

HOUSE BILL NO. 15
INTRODUCED BY LARSON

IN THE HOUSE

NOVEMBER 29, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

NOVEMBER 30, 1993 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

 PRINTING REPORT.

DECEMBER 3, 1993 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

DECEMBER 7, 1993 SECOND READING, DO PASS AS AMENDED.

 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 99; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

DECEMBER 8, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

DECEMBER 13, 1993 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

DECEMBER 14, 1993 SECOND READING, CONCURRED IN.

 THIRD READING, CONCURRED IN.
AYES, 40; NOES, 10.

 RETURNED TO HOUSE.

IN THE HOUSE

DECEMBER 15, 1993 RECEIVED FROM SENATE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 15
INTRODUCED BY LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the

provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) \$16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) \$54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) \$6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid

1 interstate system and the federal-aid primary system;

2 (ii) 40% in the ratio that the rural population in each

3 county outside incorporated cities and towns bears to the

4 total rural population in the state outside incorporated

5 cities and towns;

6 (iii) 20% in the ratio that the land area of each county

7 bears to the total land area of the state;

8 (c) \$10,389,000 must be divided among the incorporated

9 cities and towns in the following manner:

10 (i) 50% of the sum in the ratio that the population

11 within the corporate limits of the city or town bears to the

12 total population within corporate limits of all the cities

13 and towns in Montana;

14 (ii) 50% in the ratio that the city or town street and

15 alley mileage, exclusive of the federal-aid interstate

16 system and the federal-aid primary system, within corporate

17 limits bears to the total street and alley mileage,

18 exclusive of the federal-aid interstate system and

19 federal-aid primary system, within the corporate limits of

20 all cities and towns in Montana.

21 (2) All funds allocated by this section to counties,

22 cities, and towns must be used for the construction,

23 reconstruction, maintenance, and repair of rural roads or

24 city or town streets and alleys or for the share that the

25 city, town, or county might otherwise expend for

1 proportionate matching of federal funds allocated for the

2 construction of roads or streets that are part of the

3 federal-aid primary or secondary highway system or urban

4 extensions to those systems, except that the governing body

5 of a town or third-class city, as defined in 7-1-4111, may

6 each year expend no more than 25% of the funds allocated to

7 that town or third-class city for the purchase of capital

8 equipment and supplies to be used for the maintenance and

9 repair of town or third-class city streets and alleys.

10 (3) All funds allocated by this section to counties,

11 cities, and towns must be disbursed to the lowest

12 responsible bidder according to applicable bidding

13 procedures followed in all cases in which the contract for

14 construction, reconstruction, maintenance, or repair is in

15 excess of \$4,000.

16 (4) For the purposes of this section in which

17 distribution of funds is made on a basis related to

18 population, the population must be determined by the last

19 preceding official federal census.

20 (5) For the purposes of this section in which

21 determination of mileage is necessary for distribution of

22 funds, it is the responsibility of the cities, towns, and

23 counties to furnish to the department of transportation a

24 yearly certified statement indicating the total mileage

25 within their respective areas applicable to this chapter.

1 All mileage submitted is subject to review and approval by
2 the department of transportation.

3 (6) Except by a town or third-class city as provided in
4 subsection (2), the funds authorized by this section may not
5 be used for the purchase of capital equipment.

6 (7) Funds authorized by this section must be used for
7 construction and maintenance programs only."

8 **Section 2.** Section 15-70-301, MCA, is amended to read:

9 "15-70-301. Definitions. As used in this part, the
10 following definitions apply:

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

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

16 (3) "Bond" means:

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

23 (b) a deposit with the department by the special fuel
24 user, under terms and conditions the department may
25 prescribe, of certificates of deposit or irrevocable letters

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

3 (4) (3) "Bulk delivery" means placing special fuel not
4 intended for resale in storage or containers. The term does
5 not mean special fuel delivered into the supply tank of a
6 motor vehicle.

7 (5) (4) "Cardtrol" or "keylock" means any unique device
8 intended to allow access to a special fuel dealer's
9 unattended pump or dispensing unit for the purpose of
10 delivery of special fuel to an authorized user of the unique
11 device.

12 (6) (5) "Department" means the department of
13 transportation.

