

SENATE BILL NO. 228

INTRODUCED BY STANG, GILBERT, RANEY,
DOHERTY, BECK, YELLOWTAIL

IN THE SENATE

JANUARY 21, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 8, 1993	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 38; NOES, 12.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 23, 1993	ON MOTION, REREFERRED TO COMMITTEE ON TAXATION.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.
MARCH 16, 1993	THIRD READING, CONCURRED IN. AYES, 77; NOES, 22.
MARCH 17, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 17, 1993

RECEIVED FROM HOUSE.

MARCH 19, 1993

ON MOTION, CONSIDERATION PASSED
UNTIL 64TH LEGISLATIVE DAY.

MARCH 22, 1993

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

MARCH 23, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 24, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senat* BILL NO. *228*
 2 INTRODUCED BY *Theresa Isibent*
 3 *Bank Yellowtail* *Randy Denei*

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE
 5 CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM
 6 STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS
 7 "AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER",
 8 "HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING
 9 SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN
 10 APPLICABILITY DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 75-11-302, MCA, is amended to read:

14 "75-11-302. Definitions. The Except as provided in
 15 subsections (2), (14), and (24), the following definitions
 16 apply to this part:

17 (1) "Accidental release" means a sudden or nonsudden
 18 release, neither expected nor intended by the tank owner or
 19 operator, of petroleum or petroleum products from a storage
 20 tank that results in a need for corrective action or
 21 compensation for third party bodily injury or property
 22 damage.

23 (2) "Aviation gasoline" means aviation gasoline as
 24 defined in 15-70-201. For the purposes of this chapter,
 25 aviation gasoline does not include JP-4 jet fuel sold to a

1 federal defense fuel supply center.

2 ~~(2)~~(3) "Board" means the petroleum tank release
 3 compensation board established in 2-15-2108.

4 ~~(3)~~(4) "Bodily injury" means physical injury, sickness,
 5 or disease sustained by an individual, including death that
 6 results from the physical injury, sickness, or disease at
 7 any time.

8 ~~(4)~~(5) "Claim" means a written request prepared and
 9 submitted by an owner or operator or an agent of the owner
 10 or operator for reimbursement of expenses caused by an
 11 accidental release from a petroleum storage tank.

12 ~~(5)~~(6) "Corrective action" means investigation,
 13 monitoring, cleanup, restoration, abatement, removal, and
 14 other actions necessary to respond to a release.

15 ~~(6)~~(7) "Department" means the department of health and
 16 environmental sciences provided for in Title 2, chapter 15,
 17 part 21.

18 ~~(7)~~(8) "Distributor" means a distributor-as-defined--in
 19 15-70-201 person who is licensed to sell gasoline, as
 20 provided in 15-70-202, and who:

21 (a) in the state of Montana, engages in the business of
 22 producing, refining, manufacturing, or compounding gasoline,
 23 aviation gasoline, special fuel, or heating oil for sale,
 24 use, or distribution;

25 (b) imports gasoline, aviation gasoline, special fuel,

1 or heating oil for sale, use, or distribution in this state;

2 (c) engages in wholesale distribution of gasoline,
3 aviation gasoline, special fuel, or heating oil in this
4 state;

5 (d) is an exporter;

6 (e) is a dealer licensed as of January 1, 1969, except
7 a dealer at an established airport; or

8 (f) either blends gasoline with alcohol or blends
9 heating oil with waste oil.

10 (9) "Eligible costs" means expenses reimbursable
11 under 75-11-307.

12 (10) "Export" means to transport out of the state of
13 Montana, by means other than in the fuel supply tank of a
14 motor vehicle, gasoline, aviation gasoline, special fuel, or
15 heating oil received from a refinery or pipeline terminal
16 within the state of Montana.

17 (11) "Exporter" means a person who transports, by means
18 other than in the fuel supply tank of a motor vehicle,
19 gasoline, aviation gasoline, special fuel, or heating oil
20 received from a refinery or pipeline terminal within the
21 state of Montana to a destination outside the state of
22 Montana for sale, use, or consumption beyond the boundaries
23 of the state of Montana.

24 (12) "Fee" means the petroleum storage tank cleanup
25 fee provided for in 75-11-314.

