, MCA, is amended to read:

4 "15-70-303. Application for license, permit, or  
5 authorization. (1) Application for a ~~special fuel dealer's~~  
6 ~~license, special fuel user's permit, or authorization shall~~  
7 must be made to the department unless otherwise provided in  
8 this part.

9 (2) The application ~~shall~~ must be filed upon a form  
10 prepared and furnished by the department. The application  
11 must contain information the department considers  
12 necessary."

13 **Section 4.** Section 15-70-304, MCA, is amended to read:

14 "15-70-304. Bonding, release of surety, and additional  
15 bond. (1) Except as provided in this section, a ~~special fuel~~  
16 ~~dealer's license or~~ special fuel user's permit may not be  
17 issued to a person or continued in force unless the person  
18 has furnished bond, as defined in 15-70-301 and in a form as  
19 the department may require, to secure its compliance with  
20 this part and the payment of any taxes, interest, and  
21 penalties due and to become due under this part. The  
22 department shall waive the bond requirement of a special  
23 fuel user not subject to subsection (2)(a) or (2)(b). Upon  
24 ~~application, the department shall waive the bond requirement~~  
25 ~~of a public contractor licensed under Title 15, chapter 50,~~



1 who--has-posted-a-performance-bond-conditioned-on-payment-of  
2 all-lawful-taxes-with-the-contracting-entity-

3 (2) The total amount of the bond or bonds required of a  
4 special--fuel--dealer--must--be--equivalent--to--twice---his  
5 estimated--monthly-tax-payments;-and-the-total-amount-of-the  
6 bond-or-bonds-required--of--a special fuel user must be  
7 equivalent to twice his the special fuel user's estimated  
8 quarterly tax payments as provided in this part, determined  
9 as the department considers proper; however, the total  
10 amount of the bond or bonds may not be less than:

11 (a) \$5,000 for a special fuel user awarded a contract  
12 in accordance with 15-70-321; and

13 (b) \$500 for any other special fuel user who:

14 (i) requests a special fuel user's permit to be  
15 reissued after being canceled for cause; or

16 (ii) fails to file timely reports and pay tax due as  
17 required by 15-70-325 and 15-70-327;-and

18 (c) --\$1,000-for-a-special-fuel-dealer.

19 (3) A surety on a bond furnished by a special-fuel  
20 dealer-or special fuel user, as provided in this section,  
21 must be released and discharged from any liability to the  
22 state accruing on the bond after the expiration of 30 days  
23 from the date when the surety has lodged with the department  
24 a written request to be released and discharged, but this  
25 provision may not operate to relieve, release, or discharge

1 the surety from any liability already accrued or that  
2 accrues before the expiration of the 30-day period. The  
3 department shall, promptly upon receiving a release request,  
4 notify the special--fuel--dealer--or special fuel user who  
5 furnished the bond, and unless the special--fuel--dealer--or  
6 special fuel user, on or before the expiration of the 30-day  
7 period, files a new bond in accordance with the requirements  
8 of this section or makes a deposit in lieu of a bond as  
9 provided in 15-70-301+2+(3), the department shall cancel the  
10 special-fuel-dealer's-license-or special fuel user's permit.

11 (4) The department may require a special-fuel-dealer-or  
12 special fuel user to give a new or additional surety bond or  
13 to deposit additional securities of the character specified  
14 in 15-70-301+2+(3) if, in its opinion, the security of the  
15 surety bond previously filed by the special-fuel--dealer--or  
16 special fuel user or the market value of the properties  
17 deposited as security by the special-fuel-dealer-or special  
18 fuel user becomes impaired or inadequate. Upon failure of  
19 the special-fuel-dealer-or special fuel user to give a new  
20 additional surety bond or to deposit additional securities  
21 within 30 days after being requested to do so by the  
22 department, the department shall cancel his-license the  
23 permit."

24 **Section 5.** Section 15-70-305, MCA, is amended to read:

25 "15-70-305. Issuance of license, permit, or

1 authorization -- grounds for refusal -- hearing. (1) Except  
 2 as provided in subsection ~~†3†~~(4), upon receipt of the  
 3 application and bond in proper form, the department shall  
 4 issue to the applicant a ~~license-or~~ permit to act operate as  
 5 a ~~special--fuel--dealer--or~~ special fuel user. Each ~~special~~  
 6 ~~fuel-dealer's-license-or~~ special fuel user's permit is valid  
 7 until suspended or revoked for cause or otherwise canceled.

8 (2) Except as provided in subsection ~~†3†~~(4), upon  
 9 receipt of the application in proper form, the department  
 10 shall issue to the applicant an authorization. A holder of  
 11 an authorization is not required to furnish bond as provided  
 12 under 15-70-304. The authorization must be issued annually  
 13 and is valid from the date of its issuance through December  
 14 31 of the calendar year, unless a motor vehicle for which  
 15 the tax is prepaid is sold, or until suspended or revoked  
 16 for cause or otherwise canceled.

17 (3) If the special fuel user's permit is surrendered or  
 18 revoked, the special fuel user shall pay a reissuance fee of  
 19 \$100.

20 ~~†3†~~(4) The department may refuse to issue a ~~special~~  
 21 ~~fuel--dealer's--license,~~ special fuel user's permit, or  
 22 authorization to any person:

23 (a) who formerly held a ~~license,~~ permit, or  
 24 authorization that, prior to the time of filing application,  
 25 has been revoked for cause;

1 (b) who is not the real party in interest and the  
 2 ~~license,~~ permit, or authorization of the real party in  
 3 interest has been revoked for cause prior to the time of  
 4 filing the application; or

5 (c) upon other sufficient cause being shown.

6 ~~†4†~~(5) Before refusal to issue a ~~license,~~ permit, or  
 7 authorization, the department shall grant the applicant a  
 8 hearing and shall grant him the applicant at least 10 days'  
 9 written notice of the time and place of hearing.

10 ~~†5†~~(6) A ~~special--fuel--dealer's-license,~~ special fuel  
 11 user's permit, or authorization is not transferable."

12 **Section 6.** Section 15-70-306, MCA, is amended to read:

13 "15-70-306. Revocation, suspension, and cancellation.  
 14 (1) The department may revoke the ~~license,~~ permit, or  
 15 authorization of any ~~special-fuel--dealer--or~~ special fuel  
 16 user or any special fuel vehicle permit for reasonable  
 17 cause. Before revoking a ~~license,~~ permit, or authorization,  
 18 the department shall notify the ~~licensee-or~~ permittee of its  
 19 intention, by certified mail addressed to his the  
 20 permittee's last-known address shown in the files of the  
 21 department, requiring him the permittee to appear before the  
 22 department on a day and hour specified in the notice, not  
 23 more than 30 days or less than 10 days from date of notice,  
 24 and show cause, if any, why the ~~license,~~ permit, or  
 25 authorization should not be revoked; provided, however, that

at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the license, permit, or authorization.

(2) Upon revocation by the department of any license, permit, or authorization, the holder shall immediately surrender the license, permit, or authorization to the department for cancellation."

**Section 7.** Section 15-70-307, MCA, is amended to read:

"15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any license to act as a special fuel dealer or any special fuel user permit immediately upon surrender thereof by the holder."

**Section 8.** Section 15-70-309, MCA, is amended to read:

"15-70-309. Authorization for certain uses -- disposition of proceeds -- penalties. (1) (a) A person who purchases, tax-free, special fuel in bulk and whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or pickups, each having a licensed gross vehicle weight of 10,000 pounds or less and powered by special fuel, may elect to apply to the department, as provided in 15-70-303, for an authorization. The authorization requires the holder to prepay an annual tax on the special fuel placed in bulk storage and used, in part, in the holder's special fuel-powered vehicles, rather than

apply for a special fuel user's permit special fuel vehicles 26,000 pounds or less gross vehicle weight or registered gross vehicle weight shall pay an authorization fee as follows:

(i) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 10,000 pounds or less, \$150;

(ii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, \$225;

(iii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 18,000 pounds or more and up to 26,000 pounds, \$500.

(b) If a holder elects to obtain an authorization, he shall prepay the tax at the rate of \$120 for each passenger car or pickup within the weight limit specified in subsection (1)(a). The tax must be paid on a calendar year basis and must be prorated from the date of authorization for each vehicle. A person whose purchases of special fuel are predominantly for highway or nonagricultural use does not qualify for the special fuel tax.

(b) The authorization fee for vehicles under 10,000 pounds gross vehicle weight or registered gross vehicle weight purchased during the calendar year must be computed at one-twelfth of the applicable fee for each month or

fraction of a month. The authorization fee for vehicles 10,000 pounds or more and up to 26,000 pounds gross vehicle weight or registered gross vehicle weight must be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually.

(c) Whenever the holder of an authorization ceases to farm operate within this state, he the holder shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to him the holder by the department. The department shall refund the portion of the prepaid-tax authorization fee attributable to the remaining portion of the calendar year applicable period.

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter."