14 (7) (6) (a) "Distributed" means, at the time special
15 fuel is withdrawn, the withdrawal from a storage tank, a
16 refinery, or a terminal storage in this state for sale or
17 use in this state or for the transportation other than by
18 pipeline to another refinery in this state or a pipeline
19 terminal in this state of the following:

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

23 (ii) special fuel transferred from a refinery or
24 pipeline terminal in this state and placed in tanks at the
25 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†~~(7) "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†~~(8) "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†~~(9) "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†~~(10) "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†~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~†13†~~(12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~†14†~~(13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~†15†~~(14) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

1 (a) built and maintained with appropriated funds of the
2 United States, the state of Montana, or any political
3 subdivision of the state;

4 (b) dedicated to public use;

5 (c) acquired by eminent domain; or

6 (d) acquired by adverse use by the public, jurisdiction
7 having been assumed by the state or any political
8 subdivision of the state.

9 ~~†16†~~(15) "Special fuel" means those combustible gases
10 and liquids commonly referred to as diesel fuel or any other
11 volatile liquid of less than 46 degrees A.P.I. (American
12 petroleum institute) gravity test, except liquid petroleum
13 gas, when actually sold for use in motor vehicles operating
14 upon the public roads and highways within the state of
15 Montana.

16 ~~†17†~~(16) "Special fuel dealer" means:

17 (a) any person in the business of handling special fuel
18 who delivers any part of the fuel into the fuel supply tank
19 or tanks of a motor vehicle not then owned or controlled by
20 the person;

21 (b) any person who sells special fuel at a location
22 unattended by the dealer through an unattended pump by use
23 of a cardtrol, keylock, or similar device; or

24 (c) any person who provides any facility, with or
25 without attended services, from which more than one special

1 fuel user obtains special fuel for use in the fuel supply
2 tank of a motor vehicle not then controlled by the dealer.

3 ~~†18†~~(17) "Special fuel user" means any person other than
4 a county, incorporated city or town, or school district of
5 this state who consumes in this state special fuel for the
6 operation of motor vehicles owned or controlled by the
7 person upon the highways of this state.

8 ~~†19†~~(18) "Use", when the term relates to a special fuel
9 user, means the consumption by a special fuel user of
10 special fuels in the operation of a motor vehicle on the
11 highways of this state."

12 **Section 3.** Section 15-70-302, MCA, is amended to read:

13 **"15-70-302. Special fuel user's permits required --**
14 **exceptions.** (1) A special fuel user shall obtain a special
15 fuel user's permit annually from the department, prior to
16 the use of special fuel for the operation of a motor vehicle
17 or vehicles in this state, ~~a special fuel user's permit~~ in
18 excess of 26,000 pounds gross vehicle weight or registered
19 gross vehicle weight. Except as provided in subsection (3),
20 a special fuel user shall at all times display the original
21 or a reproduced copy of the permit in each special fuel
22 vehicle operated by the special fuel user upon the public
23 roads and highways. The permit or copy must be exhibited for
24 inspection on request of any motor carrier services division
25 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.

(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 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 a 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 been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (1) if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement.

~~{4}--A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall obtain annually from the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under~~

~~15-70-343.~~"

Section 4. Section 15-70-303, MCA, is amended to read:

"15-70-303. Application for permit or authorization.

(1) Application for a special fuel user's permit or authorization must be made to the department unless otherwise provided in this part.

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

Section 5. Section 15-70-304, MCA, is amended to read:

"15-70-304. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice 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

1 less than:

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

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

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

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

9 (3) A surety on a bond furnished by a special fuel
10 user, as provided in this section, must be released and
11 discharged from any liability to the state accruing on the
12 bond after the expiration of 30 days from the date when the
13 surety has lodged with the department a written request to
14 be released and discharged, but this provision may not
15 operate to relieve, release, or discharge the surety from
16 any liability already accrued or that accrues before the
17 expiration of the 30-day period. The department shall,
18 promptly upon receiving a release request, notify the
19 special fuel user who furnished the bond, and unless the
20 special fuel user, on or before the expiration of the 30-day
21 period, files a new bond in accordance with the requirements
22 of this section or makes a deposit in lieu of a bond as
23 provided in 15-70-301(3)(2), the department shall cancel the
24 special fuel user's permit.