1 (13) "Fund" means the petroleum tank release cleanup
2 fund established in 75-11-313.

3 (14) "Gasoline" means gasoline as defined in
4 15-70-201. For the purposes of this chapter, gasoline does
5 not include JP-4 jet fuel sold to the federal defense fuel
6 supply center.

7 (15) "Heating oil" means petroleum that is No. 1, No. 2,
8 No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No.
9 6 technical grades of fuel oil; other residual fuel oils,
10 including navy special fuel oil and bunker C; and other
11 fuels when used as substitutes for one of these fuel oils.
12 Heating oil is typically used in the operation of heating
13 equipment, boilers, or furnaces.

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

21 (17) "Operator" means a person in control of or
22 having responsibility for the daily operation of a petroleum
23 storage tank.

24 (18) "Owner" means a person who holds title to,
25 controls, or possesses an interest in a petroleum storage

tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(14)~~(19) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

~~(15)~~(20) "Petroleum" or "petroleum products" means crude oil or any fraction thereof of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

~~(16)~~(21) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections ~~(16)~~(b) (21)(b) and ~~(16)~~(c) (21)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections ~~(16)~~(d)(i) (21)(d)(i) and ~~(16)~~(d)(ii) (21)(d)(ii), if the facility is intrastate.

~~(17)~~(22) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

~~(18)~~(23) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(24) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For

the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), every each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by him the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; and

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state may

not must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

NEW SECTION. Section 3. Applicability. [This act] applies to all tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0228, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act expanding the categories of petroleum products for which a petroleum storage tank cleanup fee is assessed; defining the terms "aviation gasoline", "distributor", "export", "exporter", "heating oil", "import", and "special fuel".

ASSUMPTIONS:

Department of Transportation:

1. If the bill proposed by the Montana Department of Transportation to tax all special fuels at the distributor level passes, the additional expenses associated with this bill will be absorbed by the department through re-prioritization of the current level budget.
2. If the bill proposed by the Department of Transportation to tax all special fuels at the distributor level does not pass, the department will require an additional 1.00 FTE accounting clerk due to increased numbers of distributors reporting and the inclusion of heating oil in the Department of Transportation's tax system.

Petroleum Tank Release Compensation Board:

1. Approximately 280 million gallons of special fuel and heating oil are distributed in the state per year. This fuel usage should remain stable over the biennium. The fee rate in the 1995 biennium will be \$0.0075 per gallon.
2. Approximately 370 million gallons of gasoline are distributed in the state per year. This fuel usage should remain stable over the biennium. The fee rate in the 1995 biennium will be \$0.0075 per gallon.
3. Collection will be lagged by one month for special fuel and heating oil, resulting in 11 months of collections in FY94.
4. The fee on gasoline will be reinstated prior to FY94.
5. Claim payments for FY94 and FY95 are projected from the FY91 and FY92 claim payments, assuming same historical increases.
6. Revenue estimates do not include interest payments.
7. The fund balance at FYEND93 will be approximately \$5,000,000 to \$6,000,000.

FISCAL IMPACT:

(continued)

David Lewis 1.27.93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Barry Stang 1/28/93
BARRY STANG, PRIMARY SPONSOR DATE

Fiscal Note for SB0228, as introduced

SB228

FISCAL IMPACT:

Expenditures:

**Department of Transportation:
General Operations (PG 01)**

	<u>FY94</u>			<u>FY95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	163.58	164.58	1.00	163.58	164.58	1.00
Personal Services	\$ 5,424,152	\$ 5,442,105	\$ 17,953	\$5,442,859	\$ 5,460,812	\$ 17,953
Operating	4,204,029	4,204,029	0	4,512,969	4,512,969	0
Equipment	276,426	277,426	1,000	152,400	152,400	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	\$ 9,917,248	\$ 9,936,201	\$ 18,953	\$10,120,869	\$ 10,138,822	\$ 17,953
Funding:						
State Special Revenue	\$ 8,215,066	\$ 8,234,019	\$ 18,953	\$ 8,485,892	\$ 8,503,845	\$ 17,953
Federal Special Revenue	<u>1,702,182</u>	<u>1,702,182</u>	<u>0</u>	<u>1,634,977</u>	<u>1,634,977</u>	<u>0</u>
Total	\$ 9,917,248	\$ 9,936,201	\$ 18,953	\$10,120,869	\$ 10,138,822	\$ 17,953

Revenues:

Petroleum Tank Release Compensation Fund:

Petro. Tank Fee (02)	2,775,000	4,700,000	1,925,000	2,775,000	4,875,000	2,100,000
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SB228

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 228

INTRODUCED BY STANG, GILBERT, RANEY,
DOHERTY, BECK, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE
CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM
STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS
"AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER",
"HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING
SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE."