**Section 9.** Section 15-70-311, MCA, is amended to read:

"15-70-311. Special fuel user's temporary trip permits

-- nonresident agricultural harvesting equipment special fuel permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit or--registration card--indicating--the--special--fuel--use--permit-number, as provided by 15-70-302, shall-be is required to purchase a special fuel user's temporary trip permit. The permits will must be issued by scale--house--personnel,--gross--vehicle weight---patrol---crews motor carrier services division employees, Montana highway patrol officers, and such other enforcing agents as that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, shall--be is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit will must be issued by scale-house-personnel,--gross-vehicle-weight-patrol crews motor carrier services division employees, Montana

highway patrol officers, and such other enforcing agents as that the department may prescribe by order or rule.

(3) A resident or nonresident operating a special fuel-powered vehicle up to 26,000 pounds gross vehicle weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase."

**Section 10.** Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits -- duration of temporary permits. (1) The temporary Temporary special fuel permits shall cost the special-fuel-vehicle-user-a-fee-of \$30. The permit shall be is valid for a period of time not to exceed 72 hours and will be is automatically void should if the vehicle leave leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost costs \$30 per unit for the calendar year in which the fee is collected. The permit shall is not be transferable. A unit shall be is defined as:

- (a) one truck suitable for hauling produce commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) All fees collected shall must be remitted to the department or deposited directly in the state special

revenue fund for the department."

**Section 11.** Section 15-70-315, MCA, is amended to read:

"15-70-315. Affidavit required of cardtrol or keylock purchaser -- inspection by department. (1) A person who uses a cardtrol, keylock, or similar device to obtain delivery of special fuel tax-free from an unattended pump or dispensing unit shall sign and furnish to the special fuel dealer an affidavit exemption certificate, on a form prescribed and furnished by the department, stating the type-of-equipment in-which-the-special-fuel-will-be-placed-and-stating-that-no special-fuel-will-be-placed-into-the-supply-tank-of-a-motor vehicle--to--be-operated-on-the-public-roads-and-highways-of this-state.

(2) The--special--fuel--dealer--shall--keep--all--such affidavits--and--make--them--available-for-inspection-by-the department sale of special fuel that is not subject to taxation under [section 26]."

**Section 12.** Section 15-70-321, MCA, is amended to read:

"15-70-321. Tax on diesel fuel and volatile liquids. The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 20 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when

1 actually sold or used to produce motor power to propel  
 2 operate motor vehicles upon the public highways or streets  
 3 within the state or used in motor vehicles, motorized  
 4 equipment, and the internal combustion of any and all  
 5 engines, including stationary engines, used in connection  
 6 with any and all work performed under any and all contracts  
 7 pertaining to the construction, reconstruction, or  
 8 improvement of any highway or street and their appurtenances  
 9 awarded by any and all public agencies, including federal,  
 10 state, county, municipal, or other political subdivisions."

11 **Section 13.** Section 15-70-323, MCA, is amended to read:

12 "15-70-323. ~~Special fuel--dealer's--and--special~~ fuel  
 13 ~~user's records.~~ (1) Every ~~special-fuel-dealer,~~ special fuel  
 14 ~~user,~~ and every person importing, manufacturing, refining,  
 15 dealing in, transporting, or storing special fuel in this  
 16 state shall keep such records, receipts, and invoices and  
 17 other pertinent papers ~~with--respect--thereto--as~~ that the  
 18 department may require and shall produce them for the  
 19 inspection of the department at any time during the business  
 20 hours of the day.

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

25 **Section 14.** Section 15-70-324, MCA, is amended to read:

1 "15-70-324. **Examination of records -- enforcement of**  
 2 **part.** (1) The department shall enforce the provisions of  
 3 this part.

4 (2) The department or its authorized representative ~~is~~  
 5 ~~hereby--empowered--to~~ may examine the books, papers, records,  
 6 and equipment of any ~~special-fuel--dealer--or~~ special fuel  
 7 user or any person dealing in, transporting, or storing  
 8 special fuel as defined in this part and to investigate the  
 9 character of the disposition which any person makes of such  
 10 special fuel in order to ascertain and determine whether all  
 11 excise taxes due hereunder are being properly reported and  
 12 paid. If such the books, papers, records, and equipment are  
 13 not maintained in this state at the time of demand, they  
 14 ~~shall~~ must be furnished at the direction of the department  
 15 for review either in the offices of the department or at the  
 16 business location of the taxpayer and ~~shall~~ must be, if  
 17 requested by the department, accompanied by the ~~special-fuel~~  
 18 ~~dealer--or~~ special fuel user.

19 (3) For the purpose of enforcing the provisions of this  
 20 part, the fact that ~~a-special-fuel-dealer--or~~ a special fuel  
 21 user has placed or received special fuel into storage or  
 22 dispensing equipment designed to fuel motor vehicles ~~shall~~  
 23 ~~be~~ is prima facie evidence that all of such the special fuel  
 24 has been delivered by the ~~special--fuel--dealer--or~~ special  
 25 fuel user into the fuel supply tanks of motor vehicles and

consumed in the propulsion operation of motor vehicles upon the highways ~~as-herein-defined~~ unless the contrary ~~shall-be~~ is established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of ~~the-Dominion-of~~ Canada, forward to ~~such~~ the officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any ~~special-fuel-dealer-or~~ special fuel user, provided ~~such~~ the other state or states furnish like information to this state."

**Section 15.** Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the special fuel tax herein imposed, ~~each--special--fuel--dealer--shall--file--with--the~~ department--a--monthly-tax-return-and each special fuel user shall file with the department, on forms prescribed by ~~said~~ the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that ~~such~~ the user's annual tax liability is or will be \$200 or less.

(3) ~~Such~~ The user shall make an annual report and

return to the department on forms prescribed by ~~said~~ the department, on or before January 31 of each year. ~~Should~~ If the department ~~determine~~ determines that a user filing annual returns ~~as-herein-provided~~ is delinquent in making reports and payments, it shall require ~~such~~ the person to file quarterly returns ~~as-herein-provided~~. ~~Such~~ A return, annual or quarterly, ~~shall~~ must contain a declaration by the person making the ~~same~~ return to the effect that the statements contained in the return are true and are made under penalties of perjury, ~~which~~. The declarations ~~shall~~ have the same force and effect as a verification. The return ~~shall~~ must show ~~such~~ the information ~~as~~ that the department may reasonably require for the proper administration and enforcement of this part.

~~(4)--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-return-to-the--department--need~~  
~~not--include--inventory--control--data-covering-bulk-storage~~  
~~from-which-wholesale-distribution-of-special-fuel-is-made.~~

~~(5)~~ (4) The ~~special-fuel-dealer--or~~ special fuel user shall file the return on or before the last day of the next succeeding calendar month following the 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 30 days."

**Section 16.** Section 15-70-326, MCA, is amended to read:

"15-70-326. Computation. The tax imposed by this part shall must be computed, as follows:

(1) ~~with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle;~~

(2) with respect to special fuel ~~as to~~ for which the tax has not been paid ~~to a special fuel dealer~~ in this state and which that has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by him the special fuel user in the propulsion operation of motor vehicles on the highways of this state."

**Section 17.** Section 15-70-327, MCA, is amended to read:

"15-70-327. Payment -- deductions. The tax return shall must be accompanied by remittance covering the tax due hereunder under this part for on ~~account~~ of the use, as defined in 15-70-301, of special fuels during the preceding period. ~~A licensed special fuel dealer is allowed a deduction equal to 14 of the first 6 cents per gallon of the~~

~~taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control."~~

**Section 18.** Section 15-70-328, MCA, is amended to read:

"15-70-328. Credits. (1) Any licensed special fuel user or ~~licensed special fuel dealer~~ who has paid a special fuel tax either directly or to the vendor from whom it was purchased shall must receive credit in the amount of any tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state or for any overpayment of special fuel taxes not due to the state. ~~Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.~~

(2) ~~Any licensed special fuel user who purchases a temporary special fuel permit and thereafter applies for a special fuel vehicle permit for the same vehicle in less than 11 days after the temporary permit is issued shall receive credit in the amount of the temporary permit fee.~~

(3) ~~(a) A special fuel dealer who has paid a special fuel tax is entitled to a credit of the tax paid to the department on those sales of special fuels for which the dealer has received no consideration from or on behalf of the purchaser. The dealer shall 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--dealer--to-submit  
 periodic-reports-listing-accounts-that-are-delinquent-for-90  
 days-or-more:"

**Section 19.** Section 15-70-329, MCA, is amended to read:

"15-70-329. Procedures for credits -- deadline. (1)  
 Should If a licensed special fuel user or--licensed-special  
 fuel-dealer-desire wants to receive a refund of special fuel  
 taxes or of the temporary permit fee, the user or--dealer  
 shall make a signed and written request to the department  
 requesting those amounts then due. Any amount determined to  
 be creditable by the department under 15-70-328 shall must  
 first be credited on any amounts then due and payable from  
 the special--fuel--dealer--or special fuel user to whom the  
 refund is due, and the department shall then certify the  
 balance to the credit of the dealer-or user. A warrant shall  
must be drawn upon the state treasurer for the amount of  
 such the claim, and same-shall the claim must be paid in the  
 same manner as other claims against the state are paid.