25 (4) The department may require a special fuel user to

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

11 **Section 6.** Section 15-70-305, MCA, is amended to read:

12 "15-70-305. Issuance of permit or--authorization --
13 grounds for refusal -- hearing. (1) Except as provided in
14 subsection (4)(3), upon receipt of the application and bond
15 in proper form, the department shall issue to the applicant
16 a permit to operate as a special fuel user. Each special
17 fuel user's permit is valid until suspended or revoked for
18 cause or otherwise canceled.

19 (2)--Except--as-provided-in-subsection-(4)--upon-receipt
20 of-the-application-in--proper--form--the--department--shall
21 issue--to--the--applicant--an--authorization--A-holder-of-an
22 authorization-is-not-required-to-furnish--bond--as--provided
23 under--15-70-304--The-authorization-must-be-issued-annually
24 and-is-valid-from-the-date-of-its-issuance-through--December
25 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)(2)~~ If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of \$100.

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

(a) who formerly held a 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 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.

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

(6) A special fuel user's permit or authorization is not transferable."

Section 7. Section 15-70-306, MCA, is amended to read:

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

(1) The department may revoke the permit or authorization of any special fuel user or any special fuel vehicle permit for

reasonable cause. Before revoking a permit or authorization, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring 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 permit or authorization should not be revoked;--provided, however, that. However, at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit or authorization.

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

Section 8. 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, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor

1 carrier services division employees, Montana highway patrol
2 officers, and other enforcing agents that the department may
3 prescribe by order or rule.

4 (2) Any nonresident upon entering the state with
5 agricultural harvesting equipment that is over 26,000 pounds
6 gross vehicle weight or registered gross vehicle weight and
7 that is powered by special fuel and operating upon the
8 public roads and highways of this state who fails or
9 neglects to carry in or on equipment a valid special fuel
10 vehicle permit, as provided by 15-70-302, is required to
11 purchase a nonresident agricultural harvesting equipment
12 special fuel permit. The permit must be issued by motor
13 carrier services division employees, Montana highway patrol
14 officers, and other enforcing agents that the department may
15 prescribe by order or rule.

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

21 **Section 9.** Section 15-70-321, MCA, is amended to read:

22 "15-70-321. Tax on diesel fuel and volatile liquids.

23 (1) The department shall, under the provisions of rules
24 issued by it, collect or cause to be collected from the
25 owners or operators of motor vehicles a tax, as provided in

1 subsection (2):

2 (a) for each gallon of undyed diesel fuel or other
3 volatile liquid, except liquid petroleum gas, of less than
4 46 degrees A.P.I. (American petroleum institute) gravity
5 test when actually sold or used to produce motor power to
6 operate motor vehicles upon the public highways or streets
7 within the state; and

8 (b) for each gallon of diesel fuel or other volatile
9 liquid, except liquid petroleum gas, of less than 46 degrees
10 A.P.I. (American petroleum institute) gravity test when
11 actually sold or used in motor vehicles, motorized
12 equipment, and the internal combustion of any engines,
13 including stationary engines, used in connection with any
14 work performed under any contracts pertaining to the
15 construction, reconstruction, or improvement of any highway
16 or street and their appurtenances awarded by any public
17 agencies, including federal, state, county, municipal, or
18 other political subdivisions.

19 (2) The tax imposed in subsection (1) is:

20 (a) 24 cents per gallon beginning July 1, 1993;

21 (b) 24 3/4 cents per gallon beginning January 1, 1994;

22 and

23 (c) 27 3/4 cents per gallon beginning July 1, 1994."

24 **Section 10.** Section 15-70-324, MCA, is amended to read:

25 "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 may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to may investigate the character of the disposition which that any person makes of special fuel in order to ascertain and determine whether all excise 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 and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$2,000 or imprisonment for a term not to exceed 60 days, or both. Each refusal is a separate offense.

~~(4)~~(5) 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 Canada, forward to the officials any information which that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state."

Section 11. 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~~ Special fuel penalties. (1) In the case of any a 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 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 1% on the tax due for each calendar month or fraction of a
 2 month during which the refusal or failure continues;
 3 provided, however, that if any special fuel user establishes
 4 to the satisfaction of the department that the failure to
 5 file a return within the time prescribed was due to
 6 reasonable cause, the department shall waive the penalty
 7 provided by this section.