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subsections (2), (14), and (24), the following definitions
apply to this part:

(1) "Accidental release" means a sudden or nonsudden
release, neither expected nor intended by the tank owner or
operator, of petroleum or petroleum products from a storage
tank that results in a need for corrective action or
compensation for third party bodily injury or property
damage.

(2) "Aviation gasoline" means aviation gasoline as
defined in 15-70-201. For the purposes of this chapter,

aviation gasoline does not include JP-4 jet fuel sold to a
federal defense fuel supply center.

(3) "Board" means the petroleum tank release
compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness,
or disease sustained by an individual, including death that
results from the physical injury, sickness, or disease at
any time.

(5) "Claim" means a written request prepared and
submitted by an owner or operator or an agent of the owner
or operator for reimbursement of expenses caused by an
accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation,
monitoring, cleanup, restoration, abatement, removal, and
other actions necessary to respond to a release.

(7) "Department" means the department of health and
environmental sciences provided for in Title 2, chapter 15,
part 21.

(8) "Distributor" means a distributor-as-defined--in
15-70-201 person who is licensed to sell gasoline, as
provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of
producing, refining, manufacturing, or compounding gasoline,
aviation gasoline, special fuel, or heating oil for sale,
use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

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

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

{8}{9} "Eligible costs" means expenses reimbursable under 75-11-307.

{10} "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

{11} "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

{9}{12} "Fee" means the petroleum storage tank cleanup

fee provided for in 75-11-314.

{10}{13} "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

{11}{14} "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

{15} "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

{16} "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

{12}{17} "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

{13}{18} "Owner" means a person who holds title to,

1 controls, or possesses an interest in a petroleum storage
2 tank. The term does not include a person who holds an
3 interest in a tank solely for financial security, unless
4 through foreclosure or other related actions the holder of a
5 security interest has taken possession of the tank.

6 ~~(14)~~(19) "Person" means an individual, firm, trust,
7 estate, partnership, company, association, joint stock
8 company, syndicate, consortium, commercial entity,
9 corporation, or agency of state or local government.

10 ~~(15)~~(20) "Petroleum" or "petroleum products" means crude
11 oil or any fraction thereof of crude oil that is liquid at
12 standard conditions of temperature and pressure (60 degrees
13 F and 14.7 pounds per square inch absolute) or motor fuel
14 blend, such as gasohol, and that is not augmented or
15 compounded by more than a de minimis amount of another
16 substance.

17 ~~(16)~~(21) "Petroleum storage tank" means a tank that
18 contains or contained petroleum or petroleum products and
19 that is:

20 (a) an underground storage tank as defined in
21 75-10-403;

22 (b) a storage tank that is situated in an underground
23 area such as a basement, cellar, mine, drift, shaft, or
24 tunnel;

25 (c) an above ground storage tank with a capacity less

1 than 30,000 gallons; or

2 (d) above ground or underground pipes associated with
3 tanks under subsections ~~(16)~~(b) (21)(b) and ~~(16)~~(c) (21)(c),
4 except that pipelines regulated under the following laws are
5 excluded:

6 (i) the Natural Gas Pipeline Safety Act of 1968 (49
7 U.S.C. 1671, et seq.);

8 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
9 (49 U.S.C. 2001, et seq.); and

10 (iii) state law comparable to the provisions of law
11 referred to in subsections ~~(16)~~(d) (21)(d)(i) and
12 ~~(16)~~(d) (21)(d)(ii), if the facility is intrastate.

13 ~~(17)~~(22) "Property damage" means:

14 (a) physical injury to tangible property, including
15 loss of use of that property caused by the injury; or

16 (b) loss of use of tangible property that is not
17 physically injured.