(2) In case any a special fuel user or--special--fuel  
 dealer fails or neglects to file a request for refund of

special fuel taxes within 12 months from the date his the  
user's special fuel license became canceled, the department  
 shall-be is under no obligation to make a refund.

(3) A request for refund or credit under this section  
must be made within 3 years from the date of the payment for  
which a refund or credit is claimed."

**Section 20.** Section 15-70-330, MCA, is amended to read:

"15-70-330. Penalties for refusal or failure to file  
 return or pay tax when due. (1) In case of any special--fuel  
 dealer--or special fuel user who refuses or fails to file a  
 return required by this part within the time prescribed by  
 15-70-103 and 15-70-325, there is hereby imposed a penalty  
 of \$25 or a sum equal to 10% of the tax due, whichever is  
 greater, together with interest at the rate of 1% on the tax  
 due for each calendar month or fraction thereof of a month  
 during which such the refusal or failure continues;  
 provided, however, that if any such-special-fuel-dealer-or  
 special fuel user shall--establish establishes to the  
 satisfaction of the department that his the failure to file  
 a return within the time prescribed was due to reasonable  
 cause, the department shall waive the penalty provided by  
 this section.

(2) Where-a-special-fuel-dealer-or Whenever a special  
 fuel user files a return but fails to pay in whole or in  
 part the tax due hereunder under this part, there shall must

be added to the amount due and unpaid interest at the rate of 1% per month or fraction thereof of a month from the date such the tax was due to the date of payment in full thereof."

**Section 21.** Section 15-70-331, MCA, is amended to read:

"15-70-331. Deficiency. If it be determined by the department that the tax reported by any ~~special-fuel-dealer~~ or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction thereof of a month from the date the return was due."

**Section 22.** Section 15-70-332, MCA, is amended to read:

"15-70-332. Determination if no return made. (1) If any ~~special-fuel-dealer-or~~ special fuel user, whether or not he the user is licensed as such a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the ~~special fuel-dealer-or~~ special fuel user for the period during which no a return was not filed, and to the tax as thus determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 ~~shall-be~~ is presumed to be

correct, and in any case ~~where~~ in which the validity of the assessment is drawn in question, the burden ~~shall-be~~ is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be."

**Section 23.** Section 15-70-333, MCA, is amended to read:

"15-70-333. Fraudulent return -- penalty. If any ~~special--fuel-dealer-or~~ a special fuel user ~~shall-file~~ files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there ~~shall~~ must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction thereof of a month on such the deficiency from the date such the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

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

**NEW SECTION. Section 24.** License, fee, and security of special fuel distributors. (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, 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 that 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 special fuel 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 that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(8)(c) and not already licensed under 15-70-202 shall pay an annual license fee of \$200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(4) As used in this section, "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) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

**NEW SECTION. Section 25.** License to sell special fuel on which refund may be claimed. (1) A person other than a licensed distributor shall obtain a license from the department of transportation prior to selling special fuel on which a refund may be claimed. The application for a license must contain the applicant's name, address, place or places of business in the state of Montana, and other information that may be required by the department. Licenses issued must bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license must be issued and is effective until canceled or suspended by the department.

(2) Any person failing to comply with this section is subject to a fine of not less than \$50 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 the fine and imprisonment.

**NEW SECTION. Section 26.** Special fuel license tax -- rate. (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax

1 is in the amount of 20 cents for each gallon of special fuel  
2 that is distributed by the distributor within the state and  
3 upon which the special fuel license tax has not been paid by  
4 any other distributor.

5 (2) Special fuel may not be included in the measure of  
6 the distributor's license tax if sold:

7 (a) to the United States government, state of Montana,  
8 any other state, and any county, incorporated city, town,  
9 and school district of this state;

10 (b) in bulk delivery quantities of 200 gallons or more;  
11 or

12 (c) for export, unless the distributor is not licensed  
13 and is not paying the tax to the state where the fuel is  
14 destined.

15 NEW SECTION. **Section 27. Distributor's statement and**  
16 **payment -- confidentiality.** (1) Each distributor shall, not  
17 later than the 25th day of each calendar month, render to  
18 the department of transportation a signed statement that  
19 specifies all special fuel distributed and received by the  
20 distributor in this state during the preceding calendar  
21 month and that contains other information the department may  
22 reasonably require in order to administer the special fuel  
23 license tax law. The statement must be accompanied by a  
24 payment in an amount equal to the tax imposed by [section  
25 26], less any refund credit issued under [section 36] and

1 less 1% of the total tax that may be deducted by the  
2 distributor as an allowance for collection.

3 (2) A distributor engaged in or carrying on a business  
4 at more than one location in this state may include all  
5 places of business in one statement.

6 (3) The department or a deputy, assistant, agent,  
7 clerk, or other employee of the department may not publish  
8 or otherwise disseminate information contained in a  
9 statement required under this section in a form that allows  
10 identification of a distributor or a purchaser of special  
11 fuel. This section may not be construed to prohibit:

12 (a) the delivery to a distributor or a distributor's  
13 authorized representative of a certified copy of any return  
14 or report filed in connection with the distributor's tax;

15 (b) the inspection by the attorney general or by  
16 another legal representative of the state of the report or  
17 return of a distributor who brings an action to set aside or  
18 review the tax based on the report or return or against whom  
19 an action or proceeding has been instituted in accordance  
20 with the provisions of Title 15;

21 (c) the publication of statistics classified to prevent  
22 the identification of particular reports or returns and the  
23 items in the reports or returns;

24 (d) the inspection by the commissioner of internal  
25 revenue of the United States or by the proper officer of any

1 state imposing a tax on special fuel or by any  
 2 representative of either officer of the report or return of  
 3 any distributor or the furnishing to the officer or  
 4 authorized representative of an abstract of the report or  
 5 return, but permission must be granted or information must  
 6 be furnished to the officer or the officer's representative  
 7 only if the statutes of the United States or the other state  
 8 grant substantially similar privileges to the proper officer  
 9 of this state charged with the administration of this  
 10 chapter or in compliance with 15-70-121 and 15-70-122; or

11 (e) the compliance of the department with any order of  
 12 a court of competent jurisdiction.

13 **NEW SECTION. Section 28. Recordkeeping requirements.**

14 Each distributor or any other person dealing in,  
 15 transporting, receiving, or storing special fuel shall keep  
 16 for a period not to exceed 3 years the records, receipts,  
 17 and invoices and any other pertinent papers and information  
 18 that the department of transportation may require.

19 **NEW SECTION. Section 29. Invoice of distributors.** Each  
 20 distributor in this state shall at the time of delivery,  
 21 except when authorized by the department of transportation,  
 22 issue to the purchaser an invoice that states the number of  
 23 gallons of special fuel covered by the invoice and other  
 24 information the department may require.

25 **NEW SECTION. Section 30. Examination of records.** (1)

1 The department of transportation or its authorized  
 2 representative may examine the books, papers, records, and  
 3 equipment of any special fuel distributor or any person  
 4 dealing in, transporting, or storing special fuel, as  
 5 defined in this part, and may investigate the character of  
 6 the disposition that any person makes of the special fuel in  
 7 order to ascertain and determine whether all license taxes  
 8 due are being properly reported and paid. If the books,  
 9 papers, records, and equipment are not maintained in this  
 10 state at the time of demand, they must be furnished at the  
 11 direction of the department for review either in the offices  
 12 of the department or at the business location of the  
 13 taxpayer.

14 (2) The records, receipts, and invoices and any other  
 15 pertinent papers supporting sales of each distributor or any  
 16 person dealing in, transporting, or storing special fuel  
 17 must be open and subject to inspection by the department or  
 18 its authorized representative during business hours in order  
 19 to ascertain the amount of license tax due.

20 **NEW SECTION. Section 31. Information reports --**  
 21 **penalty -- confidentiality.** (1) A person receiving special  
 22 fuel, including an importer, exporter, common carrier,  
 23 private carrier, and contract carrier of property who hauls,  
 24 receives, transports, or ships special fuel from any other  
 25 state or foreign country into this state or from this state

1 to any other state or foreign country or from any refinery  
 2 or pipeline terminal in this state to another point within  
 3 this state shall submit to the department of transportation,  
 4 upon its request and within the time specified, a statement  
 5 showing the number of gallons of special fuel contained in  
 6 each shipment in interstate commerce and the movement of the  
 7 products from any refinery or pipeline terminal located  
 8 within this state to another point within this state during  
 9 the preceding calendar month, the names and addresses of the  
 10 consignor and the consignee, and the date of delivery to the  
 11 consignee.

12 (2) A person, except a licensed distributor, importer,  
 13 or exporter, who refuses or fails to file a statement as  
 14 required in this section is subject to a penalty of \$100 for  
 15 each failure or refusal.