8 (2) Whenever a special fuel user files a return but
 9 fails to pay in whole or in part the tax due under this
 10 part, there must be added to the amount due and unpaid
 11 interest at the rate of 1% per month or fraction of a month
 12 from the date the tax was due to the date of payment in
 13 full.

14 (3) A special fuel user may not use dyed special fuel
 15 to operate a motor vehicle upon the public highways or
 16 streets within the state unless the fuel is subject to
 17 taxation under 15-70-321(1)(b). The purposeful or knowing
 18 use of dyed special fuel in a motor vehicle operating upon
 19 the public highways or streets within the state in violation
 20 of this subsection is a misdemeanor punishable by a fine not
 21 to exceed \$2,000 or imprisonment for a term not to exceed 60
 22 days, or both. Each use is a separate offense."

23 **Section 12.** Section 15-70-341, MCA, is amended to read:

24 "15-70-341. (Effective January 1, 1994) License, fee,
 25 and security of special fuel distributors. (1) All special

1 fuel distributors, including importers and exporters as
 2 defined in 15-70-301, prior to the commencement of doing
 3 business, shall file an application for a license with the
 4 department ~~of--transportation~~, on forms prescribed and
 5 furnished by the department, setting forth the information
 6 that may be requested by the department. Each distributor
 7 shall at the same time file security with the department in
 8 an amount to be determined by the department. However, the
 9 required amount of security may not exceed twice the
 10 estimated amount of special fuel taxes the distributor will
 11 pay to this state each month. Upon approval of the
 12 application, the department shall issue to the distributor a
 13 nonassignable license that continues in force until
 14 surrendered or revoked.

15 (2) A person who engages in the wholesale distribution
 16 of special fuel in this state exercising the option under
 17 15-70-301~~(8)(c)~~~~(7)(c)~~ and not already licensed under
 18 15-70-202 shall pay an annual license fee of \$200.

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

21 (4) As used in this section, "security" means:

22 (a) a bond executed by a distributor as principal with
 23 a corporate surety qualified under the laws of Montana,
 24 payable to the state of Montana, and conditioned upon
 25 faithful performance of all requirements of this part,

1 including the payment of all taxes and penalties; or

2 (b) (i) a deposit made by the distributor with the
3 department, under the conditions that the department may
4 prescribe; or

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

8 **Section 13.** Section 15-70-343, MCA, is amended to read:

9 "15-70-343. (Effective January 1, 1994) Special fuel
10 license tax -- rate. (1) Each distributor shall pay to the
11 department of transportation a license tax for the privilege
12 of engaging in and carrying on business in this state. The
13 license tax is in the amount ~~of--20--cents--imposed under~~
14 15-70-321+ for each gallon of special fuel that is
15 distributed by the distributor within the state and upon
16 which the special fuel license tax has not been paid by any
17 other distributor.

18 (2) Special fuel may not be included in the measure of
19 the distributor's license tax if sold it is:

20 (a) ~~to--the--United--States--government,--state--of--Montana,~~
21 ~~any--other--state--and--any--county--incorporated--city--town,~~
22 ~~and--school--district--of--this--state~~ died at a refinery or
23 terminal for off-highway use; or

24 (b) ~~in-bulk-delivery-quantities-of-200-gallons-or-more;~~
25 or

1 ~~(c)--sold~~ for export, unless the distributor is not
2 licensed and is not paying the tax to the state where the
3 fuel is destined."

4 **Section 14.** Section 15-70-349, MCA, is amended to read:

5 "15-70-349. (Effective January 1, 1994) Examination of
6 records. (1) The department ~~of--transportation~~ or its
7 authorized representative may examine the books, papers,
8 records, and equipment of any special fuel distributor or
9 any person dealing in, transporting, or storing special
10 fuel, as defined in this part, and may investigate the
11 character of the disposition that any person makes of the
12 special fuel in order to ascertain and determine whether all
13 license taxes due are being properly reported and paid. If
14 the books, papers, records, and equipment are not maintained
15 in this state at the time of demand, they must be furnished
16 at the direction of the department for review either in the
17 offices of the department or at the business location of the
18 taxpayer.