18 ~~(18)~~(23) "Release" means any spilling, leaking,
19 emitting, discharging, escaping, leaching, or disposing of
20 petroleum or petroleum products from a petroleum storage
21 tank into ground water, surface water, surface soils, or
22 subsurface soils.

23 (24) "Special fuel" means those combustible liquids
24 commonly referred to as diesel fuel or another volatile
25 liquid of less than 46 degrees A.P.I. (American petroleum

1 institute) gravity test, except liquid petroleum gas. For
 2 the purposes of this chapter, special fuel does not include
 3 diesel fuel sold to a railroad or a federal defense fuel
 4 supply center."

5 **Section 2.** Section 75-11-314, MCA, is amended to read:

6 "75-11-314. Petroleum storage tank cleanup fee --
 7 collection -- penalties -- warrant for distraint -- statute
 8 of limitations. (1) Except as provided in subsection (4),
 9 every each distributor shall pay to the department of
 10 transportation a petroleum storage tank cleanup fee for each
 11 gallon of gasoline, aviation gasoline, special fuel, or
 12 heating oil distributed by him the distributor within the
 13 state and upon which the fee has not been paid by any other
 14 distributor. The fee must equal:

15 (a) 1 cent for each gallon of gasoline distributed from
 16 July 1, 1989, through June 30, 1991; and

17 (b) 0.75 cent for each gallon of gasoline distributed
 18 after July 1, 1991;

19 (c) 0.75 cent for each gallon of aviation gasoline
 20 distributed after July 1, 1993;

21 (d) 0.75 cent for each gallon of special fuel
 22 distributed after July 1, 1993; and

23 (e) 0.75 cent for each gallon of heating oil
 24 distributed after July 1, 1993.

25 (2) Gasoline, aviation gasoline, special fuel, and

1 heating oil exported or sold for export out of the state may
 2 not must be included in the measure of a distributor's fee.

3 (3) Alcohol that is blended with gasoline to be sold as
 4 gasohol is subject to the fee provided in subsection (1).

5 (4) A fee may not be imposed or collected beginning on
 6 the first day of the first month in the first calendar
 7 quarter after the unobligated balance in the fund equals or
 8 exceeds \$8 million. Whenever the unobligated fund balance is
 9 less than \$4 million, the department of transportation
 10 shall, within 30 days, notify distributors by mail that the
 11 fee is reinstated beginning on the first day of the first
 12 month that begins no less than 30 days after the date of the
 13 notice. Once reinstated, the fee must be imposed and
 14 collected until the unobligated fund balance again equals or
 15 exceeds \$8 million.

16 (5) The department of transportation shall collect the
 17 fee in the same manner as the basic gasoline license tax
 18 under Title 15, chapter 70, part 2. The provisions of
 19 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206,
 20 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232
 21 apply to the fee. The provisions of 15-70-203, 15-70-204,
 22 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do
 23 not apply to the fee."

24 **NEW SECTION. Section 3. APPLICABILITY EFFECTIVE DATE**
 25 **-- APPLICABILITY.** [This act] IS EFFECTIVE JULY 1, 1993, AND

SB 0228/02

- 1 applies to all tax revenue recorded on or after July 1,
- 2 1993~~7-regardless-of-when-the-tax-obligation-accrued.~~

-End-

SENATE BILL NO. 228

INTRODUCED BY STANG, GILBERT, RANEY,

DOHERTY, BECK, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS "AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER", "HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter,

aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

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(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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~~(9)~~ (9) "Eligible costs" means expenses reimbursable under 75-11-307.

(10) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(11) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

~~(9)~~ (12) "Fee" means the petroleum storage tank cleanup

fee provided for in 75-11-314.

~~(10)~~ (13) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

~~(11)~~ (14) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

(15) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

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

~~(12)~~ (17) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

~~(13)~~ (18) "Owner" means a person who holds title to,

controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(20) "Petroleum" or "petroleum products" means crude oil or any fraction thereof of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less

than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (d)(i) and (d)(ii), if the facility is intrastate.

(22) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(23) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(24) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum

institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), every each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by him the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; and

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and

heating oil exported or sold for export out of the state may not must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

NEW SECTION. Section 3. APPLICABILITY EFFECTIVE DATE
-- APPLICABILITY. [This act] IS EFFECTIVE JULY 1, 1993, AND

SB 0228/02

- 1 applies to all tax revenue recorded on or after July 1,
- 2 1993, regardless of when the tax obligation accrued.