16 (3) The department or a deputy, assistant, agent,  
 17 clerk, or other employee of the department may not publish  
 18 or otherwise disseminate information contained in a  
 19 statement required under this section in a form that allows  
 20 identification of a distributor or a purchaser of special  
 21 fuel. This section may not be construed to prohibit:

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

25 (b) the inspection by the attorney general or other

1 legal representative of the state of the report or statement  
 2 of a person if a person or distributor brings an action to  
 3 set aside or review the tax based on the report or statement  
 4 or if an action or proceeding has been instituted in  
 5 accordance with the provisions of Title 15 against that  
 6 person or distributor;

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

10 (d) the inspection by the commissioner of internal  
 11 revenue of the United States or by the proper officer of any  
 12 state imposing a tax on special fuel or by the authorized  
 13 representative of either officer of the report or statement  
 14 of any person or the furnishing to the officer or authorized  
 15 representative of an abstract of the report or statement,  
 16 but permission may be granted or information may be  
 17 furnished to the officer or the officer's representative  
 18 only if the statutes of the United States or the other state  
 19 grant substantially similar privileges to the proper officer  
 20 of this state charged with the administration of this  
 21 chapter or in compliance with 15-70-121 and 15-70-122; or

22 (e) the compliance of the department with any order of  
 23 a court of competent jurisdiction.

24 NEW SECTION. **Section 32. Penalties for delinquency.**

25 (1) Any license tax not paid within the time provided in

[section 27] is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1% on the tax due for each calendar month or fraction of a month. Upon a showing of good cause by the distributor, the department of transportation may waive penalty.

(2) If any distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of \$25 or 10% of the amount due, whichever is greater, together with an interest rate of 1% per month or fraction of a month from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

**NEW SECTION. Section 33. Fraudulent returns** --  
penalty. If a special fuel distributor files a false or

fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.

**NEW SECTION. Section 34. Warrant for distraint.** If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.

**NEW SECTION. Section 35. Statute of limitations.** Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

**NEW SECTION. Section 36. Refund or credit authorized.**

(1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use

other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) A distributor who sells special fuel that is not subject to taxation under [section 26] shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report.

(4) (a) A distributor is entitled to a credit for the tax paid to the department of transportation on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (3), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and 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.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under [section 31], the department shall authorize the credit or refund.

**NEW SECTION. Section 37. Required records.** (1) Special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for own use upon which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted



from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

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

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

**NEW SECTION. Section 38.** Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60%

of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence as may be required by the department of transportation.

(3) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by [section 37].

**NEW SECTION. Section 39.** Determination of highway use. Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads.

**NEW SECTION. Section 40.** Application for refund or credit -- filing -- correction by department. (1) The application for a refund must be a signed statement on a form furnished by the department of transportation. Except for a claim for a credit for taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of

special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

**NEW SECTION. Section 41. Approval or rejection of claim.** (1) The department of transportation has 120 working

days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

**NEW SECTION. Section 42. Penalties.** A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

**Section 43.** Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-70-301, ~~15-70-322~~, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

**NEW SECTION. Section 44. Repealer.** Sections 15-70-316 and 15-70-322, MCA, are repealed.

**NEW SECTION. Section 45. Codification instruction.**

[Sections 24 through 42] are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [sections 24 through 42].

**NEW SECTION. Section 46. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 47. Effective date.** [This act] is effective January 1, 1994.

-End-

## HOUSE BILL NO. 539

INTRODUCED BY D. BROWN, LARSON, HARRINGTON, GILBERT, NATHE  
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING THE COLLECTION  
OF SPECIAL FUEL TAXATION AT THE DISTRIBUTOR LEVEL RATHER  
THAN THE RETAIL LEVEL; AMENDING SECTIONS 15-70-301,  
15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306,  
15-70-307, 15-70-309, 15-70-311, 15-70-312, 15-70-315,  
15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326,  
15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331,  
15-70-332, 15-70-333, AND 20-15-403, MCA; REPEALING SECTIONS  
15-70-316 AND 15-70-322, MCA; AND PROVIDING A DELAYED  
EFFECTIVE DATE."

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

Section 1. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the  
following definitions apply:

(1) "Agricultural use" means use of special fuel by a  
person whose major endeavor is and primary source of earned  
income is from the business of farming or ranching.

(2) "Authorization" means an uncanceled special fuel  
tax prepaid authorization issued by the department.

(3) "Bond" means:

(a) a bond duly executed by a special-fuel-dealer-or  
special fuel user as principal with a corporate surety  
qualified under the laws of Montana, payable to the state of  
Montana, conditioned upon faithful performance of all  
requirements of this part, including the payment of all  
taxes, penalties, and other obligations of the special-fuel  
dealer-or special fuel user arising out of this part; or

(b) a deposit with the department by the special--fuel  
dealer--or special fuel user, under terms and conditions 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.

(4) "Bulk delivery" means placing special fuel NOT  
INTENDED FOR RESALE in storage or containers. The term does

THERE ARE NO CHANGES IN THIS BILL,  
AND WILL NOT BE REPRINTED. Please  
refer to yellow copy for complete  
text.

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15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326,  
15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331,  
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(2) "Authorization" means an uncanceled special fuel  
tax prepaid authorization issued by the department.

(3) "Bond" means:

(a) a bond duly executed by a ~~special-fuel-dealer-or~~  
special fuel user as principal with a corporate surety  
qualified under the laws of Montana, payable to the state of  
Montana, conditioned upon faithful performance of all  
requirements of this part, including the payment of all  
taxes, penalties, and other obligations of the ~~special-fuel~~  
~~dealer-or~~ special fuel user arising out of this part; or

(b) a deposit with the department by the ~~special--fuel~~  
dealer--or special fuel user, under terms and conditions 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.

(4) "Bulk delivery" means placing special fuel NOT  
INTENDED FOR RESALE in storage or containers. The term does  
not mean special fuel delivered into the supply tank of a  
motor vehicle.

(5) "Cardtrol" or "keylock" means any unique device  
intended to allow access to a special fuel dealer's  
unattended pump or dispensing unit for the purpose of  
delivery of special fuel to an authorized user of the unique  
device.

(6) "Department" means the department of  
transportation.

(7) (a) "Distributed" means, at the time special fuel  
is withdrawn, the withdrawal from a storage tank, a

refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

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

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter as defined in this section.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(13) "Motor vehicle" means any--vehicle--which--is self-propelled--upon--the--highways all vehicles that are operated upon the public highways or streets of this state

1 and that are operated in whole or in part by the combustion  
2 of special fuel.

3 {6}(14) "Person" means and includes any person, firm,  
4 association, joint-stock company, syndicate, partnership, or  
5 corporation,--whenever. Whenever the term is used in any  
6 clause prescribing and imposing a fine or imprisonment, or  
7 both, as applied to a firm, association, syndicate, or  
8 partnership, means and it includes the partners or members  
9 thereof and, as applied to joint-stock companies and  
10 corporations, the officers thereof.

11 {7}(15) "Public roads and highways of this state" means  
12 all streets, roads, highways, and related structures:

13 (a) built and maintained with appropriated funds of the  
14 United States, the state of Montana, or any political  
15 subdivision of the state;

16 (b) dedicated to public use;

17 (c) acquired by eminent domain; or

18 (d) acquired by adverse use by the public, jurisdiction  
19 having been assumed by the state or any political  
20 subdivision of the state.

21 {8}(16) "Special fuel" means those combustible gases and  
22 liquids commonly referred to as diesel fuel or any other  
23 volatile liquid of less than 46 degrees A.P.I. (American  
24 petroleum institute) gravity test, except liquid petroleum  
25 gas, when actually sold for use in motor vehicles propelled

1 operating upon the public roads and highways within the  
2 state of Montana. The term includes compressed natural gas.

3 {9}(17) {a} "Special fuel dealer" means:

4 {i}(a) any person in the business of handling special  
5 fuel who delivers any part of the fuel into the fuel supply  
6 tank or tanks of a motor vehicle not then owned or  
7 controlled by him the person;

8 {i}(b) any person who sells special fuel at a location  
9 unattended by the dealer through an unattended pump by use  
10 of a cardtrol, keylock, or similar device; or

11 {i}(c) any person who provides any facility, with or  
12 without attended services, from which more than one special  
13 fuel user obtains special fuel for use in the fuel supply  
14 tank of a motor vehicle not then controlled by the dealer.

15 {b}--For purposes of subsection {9}-{a}, the term "fuel  
16 supply--tank--or--tanks" does not include cargo tanks, even  
17 though fuel is withdrawn directly from cargo tanks for  
18 propulsion of the vehicle.

19 {10}(18) "Special fuel user" means any person other than  
20 a county, incorporated city or town, or school district of  
21 this state who consumes in this state special fuel for the  
22 propulsion operation of motor vehicles owned or controlled  
23 by him the person upon the highways of this state.

24 {i}(19) "Use", when the term relates to a special fuel  
25 user, means:

~~{a}--the--receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or~~

{b} the consumption by a special fuel user of special fuels in propulsion the operation of a motor vehicle on the highways of this state."

**Section 2.** Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel dealer's licenses and special fuel user's permits required -- exceptions. {1} A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department.

{2}{1} A special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion operation of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection {5}{3}, a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by him the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any checking station officer motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The

special fuel user is responsible for reproducing clear and legible copies of the permit.