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

25 (3) The department may physically inspect terminals,

dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$2,000 or imprisonment for a term not to exceed 60 days, or both. Each refusal is a separate offense."

Section 15. Section 15-70-356, MCA, is amended to read:

"15-70-356. (Effective January 1, 1994) 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) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

~~(2)~~(3) 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 15-70-343 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 (4)(a), 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

1 is not licensed and is not paying the tax to the state where
2 fuel is destined. Upon completion of the reports required
3 under 15-70-351, the department shall authorize the credit
4 or refund."

5 **Section 16.** Section 15-70-361, MCA, is amended to read:

6 "15-70-361. (Effective January 1, 1994) Required
7 records. (1) ~~Special~~ Except as provided in subsection (5),
8 special fuel purchased and delivered into bulk storage for
9 use in motor vehicles on public roads and nonhighway use
10 must be fully accounted for by detailed withdrawal records
11 to accurately show the manner in which it was used. Special
12 fuel on hand, determined by actual measurement, must be
13 deducted from a claim and must be reported as an opening
14 inventory on the next claim.

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

19 (3) When a highway use of special fuel is not deducted
20 from the claim, the applicant shall substantiate purchases
21 of special fuel and miles traveled for licensed motor
22 vehicles upon request of the department of transportation.

23 (4) Any person who operates a licensed motor vehicle on
24 and off the public roads for commercial purposes may claim
25 refund of the state license tax on the special fuel used to

1 operate the vehicle on roads or property in private
2 ownership if the person has maintained the following
3 records:

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

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

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

10 (5) The United States government, the state of Montana,
11 any other state, or any county, incorporated city, town, or
12 school district of this state is not required to keep
13 dispersal records in order to claim a refund of special fuel
14 taxes.

15 ~~(5)(6)~~ An exporter or any other person who transports
16 special fuel out of Montana for sale, use, or consumption
17 outside Montana shall maintain detailed and current records
18 of withdrawal, transportation, ownership, and delivery of
19 the special fuel to destinations outside Montana as required
20 by the department."

21 **Section 17.** Section 15-70-364, MCA, is amended to read:

22 "15-70-364. (Effective January 1, 1994) Application for
23 refund or credit -- filing -- correction by department. (1)
24 The application for a refund must be a signed statement on a
25 form furnished by the department ~~of transportation~~. Except

for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state, 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."

Section 18. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424;

1 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304;
 2 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101;
 3 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
 4 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111;
 5 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136;
 6 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301;
 7 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501;
 8 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206;
 9 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206;
 10 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507;
 11 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;
 12 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136;
 13 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331;
 14 90-7-220; 90-9-306; and 90-14-107.

15 (4) There is a statutory appropriation to pay the
 16 principal, interest, premiums, and costs of issuing, paying,
 17 and securing all bonds, notes, or other obligations, as due,
 18 that have been authorized and issued pursuant to the laws of
 19 Montana. Agencies that have entered into agreements
 20 authorized by the laws of Montana to pay the state
 21 treasurer, for deposit in accordance with 17-2-101 through
 22 17-2-107, as determined by the state treasurer, an amount
 23 sufficient to pay the principal and interest as due on the
 24 bonds or notes have statutory appropriation authority for
 25 the payments. (In subsection (3): pursuant to sec. 7, Ch.

1 567, L. 1991, the inclusion of 19-6-709 terminates upon
 2 death of last recipient eligible for supplemental benefit;
 3 and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of
 4 90-14-107 terminates July 1, 1995.)"

5 **Section 19.** Section 61-12-206, MCA, is amended to read:

6 **"61-12-206. Offenses for which arrest authorized.** (1)

7 Employees appointed under 61-12-201 may make arrests for
 8 violations of the following statutory provisions only:

9 (a) part 1, chapter 10, of this title;

10 (b) part 3, chapter 4, of this title;

11 (c) sections 15-24-201 through 15-24-205;

12 (d) ~~sections 15-70-302 through 15-70-307;~~

13 ~~(e) sections 15-70-311 through 15-70-314~~ Title 15,

14 chapter 70, parts 2 and 3;

15 ~~(f)(e)~~ sections 15-71-101 through 15-71-105;

16 ~~(g)(f)~~ section 61-3-502(1);

17 ~~(h)(g)~~ sections 61-10-201, 61-10-203, 61-10-206,
 18 61-10-209, and 61-10-211 through 61-10-215;

19 ~~(i)(h)~~ sections 61-10-222 through 61-10-224;

20 ~~(j)(i)~~ sections 61-10-231 through 61-10-233.