-End-

HOUSE STANDING COMMITTEE REPORT

March 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 228 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Gilbert
Bob Gilbert, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Page 8, line 8.

Following: "balance"

Insert: ", less claims anticipated for board approval within the next 90 days,"

HOUSE

SB 228

Committee Vote:

Yes 18, No 3

541205SC.Hsx

SENATE BILL NO. 228

INTRODUCED BY STANG, GILBERT, RANEY,
DOHERTY, BECK, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS "AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER", "HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. The Except as provided in subsections (2), (14), and (24), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter,

aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Distributor" means a ~~distributor-as-defined-in 15-70-201~~ person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

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

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

{8}{9} "Eligible costs" means expenses reimbursable under 75-11-307.

{10} "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

{11} "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

{9}{12} "Fee" means the petroleum storage tank cleanup

fee provided for in 75-11-314.

{10}{13} "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

{11}{14} "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

{15} "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

{16} "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

{12}{17} "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

{13}{18} "Owner" means a person who holds title to,

1 controls, or possesses an interest in a petroleum storage
2 tank. The term does not include a person who holds an
3 interest in a tank solely for financial security, unless
4 through foreclosure or other related actions the holder of a
5 security interest has taken possession of the tank.

6 ~~††4†~~(19) "Person" means an individual, firm, trust,
7 estate, partnership, company, association, joint stock
8 company, syndicate, consortium, commercial entity,
9 corporation, or agency of state or local government.

10 ~~††5†~~(20) "Petroleum" or "petroleum products" means crude
11 oil or any fraction thereof of crude oil that is liquid at
12 standard conditions of temperature and pressure (60 degrees
13 F and 14.7 pounds per square inch absolute) or motor fuel
14 blend, such as gasohol, and that is not augmented or
15 compounded by more than a de minimis amount of another
16 substance.

17 ~~††6†~~(21) "Petroleum storage tank" means a tank that
18 contains or contained petroleum or petroleum products and
19 that is:

20 (a) an underground storage tank as defined in
21 75-10-403;

22 (b) a storage tank that is situated in an underground
23 area such as a basement, cellar, mine, drift, shaft, or
24 tunnel;

25 (c) an above ground storage tank with a capacity less

1 than 30,000 gallons; or

2 (d) above ground or underground pipes associated with
3 tanks under subsections ~~††6††b†~~ (21)(b) and ~~††6††c†~~ (21)(c),
4 except that pipelines regulated under the following laws are
5 excluded:

6 (i) the Natural Gas Pipeline Safety Act of 1968 (49
7 U.S.C. 1671, et seq.);

8 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
9 (49 U.S.C. 2001, et seq.); and

10 (iii) state law comparable to the provisions of law
11 referred to in subsections ~~††6††d††††~~ (21)(d)(i) and
12 ~~††6††d††††††~~ (21)(d)(ii), if the facility is intrastate.

13 ~~††7†~~(22) "Property damage" means:

14 (a) physical injury to tangible property, including
15 loss of use of that property caused by the injury; or

16 (b) loss of use of tangible property that is not
17 physically injured.

18 ~~††8†~~(23) "Release" means any spilling, leaking,
19 emitting, discharging, escaping, leaching, or disposing of
20 petroleum or petroleum products from a petroleum storage
21 tank into ground water, surface water, surface soils, or
22 subsurface soils.

23 (24) "Special fuel" means those combustible liquids
24 commonly referred to as diesel fuel or another volatile
25 liquid of less than 46 degrees A.P.I. (American petroleum

institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-314, MCA, is amended to read:

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(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; and

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and

heating oil exported or sold for export out of the state may not must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance, LESS CLAIMS ANTICIPATED FOR BOARD APPROVAL WITHIN THE NEXT 90 DAYS, is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

NEW SECTION. Section 3. Applicability Effective Date

SB 0228/03

1 -- APPLICABILITY. [This act] IS EFFECTIVE JULY 1, 1993, AND
2 applies to all tax revenue recorded on or after July 1,
3 1993~~7-regardless-of-when-the-tax-obligation-accrued.~~

-End-