{3} A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods, provided the person purchases special fuel, tax paid, except special fuel brought into this state in the fuel supply tank of the vehicle, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

{4}{2} Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits will must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and



1 pay the tax on fuel used in Montana on which the tax has not  
2 been paid.

3 ~~(5)(3)~~ A special fuel user need not display the  
4 original or reproduced copy of the special fuel user's  
5 permit as required by subsection ~~(2)(1)~~ if:

6 ~~(a) he is the special fuel user is~~ registered and  
7 licensed pursuant to the International Fuel Tax Agreement as  
8 authorized by 15-70-121 and the vehicle displays a license  
9 or decal issued pursuant to the agreement; ~~or.~~

10 ~~(b) the motor vehicle operated by him is a vehicle that~~  
11 ~~is part of a motor vehicle fleet based in Montana that is~~  
12 ~~proportionally registered under the provisions of 61-3-711~~  
13 ~~through 61-3-733;~~

14 ~~(c) he obtains a registration card issued by the~~  
15 ~~department indicating the special fuel user's permit number;~~  
16 ~~and~~

17 ~~(d) the registration card indicating the special fuel~~  
18 ~~user's permit number is carried in the vehicle and is~~  
19 ~~available for inspection;~~

20 ~~(6)(4)~~ A person whose use of special fuel is  
21 predominantly for agricultural and nonhighway use but who  
22 owns or operates one or more passenger cars or light trucks  
23 may in special fuel vehicles up to 26,000 pounds gross  
24 vehicle weight or registered gross vehicle weight shall  
25 obtain annually from the department an authorization, as

1 provided in 15-70-309, if the special fuel is not subject to  
2 taxation under [section 26]."

3 **Section 3.** Section 15-70-303, MCA, is amended to read:

4 "15-70-303. Application for license, permit, or  
5 authorization. (1) Application for a special fuel dealer's  
6 license, special fuel user's permit, or authorization shall  
7 must be made to the department unless otherwise provided in  
8 this part.

9 (2) The application shall must be filed upon a form  
10 prepared and furnished by the department. The application  
11 must contain information the department considers  
12 necessary."

13 **Section 4.** Section 15-70-304, MCA, is amended to read:

14 "15-70-304. Bonding, release of surety, and additional  
15 bond. (1) Except as provided in this section, a special fuel  
16 dealer's license or special fuel user's permit may not be  
17 issued to a person or continued in force unless the person  
18 has furnished bond, as defined in 15-70-301 and in a form as  
19 the department may require, to secure its compliance with  
20 this part and the payment of any taxes, interest, and  
21 penalties due and to become due under this part. The  
22 department shall waive the bond requirement of a special  
23 fuel user not subject to subsection (2)(a) or (2)(b). Upon  
24 application, the department shall waive the bond requirement  
25 of a public contractor licensed under Title 15, chapter 58,

who--has-posted-a-performance-bond-conditioned-on-payment-of  
all-lawful-taxes-with-the-contracting-entity.

(2) The total amount of the bond or bonds required of a  
special--fuel--dealer--must--be--equivalent--to--twice---his  
estimated--monthly-tax-payments--and-the-total-amount-of-the  
bond-or-bonds-required--of--a special fuel user must be  
equivalent to twice his the special fuel user's estimated  
quarterly tax payments as provided in this part, determined  
as the department considers proper; however, the total  
amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract  
in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be  
reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as  
required by 15-70-325 and 15-70-327; and

(c) ~~---\$1,000-for-a-special-fuel-dealer.~~

(3) A surety on a bond furnished by a special-fuel  
dealer-or special fuel user, as provided in this section,  
must be released and discharged from any liability to the  
state accruing on the bond after the expiration of 30 days  
from the date when the surety has lodged with the department  
a written request to be released and discharged, but this  
provision may not operate to relieve, release, or discharge

the surety from any liability already accrued or that  
accrues before the expiration of the 30-day period. The  
department shall, promptly upon receiving a release request,  
notify the special--fuel--dealer--or special fuel user who  
furnished the bond, and unless the special--fuel--dealer--or  
special fuel user, on or before the expiration of the 30-day  
period, files a new bond in accordance with the requirements  
of this section or makes a deposit in lieu of a bond as  
provided in 15-70-301~~(2)~~(3), the department shall cancel the  
special-fuel-dealer's-license-or special fuel user's permit.

(4) The department may require a special-fuel-dealer-or  
special fuel user to give a new or additional surety bond or  
to deposit additional securities of the character specified  
in 15-70-301~~(2)~~(3) if, in its opinion, the security of the  
surety bond previously filed by the special-fuel--dealer--or  
special fuel user or the market value of the properties  
deposited as security by the special-fuel-dealer-or special  
fuel user becomes impaired or inadequate. Upon failure of  
the special-fuel-dealer-or special fuel user to give a new  
additional surety bond or to deposit additional securities  
within 30 days after being requested to do so by the  
department, the department shall cancel his-license the  
permit."

**Section 5.** Section 15-70-305, MCA, is amended to read:

"15-70-305. Issuance of license, permit, or

authorization -- grounds for refusal -- hearing. (1) Except as provided in subsection ~~(3)~~(4), upon receipt of the application and bond in proper form, the department shall issue to the applicant a ~~license-or~~ permit to act operate as a ~~special--fuel--dealer--or~~ special fuel user. Each ~~special fuel-dealer's--license-or~~ special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) Except as provided in subsection ~~(3)~~(4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled.

(3) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of \$100.

~~(3)~~(4) The department may refuse to issue a ~~special fuel--dealer's--license,~~ special fuel user's permit, or authorization to any person:

(a) who formerly held a ~~license,~~ permit, or authorization that, prior to the time of filing application, has been revoked for cause;

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

(c) upon other sufficient cause being shown.

~~(4)~~(5) Before refusal to issue a ~~license,~~ permit, or authorization, the department shall grant the applicant a hearing and shall grant him the applicant at least 10 days' written notice of the time and place of hearing.

~~(5)~~(6) A ~~special--fuel--dealer's--license,~~ special fuel user's permit, or authorization is not transferable."

**Section 6.** Section 15-70-306, MCA, is amended to read:

"15-70-306. Revocation, suspension, and cancellation.

(1) The department may revoke the ~~license,~~ permit, or authorization of any ~~special-fuel--dealer--or~~ special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a ~~license,~~ permit, or authorization, the department shall notify the ~~licensee-or~~ permittee of its intention, by certified mail addressed to his the permittee's last-known address shown in the files of the department, requiring him the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the ~~license,~~ permit, or authorization should not be revoked; provided, however, that

at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the license, permit, or authorization.

(2) Upon revocation by the department of any license, permit, or authorization, the holder shall immediately surrender the license, permit, or authorization to the department for cancellation."

**Section 7.** Section 15-70-307, MCA, is amended to read:

"15-70-307. Surrender of permit upon use discontinuance. The department shall cancel any license to act as a special fuel dealer or any special fuel user permit immediately upon surrender thereof by the holder."

**Section 8.** Section 15-70-309, MCA, is amended to read:

"15-70-309. Authorization for certain uses -- disposition of proceeds -- penalties. (1) (a) A person who purchases, tax-free, special fuel in bulk and whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or pickups, each having a licensed gross vehicle weight of 10,000 pounds or less and powered by special fuel, may elect to apply to the department, as provided in 15-70-303, for an authorization. The authorization requires the holder to prepay an annual tax on the special fuel placed in bulk storage and used, in part, in the holder's special fuel-powered vehicles, rather than

apply for a special fuel user's permit special fuel vehicles 26,000 pounds or less gross vehicle weight or registered gross vehicle weight shall pay an authorization fee as follows:

(i) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 10,000 pounds or less, \$150;

(ii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, \$225;

(iii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 18,000 pounds or more and up to 26,000 pounds, \$500.

(b) If a holder elects to obtain an authorization, he shall prepay the tax at the rate of \$120 for each passenger car or pickup within the weight limit specified in subsection (1)(a). The tax must be paid on a calendar year basis and must be prorated from the date of authorization for each vehicle. A person whose purchases of special fuel are predominantly for highway or nonagricultural use does not qualify for the special fuel tax.

(b) The authorization fee for vehicles under 10,000 pounds gross vehicle weight or registered gross vehicle weight purchased during the calendar year must be computed at one-twelfth of the applicable fee for each month or

fraction of a month. The authorization fee for vehicles 10,000 pounds or more and up to 26,000 pounds gross vehicle weight or registered gross vehicle weight must be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually.

(c) Whenever the holder of an authorization ceases to farm operate within this state, he the holder shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to him the holder by the department. The department shall refund the portion of the prepaid-tax authorization fee attributable to the remaining portion of the calendar year applicable period.

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter."