21 (2) These employees may not arrest for violations other
 22 than specified in this section."

23 **NEW SECTION. Section 20.** Repealer. Sections 15-70-309
 24 and 15-70-315, MCA, are repealed.

25 **NEW SECTION. Section 21.** Effective dates --

1 **retroactive applicability.** (1) [Sections 1, 18, and 22 and
2 this section] are effective on passage and approval.

3 (2) [Sections 2 through 17, 19, and 20] are effective
4 January 1, 1994.

5 NEW SECTION. **Section 22.** Retroactive applicability.
6 [Sections 1 and 18] apply retroactively, within the meaning
7 of 1-2-109, to July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0015, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to motor fuel; statutorily appropriating motor fuel taxes to counties and cities and towns; clarifying the special fuel license tax rate; exempting dyed special fuel from taxation; providing that dyed fuel may be used for off-highway use; providing a tax refund for special fuel used off-highway; providing a refund for special fuel used by government agencies; revising the enforcement of motor fuel laws.

ASSUMPTIONS:

1. The Special Fuel Authorization Permit, a permit sold to persons with tax exempt bulk storage under the current law, will be eliminated with this bill. Revenues are not expected to increase or decrease as a result of this bill's passage. Monies previously collected from sales of the special fuel authorization permit, which were in lieu of state fuel taxes, will now be collected as fuel taxes. Any savings in administrative and compliance costs will be offset by costs the department will incur to notify taxpayers of the change in the law and refunding any fees already collected.
2. The number of refund requests will increase because governmental units will not be allowed to purchase undyed fuel state tax exempt. Those units will be eligible for a full refund, but it will need to be requested from the department. This is not expected to result in a net change in fuel tax revenues because, historically, those units have been exempt from the state tax.
3. The distributions to cities and counties mandated by 15-1-501(6) have been made by utilizing HB2 authority in the General Operations Program in anticipation of an amendment to 15-70-101 reinstating the statutory authority.


FISCAL IMPACT:


Prior to the 1995 biennium, the distributions to cities and counties, mandated by 15-1-501(6), were statutorily appropriated. Due to the inadvertent deletion of this statutory appropriation in SB257, the distributions to cities and counties have been temporarily paid from current level HB2 authority in the General Operations Program in anticipation of a technical amendment to restore the statutory appropriation.

There is no significant fiscal impact associated with elimination of the special fuel authorization permit.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The passage of this bill will provide the department with the necessary appropriation authority to continue the distribution of fuel tax proceeds to cities and counties as mandated by 15-1-501(6). In the event that the statutory appropriation is not restored, distributions to cities and counties may be discontinued.


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


Don Larson, PRIMARY SPONSOR DATE
Fiscal Note for HB0015, as introduced

HB 15

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 15

INTRODUCED BY LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. **Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the

provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) \$16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) \$54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) \$6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid

1 interstate system and the federal-aid primary system;

2 (ii) 40% in the ratio that the rural population in each

3 county outside incorporated cities and towns bears to the

4 total rural population in the state outside incorporated

5 cities and towns;

6 (iii) 20% in the ratio that the land area of each county

7 bears to the total land area of the state;

8 (c) \$10,389,000 must be divided among the incorporated

9 cities and towns in the following manner:

10 (i) 50% of the sum in the ratio that the population

11 within the corporate limits of the city or town bears to the

12 total population within corporate limits of all the cities

13 and towns in Montana;

14 (ii) 50% in the ratio that the city or town street and

15 alley mileage, exclusive of the federal-aid interstate

16 system and the federal-aid primary system, within corporate

17 limits bears to the total street and alley mileage,

18 exclusive of the federal-aid interstate system and

19 federal-aid primary system, within the corporate limits of

20 all cities and towns in Montana.