**Section 9.** Section 15-70-311, MCA, is amended to read:

"15-70-311. Special fuel user's temporary trip permits

— nonresident agricultural harvesting equipment special fuel permit. (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit or--registration card--indicating--the--special--fuel--use--permit-number, as provided by 15-70-302, shall-be is required to purchase a special fuel user's temporary trip permit. The permits will must be issued by state--house--personnel--gross--vehicle-weight---patrol---crews motor carrier services division employees, Montana highway patrol officers, and such other enforcing agents as that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, shall--be is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit will must be issued by state-house-personnel-gross-vehicle-weight-patrol crews motor carrier services division employees, Montana

1 highway patrol officers, and such other enforcing agents as  
2 that the department may prescribe by order or rule.

3 (3) A resident or nonresident operating a special  
4 fuel-powered vehicle up to 26,000 pounds gross vehicle  
5 weight or registered gross vehicle weight in this state is  
6 exempt from obtaining an authorization under 15-70-309 if  
7 the special fuel tax is paid at the time of purchase."

8 **Section 10.** Section 15-70-312, MCA, is amended to read:

9 "15-70-312. Fees for temporary permits -- duration of  
10 temporary permits. (1) ~~The temporary~~ Temporary special fuel  
11 permits ~~shall cost the special fuel vehicle user a fee of~~  
12 \$30. The permit ~~shall be~~ is valid for a period of time not  
13 to exceed 72 hours and ~~will be~~ is automatically void should  
14 ~~if the vehicle leave~~ leaves the state of Montana during the  
15 72-hour period.

16 (2) A temporary special fuel permit for a nonresident  
17 operating agricultural harvesting equipment ~~shall cost~~ costs  
18 \$30 per unit for the calendar year in which the fee is  
19 collected. The permit ~~shall be~~ is not be transferable. A unit  
20 ~~shall be~~ is defined as:

- 21 (a) one truck suitable for hauling produce commodities;
  - 22 (b) one harvesting machine; and
  - 23 (c) pickup trucks and any other accessory vehicles.
- 24 (3) All fees collected ~~shall~~ must be remitted to the  
25 department or deposited directly in the state special

1 revenue fund for the department."

2 **Section 11.** Section 15-70-315, MCA, is amended to read:

3 "15-70-315. Affidavit required of cardtroll or keylock  
4 purchaser -- inspection by department. (1) A person who uses  
5 a cardtroll, keylock, or similar device to obtain delivery of  
6 special fuel tax-free from an unattended pump or dispensing  
7 unit shall sign and furnish to the special fuel dealer an  
8 affidavit exemption certificate, on a form prescribed and  
9 furnished by the department, stating the type-of-equipment  
10 ~~in which the special fuel will be placed and stating that no~~  
11 ~~special fuel will be placed into the supply tank of a motor~~  
12 ~~vehicle to be operated on the public roads and highways of~~  
13 ~~this state.~~

14 (2) ~~The special fuel dealer shall keep all such~~  
15 ~~affidavits and make them available for inspection by the~~  
16 ~~department~~ sale of special fuel that is not subject to  
17 taxation under [section 26]."

18 **Section 12.** Section 15-70-321, MCA, is amended to read:

19 "15-70-321. Tax on diesel fuel and volatile liquids.  
20 The department shall, under the provisions of rules issued  
21 by it, collect or cause to be collected from the owners or  
22 operators of motor vehicles a tax in an amount equal to 20  
23 cents for each gallon of diesel fuel or other volatile  
24 liquid, except liquid petroleum gas, of less than 46 degrees  
25 A.P.I. (American petroleum institute) gravity test when

1 actually sold or used to produce motor power to propel  
 2 operate motor vehicles upon the public highways or streets  
 3 within the state or used in motor vehicles, motorized  
 4 equipment, and the internal combustion of any and all  
 5 engines, including stationary engines, used in connection  
 6 with any and all work performed under any and all contracts  
 7 pertaining to the construction, reconstruction, or  
 8 improvement of any highway or street and their appurtenances  
 9 awarded by any and all public agencies, including federal,  
 10 state, county, municipal, or other political subdivisions."

11 **Section 13.** Section 15-70-323, MCA, is amended to read:

12 "15-70-323. ~~Special fuel--dealer's--and--special~~ fuel  
 13 ~~user's~~ records. (1) Every ~~special-fuel-dealer,~~ special fuel  
 14 ~~user,~~ and every person importing, manufacturing, refining,  
 15 dealing in, transporting, or storing special fuel in this  
 16 state shall keep such records, receipts, and invoices and  
 17 other pertinent papers with--respect--thereto--as that the  
 18 department may require and shall produce them for the  
 19 inspection of the department at any time during the business  
 20 hours of the day.

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

25 **Section 14.** Section 15-70-324, MCA, is amended to read:

1 "15-70-324. Examination of records -- enforcement of  
 2 part. (1) The department shall enforce the provisions of  
 3 this part.

4 (2) The department or its authorized representative ~~is~~  
 5 ~~hereby--empowered-to~~ may examine the books, papers, records,  
 6 and equipment of any ~~special-fuel--dealer--or~~ special fuel  
 7 user or any person dealing in, transporting, or storing  
 8 special fuel as defined in this part and to investigate the  
 9 character of the disposition which any person makes of such  
 10 special fuel in order to ascertain and determine whether all  
 11 excise taxes due hereunder are being properly reported and  
 12 paid. If ~~such~~ the books, papers, records, and equipment are  
 13 not maintained in this state at the time of demand, they  
 14 ~~shall~~ must be furnished at the direction of the department  
 15 for review either in the offices of the department or at the  
 16 business location of the taxpayer and ~~shall~~ must be, if  
 17 requested by the department, accompanied by the ~~special-fuel~~  
 18 ~~dealer-or~~ special fuel user.

19 (3) For the purpose of enforcing the provisions of this  
 20 part, the fact that ~~a-special-fuel-dealer-or~~ a special fuel  
 21 user has placed or received special fuel into storage or  
 22 dispensing equipment designed to fuel motor vehicles ~~shall~~  
 23 ~~be~~ is prima facie evidence that all of such the special fuel  
 24 has been delivered by the ~~special--fuel--dealer--or~~ special  
 25 fuel user into the fuel supply tanks of motor vehicles and

consumed in the propulsion operation of motor vehicles upon the highways as-herein-defined unless the contrary shall-be is established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of the-Dominion-of Canada, forward to such the officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special-fuel-dealer-or special fuel user, provided such the other state or states furnish like information to this state."

**Section 15.** Section 15-70-325, MCA, is amended to read:

"15-70-325. Returns. (1) For the purpose of determining the amount of his liability for the special fuel tax herein imposed, each--special--fuel--dealer--shall--file--with--the department--a--monthly-tax-return-and each special fuel user shall file with the department, on forms prescribed by said the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that such the user's annual tax liability is or will be \$200 or less.

(3) Such The user shall make an annual report and

return to the department on forms prescribed by said the department, on or before January 31 of each year. Should If the department determine determines that a user filing annual returns as-herein-provided is delinquent in making reports and payments, it shall require such the person to file quarterly returns as-herein-provided. Such A return, annual or quarterly, shall must contain a declaration by the person making the same return to the effect that the statements contained in the return are true and are made under penalties of perjury-which. The declarations shall have the same force and effect as a verification. The return shall must show such the information as that the department may reasonably require for the proper administration and enforcement of this part.

{4}--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-return-to-the--department--need not--include--inventory--control--data-covering-bulk-storage from-which-wholesale-distribution-of-special-fuel-is-made

{5}{4} The special-fuel-dealer--or special fuel user shall file the return on or before the last day of the next succeeding calendar month following the period to which it



1 relates; provided, however, that for good cause the  
2 department may grant a taxpayer a reasonable extension of  
3 time for filing, but not to exceed 30 days."

4 **Section 16.** Section 15-70-326, MCA, is amended to read:

5 "15-70-326. Computation. The tax imposed by this part  
6 shall must be computed, as follows:

7 {1}--with-respect-to-special-fuel--used--by--the--seller  
8 thereof--as--a--special--fuel--dealer, by multiplying the tax  
9 rate-per-gallon-provided-in--this--part--by--the--number--of  
10 gallons--of-special-fuel-delivered-or-placed-by-him-into-the  
11 supply-tank-or-tanks-of-a-motor-vehicle;

12 {2} with respect to special fuel as-to for which the  
13 tax has not been paid to-a-special-fuel-dealer in this state  
14 and which that has been consumed by the purchaser thereof as  
15 a special fuel user, by multiplying the tax rate per gallon  
16 provided in this part by the number of gallons of special  
17 fuel consumed by him the special fuel user in the propulsion  
18 operation of motor vehicles on the highways of this state."

19 **Section 17.** Section 15-70-327, MCA, is amended to read:

20 "15-70-327. Payment -- deductions. The tax return shall  
21 must be accompanied by remittance covering the tax due  
22 hereunder under this part for on--account--of the use, as  
23 defined in 15-70-301, of special fuels during the preceding  
24 period. A--licensed--special--fuel--dealer--is--allowed--a  
25 deduction-equal-to-10-of-the-first-6-cents-per-gallon-of-the

1 taxes-paid-by-the-dealer-under-15-70-321-as-an-allowance-for  
2 shrinkage,--spillage,--and--evaporation-of-special-fuels-and  
3 other-losses-beyond-the-dealer's-control."

4 **Section 18.** Section 15-70-328, MCA, is amended to read:

5 "15-70-328. Credits. {1} Any licensed special fuel user  
6 or-licensed-special-fuel-dealer who has paid a special fuel  
7 tax either directly or to the vendor from whom it was  
8 purchased shall must receive credit in the amount of any tax  
9 paid on special fuel exported for use outside of this state  
10 or for any use off the public roads and highways of this  
11 state or for any overpayment of special fuel taxes not due  
12 to the state. Special-fuel-carried-from-this-state-in-the  
13 fuel-tank-of-a-motor-vehicle-is-deemed-to-be--exported--from  
14 this-state.

15 {2}--Any--licensed--special--fuel--user--who-purchases-a  
16 temporary-special-fuel-permit-and-thereafter-applies--for--a  
17 special--fuel--vehicle--permit--for-the-same-vehicle-in-less  
18 than-11-days-after-the-temporary-permit-is-issued--shall  
19 receive-credit-in-the-amount-of-the-temporary-permit-fee.

20 {3}--{a}--A--special--fuel--dealer-who-has-paid-a-special  
21 fuel-tax-is-entitled-to-a-credit-of--the--tax--paid--to--the  
22 department--on--those--sales--of-special-fuels-for-which-the  
23 dealer-has-received-no-consideration-from-or-on-behalf--of  
24 the-purchaser.--The-dealer-shall-have-declared-the-accounts  
25 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--dealer--to-submit  
periodic-reports-listing-accounts-that-are-delinquent-for-90  
days-or-more."

**Section 19.** Section 15-70-329, MCA, is amended to read:

"15-70-329. Procedures for credits -- deadline. (1)  
Should If a licensed special fuel user or-licensed-special  
fuel-dealer-desire wants to receive a refund of special fuel  
taxes or of the temporary permit fee, the user or--dealer  
shall make a signed and written request to the department  
requesting those amounts then due. Any amount determined to  
be creditable by the department under 15-70-328 shall must  
first be credited on any amounts then due and payable from  
the special--fuel--dealer--or special fuel user to whom the  
refund is due, and the department shall then certify the  
balance to the credit of the dealer-or user. A warrant shall  
must be drawn upon the state treasurer for the amount of  
such the claim, and same-shall the claim must be paid in the  
same manner as other claims against the state are paid.

(2) In case any a special fuel user or--special--fuel  
dealer fails or neglects to file a request for refund of

special fuel taxes within 12 months from the date his the  
user's special fuel license became canceled, the department  
shall-be is under no obligation to make a refund.

(3) A request for refund or credit under this section  
must be made within 3 years from the date of the payment for  
which a refund or credit is claimed."

**Section 20.** Section 15-70-330, MCA, is amended to read:

"15-70-330. Penalties for refusal or failure to file  
return or pay tax when due. (1) In case of any special--fuel  
dealer--or special fuel user who refuses or fails to file a  
return required by this part within the time prescribed by  
15-70-103 and 15-70-325, there is hereby imposed a penalty  
of \$25 or a sum equal to 10% of the tax due, whichever is  
greater, together with interest at the rate of 1% on the tax  
due for each calendar month or fraction thereof of a month  
during which such the refusal or failure continues;  
provided, however, that if any such-special-fuel-dealer-or  
special fuel user shall--establish establishes to the  
satisfaction of the department that his the failure to file  
a return within the time prescribed was due to reasonable  
cause, the department shall waive the penalty provided by  
this section.

(2) Where-a-special-fuel-dealer-or Whenever a special  
fuel user files a return but fails to pay in whole or in  
part the tax due hereunder under this part, there shall must

be added to the amount due and unpaid interest at the rate of 1% per month or fraction thereof of a month from the date such the tax was due to the date of payment in full thereof."

**Section 21.** Section 15-70-331, MCA, is amended to read:

"15-70-331. Deficiency. If it be determined by the department that the tax reported by any ~~special-fuel-dealer~~ or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction thereof of a month from the date the return was due."

**Section 22.** Section 15-70-332, MCA, is amended to read:

"15-70-332. Determination if no return made. (1) If any ~~special-fuel-dealer-or~~ special fuel user, whether or not he the user is licensed as such a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the ~~special fuel-dealer-or~~ special fuel user for the period during which no a return was not filed, and to the tax as thus determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 ~~shall-be~~ is presumed to be

correct, and in any case where in which the validity of the assessment is drawn in question, the burden ~~shall-be~~ is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be."

**Section 23.** Section 15-70-333, MCA, is amended to read:

"15-70-333. Fraudulent return -- penalty. If any ~~special--fuel-dealer-or~~ a special fuel user ~~shall-file~~ files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there ~~shall~~ must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction thereof of a month on such the deficiency from the date such the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

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

**NEW SECTION. Section 24.** License, fee, and security of special fuel distributors. (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, 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 that 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 special fuel 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 that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(8)(c) and not already licensed under 15-70-202 shall pay an annual license fee of \$200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(4) As used in this section, "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) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

**NEW SECTION. Section 25.** License to sell special fuel on which refund may be claimed. (1) A person other than a licensed distributor shall obtain a license from the department of transportation prior to selling special fuel on which a refund may be claimed. The application for a license must contain the applicant's name, address, place or places of business in the state of Montana, and other information that may be required by the department. Licenses issued must bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license must be issued and is effective until canceled or suspended by the department.

(2) Any person failing to comply with this section is subject to a fine of not less than \$50 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 the fine and imprisonment.

**NEW SECTION. Section 26.** Special fuel license tax -- rate. (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax

1 is in the amount of 20 cents for each gallon of special fuel  
2 that is distributed by the distributor within the state and  
3 upon which the special fuel license tax has not been paid by  
4 any other distributor.

5 (2) Special fuel may not be included in the measure of  
6 the distributor's license tax if sold:

7 (a) to the United States government, state of Montana,  
8 any other state, and any county, incorporated city, town,  
9 and school district of this state;

10 (b) in bulk delivery quantities of 200 gallons or more;  
11 or

12 (c) for export, unless the distributor is not licensed  
13 and is not paying the tax to the state where the fuel is  
14 destined.

15 NEW SECTION. **Section 27.** Distributor's statement and  
16 payment -- confidentiality. (1) Each distributor shall, not  
17 later than the 25th day of each calendar month, render to  
18 the department of transportation a signed statement that  
19 specifies all special fuel distributed and received by the  
20 distributor in this state during the preceding calendar  
21 month and that contains other information the department may  
22 reasonably require in order to administer the special fuel  
23 license tax law. The statement must be accompanied by a  
24 payment in an amount equal to the tax imposed by [section  
25 26], less any refund credit issued under [section 36] and

1 less 1% of the total tax that may be deducted by the  
2 distributor as an allowance for collection.

3 (2) A distributor engaged in or carrying on a business  
4 at more than one location in this state may include all  
5 places of business in one statement.

6 (3) The department or a deputy, assistant, agent,  
7 clerk, or other employee of the department may not publish  
8 or otherwise disseminate information contained in a  
9 statement required under this section in a form that allows  
10 identification of a distributor or a purchaser of special  
11 fuel. This section may not be construed to prohibit:

12 (a) the delivery to a distributor or a distributor's  
13 authorized representative of a certified copy of any return  
14 or report filed in connection with the distributor's tax;

15 (b) the inspection by the attorney general or by  
16 another legal representative of the state of the report or  
17 return of a distributor who brings an action to set aside or  
18 review the tax based on the report or return or against whom  
19 an action or proceeding has been instituted in accordance  
20 with the provisions of Title 15;

21 (c) the publication of statistics classified to prevent  
22 the identification of particular reports or returns and the  
23 items in the reports or returns;

24 (d) the inspection by the commissioner of internal  
25 revenue of the United States or by the proper officer of any

1 state imposing a tax on special fuel or by any  
 2 representative of either officer of the report or return of  
 3 any distributor or the furnishing to the officer or  
 4 authorized representative of an abstract of the report or  
 5 return, but permission must be granted or information must  
 6 be furnished to the officer or the officer's representative  
 7 only if the statutes of the United States or the other state  
 8 grant substantially similar privileges to the proper officer  
 9 of this state charged with the administration of this  
 10 chapter or in compliance with 15-70-121 and 15-70-122; or

11 (e) the compliance of the department with any order of  
 12 a court of competent jurisdiction.

13 NEW SECTION. Section 28. Recordkeeping requirements.

14 Each distributor or any other person dealing in,  
 15 transporting, receiving, or storing special fuel shall keep  
 16 for a period not to exceed 3 years the records, receipts,  
 17 and invoices and any other pertinent papers and information  
 18 that the department of transportation may require.

19 NEW SECTION. Section 29. Invoice of distributors. Each  
 20 distributor in this state shall at the time of delivery,  
 21 except when authorized by the department of transportation,  
 22 issue to the purchaser an invoice that states the number of  
 23 gallons of special fuel covered by the invoice and other  
 24 information the department may require.

25 NEW SECTION. Section 30. Examination of records. (1)

1 The department of transportation or its authorized  
 2 representative may examine the books, papers, records, and  
 3 equipment of any special fuel distributor or any person  
 4 dealing in, transporting, or storing special fuel, as  
 5 defined in this part, and may investigate the character of  
 6 the disposition that any person makes of the special fuel in  
 7 order to ascertain and determine whether all license taxes  
 8 due are being properly reported and paid. If the books,  
 9 papers, records, and equipment are not maintained in this  
 10 state at the time of demand, they must be furnished at the  
 11 direction of the department for review either in the offices  
 12 of the department or at the business location of the  
 13 taxpayer.

14 (2) The records, receipts, and invoices and any other  
 15 pertinent papers supporting sales of each distributor or any  
 16 person dealing in, transporting, or storing special fuel  
 17 must be open and subject to inspection by the department or  
 18 its authorized representative during business hours in order  
 19 to ascertain the amount of license tax due.

20 NEW SECTION. Section 31. Information reports --  
 21 penalty -- confidentiality. (1) A person receiving special  
 22 fuel, including an importer, exporter, common carrier,  
 23 private carrier, and contract carrier of property who hauls,  
 24 receives, transports, or ships special fuel from any other  
 25 state or foreign country into this state or from this state

1 to any other state or foreign country or from any refinery  
 2 or pipeline terminal in this state to another point within  
 3 this state shall submit to the department of transportation,  
 4 upon its request and within the time specified, a statement  
 5 showing the number of gallons of special fuel contained in  
 6 each shipment in interstate commerce and the movement of the  
 7 products from any refinery or pipeline terminal located  
 8 within this state to another point within this state during  
 9 the preceding calendar month, the names and addresses of the  
 10 consignor and the consignee, and the date of delivery to the  
 11 consignee.

12 (2) A person, except a licensed distributor, importer,  
 13 or exporter, who refuses or fails to file a statement as  
 14 required in this section is subject to a penalty of \$100 for  
 15 each failure or refusal.

16 (3) The department or a deputy, assistant, agent,  
 17 clerk, or other employee of the department may not publish  
 18 or otherwise disseminate information contained in a  
 19 statement required under this section in a form that allows  
 20 identification of a distributor or a purchaser of special  
 21 fuel. This section may not be construed to prohibit:

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

25 (b) the inspection by the attorney general or other

1 legal representative of the state of the report or statement  
 2 of a person if a person or distributor brings an action to  
 3 set aside or review the tax based on the report or statement  
 4 or if an action or proceeding has been instituted in  
 5 accordance with the provisions of Title 15 against that  
 6 person or distributor;

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

10 (d) the inspection by the commissioner of internal  
 11 revenue of the United States or by the proper officer of any  
 12 state imposing a tax on special fuel or by the authorized  
 13 representative of either officer of the report or statement  
 14 of any person or the furnishing to the officer or authorized  
 15 representative of an abstract of the report or statement,  
 16 but permission may be granted or information may be  
 17 furnished to the officer or the officer's representative  
 18 only if the statutes of the United States or the other state  
 19 grant substantially similar privileges to the proper officer  
 20 of this state charged with the administration of this  
 21 chapter or in compliance with 15-70-121 and 15-70-122; or

22 (e) the compliance of the department with any order of  
 23 a court of competent jurisdiction.

24 NEW SECTION. Section 32. Penalties for delinquency.

25 (1) Any license tax not paid within the time provided in

1 [section 27] is delinquent, a penalty of 10% is added to the  
2 tax, and the tax bears interest at the rate of 1% on the tax  
3 due for each calendar month or fraction of a month. Upon a  
4 showing of good cause by the distributor, the department of  
5 transportation may waive penalty.

6 (2) If any distributor or other person subject to the  
7 payment of the license tax willfully fails, neglects, or  
8 refuses to make any statement required by this part or  
9 willfully fails to make payment of the license tax within  
10 the time provided, the department may revoke any license  
11 issued under this part.

12 (3) The department shall set forth the information it  
13 requires in the statement and determine the amount of the  
14 license tax due from the distributor and shall add a penalty  
15 of \$25 or 10% of the amount due, whichever is greater,  
16 together with an interest rate of 1% per month or fraction  
17 of a month from the date the statements should have been  
18 made and the license tax should have been paid.

19 (4) The department shall proceed to collect the license  
20 tax, with penalties and interest. At the request of the  
21 department, the attorney general shall commence and  
22 prosecute to final determination in any court of competent  
23 jurisdiction an action to collect the license tax.

24 NEW SECTION. Section 33. Fraudulent returns ---  
25 penalty. If a special fuel distributor files a false or

1 fraudulent return with intent to evade the tax imposed by  
2 this part, there is added to the amount of deficiency  
3 determined by the department of transportation a penalty  
4 equal to 25% of the deficiency, together with interest at 1%  
5 per month or fraction of a month on the deficiency from the  
6 date the tax was due to the date of payment, in addition to  
7 all other penalties prescribed by law.

8 NEW SECTION. Section 34. Warrant for distraint. If all  
9 or part of the tax imposed by this part is not paid when  
10 due, the department of transportation may issue a warrant  
11 for distraint as provided in Title 15, chapter 1, part 7.  
12 The resulting lien has precedence over any other claim,  
13 lien, or demand filed or recorded thereafter. An action may  
14 not be maintained to enjoin the collection of all or any  
15 part of the license tax.

16 NEW SECTION. Section 35. Statute of limitations.  
17 Except in the case of a fraudulent return or of neglect or  
18 refusal to make a return, every deficiency must be assessed  
19 within 3 years from the due date of the return or the date  
20 of filing the return, whichever period expires later.

21 NEW SECTION. Section 36. Refund or credit authorized.  
22 (1) A person who purchases and uses any special fuel on  
23 which the Montana special fuel license tax has been paid for  
24 operating stationary special fuel engines, tractors used off  
25 the public highways and streets, or for any commercial use



1 other than operating vehicles upon any of the public  
2 highways or streets of this state is allowed a refund of the  
3 amount of tax paid directly or indirectly on the special  
4 fuel so used. The refund may not exceed the tax paid or to  
5 be paid to the state.

6 (2) A distributor who pays the special fuel license tax  
7 to this state erroneously is allowed a credit or refund of  
8 the amount of tax paid.

9 (3) A distributor who sells special fuel that is not  
10 subject to taxation under [section 26] shall complete an  
11 exemption certificate for each sale and submit the  
12 certificate with the distributor's monthly report.

13 (4) (a) A distributor is entitled to a credit for the  
14 tax paid to the department of transportation on those sales  
15 of special fuel with a tax liability of \$200 or greater for  
16 which the distributor has not received consideration from or  
17 on behalf of the purchaser and for which the distributor has  
18 not forgiven any liability. The distributor shall have  
19 declared the accounts of the purchaser worthless not more  
20 than once during a 3-year period and claimed those accounts  
21 as bad debts for federal income tax purposes.

22 (b) If a credit has been granted under subsection (3),  
23 any amount collected on the accounts declared worthless must  
24 be reported to the department and the tax due must be  
25 prorated on the collected amount and must be paid to the

1 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 (5) A person who purchases and exports for sale, use,  
6 or consumption outside Montana any special fuel on which the  
7 Montana special fuel tax has been paid is entitled to a  
8 credit or refund of the amount of tax paid unless the person  
9 is not licensed and is not paying the tax to the state where  
10 fuel is destined. Upon completion of the reports required  
11 under [section 31], the department shall authorize the  
12 credit or refund.

13 NEW SECTION. Section 37. Required records. (1) Special  
14 fuel purchased and delivered into bulk storage for use in  
15 motor vehicles on public roads and nonhighway use must be  
16 fully accounted for by detailed withdrawal records to  
17 accurately show the manner in which it was used. Special  
18 fuel on hand, determined by actual measurement, must be  
19 deducted from a claim and must be reported as an opening  
20 inventory on the next claim.

21 (2) Service stations, bulk dealers, and marinas shall  
22 prepare a separate and complete invoice for each withdrawal  
23 of special fuel for own use upon which a refund is to be  
24 claimed.

25 (3) When a highway use of special fuel is not deducted

from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

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

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

**NEW SECTION. Section 38.** Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60%

of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence as may be required by the department of transportation.

(3) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by [section 37].

**NEW SECTION. Section 39.** Determination of highway use. Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads.

**NEW SECTION. Section 40.** Application for refund or credit -- filing -- correction by department. (1) The application for a refund must be a signed statement on a form furnished by the department of transportation. Except for a claim for a credit for taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of

special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

NEW SECTION. Section 41. Approval or rejection of claim. (1) The department of transportation has 120 working

days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

NEW SECTION. Section 42. Penalties. A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

**Section 43.** Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-70-301, ~~15-70-322~~, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 40(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

**NEW SECTION. Section 44. Repealer.** Sections 15-70-316 and 15-70-322, MCA, are repealed.

**NEW SECTION. Section 45. Codification instruction.**

[Sections 24 through 42] are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [sections 24 through 42].

**NEW SECTION. Section 46. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 47. Effective date.** [This act] is effective January 1, 1994.

-End-