21 (2) All funds allocated by this section to counties,

22 cities, and towns must be used for the construction,

23 reconstruction, maintenance, and repair of rural roads or

24 city or town streets and alleys or for the share that the

25 city, town, or county might otherwise expend for

1 proportionate matching of federal funds allocated for the

2 construction of roads or streets that are part of the

3 federal-aid primary or secondary highway system or urban

4 extensions to those systems, except that the governing body

5 of a town or third-class city, as defined in 7-1-4111, may

6 each year expend no more than 25% of the funds allocated to

7 that town or third-class city for the purchase of capital

8 equipment and supplies to be used for the maintenance and

9 repair of town or third-class city streets and alleys.

10 (3) All funds allocated by this section to counties,

11 cities, and towns must be disbursed to the lowest

12 responsible bidder according to applicable bidding

13 procedures followed in all cases in which the contract for

14 construction, reconstruction, maintenance, or repair is in

15 excess of \$4,000.

16 (4) For the purposes of this section in which

17 distribution of funds is made on a basis related to

18 population, the population must be determined by the last

19 preceding official federal census.

20 (5) For the purposes of this section in which

21 determination of mileage is necessary for distribution of

22 funds, it is the responsibility of the cities, towns, and

23 counties to furnish to the department of transportation a

24 yearly certified statement indicating the total mileage

25 within their respective areas applicable to this chapter.

1 All mileage submitted is subject to review and approval by
2 the department of transportation.

3 (6) Except by a town or third-class city as provided in
4 subsection (2), the funds authorized by this section may not
5 be used for the purchase of capital equipment.

6 (7) Funds authorized by this section must be used for
7 construction and maintenance programs only."

8 **Section 2.** Section 15-70-301, MCA, is amended to read:

9 "15-70-301. Definitions. As used in this part, the
10 following definitions apply:

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

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

16 (3) "Bond" means:

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

23 (b) a deposit with the department by the special fuel
24 user, under terms and conditions the department may
25 prescribe, of certificates of deposit or irrevocable letters

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

3 (4) (3) "Bulk delivery" means placing special fuel not
4 intended for resale in storage or containers. The term does
5 not mean special fuel delivered into the supply tank of a
6 motor vehicle.

7 (5) (4) "Cardtrol" or "keylock" means any unique device
8 intended to allow access to a special fuel dealer's
9 unattended pump or dispensing unit for the purpose of
10 delivery of special fuel to an authorized user of the unique
11 device.

12 (6) (5) "Department" means the department of
13 transportation.

14 (7) (6) (a) "Distributed" means, at the time special
15 fuel is withdrawn, the withdrawal from a storage tank, a
16 refinery, or a terminal storage in this state for sale or
17 use in this state or for the transportation other than by
18 pipeline to another refinery in this state or a pipeline
19 terminal in this state of the following:

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

23 (ii) special fuel transferred from a refinery or
24 pipeline terminal in this state and placed in tanks at the
25 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†(7) "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†(8) "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†(9) "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†(10) "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†(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

†13†(12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

†14†(13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

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

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

(b) dedicated to public use;

(c) acquired by eminent domain; or

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

~~†16†~~(15) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana.

~~†17†~~(16) "Special fuel dealer" means:

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

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

(c) any person who provides any facility, with or without attended services, from which more than one special

fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~†18†~~(17) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~†19†~~(18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 3. Section 15-70-302, MCA, is amended to read:

"15-70-302. Special fuel user's permits required -- exceptions. (1) A special fuel user shall obtain a special fuel user's permit annually from the department, prior to the use of special fuel for the operation of a motor vehicle or vehicles in this state, ~~a special fuel user's permit~~ in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight. Except as provided in subsection (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 the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any 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.

(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 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 a 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 been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (1) if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement.

~~{4}--A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall obtain annually from the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under~~

~~15-70-343.~~"

Section 4. Section 15-70-303, MCA, is amended to read:

"15-70-303. Application for permit or authorization.

(1) Application for a special fuel user's permit or authorization must be made to the department unless otherwise provided in this part.

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

Section 5. Section 15-70-304, MCA, is amended to read:

"15-70-304. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice 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

1 less than:

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

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

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

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

9 (3) A surety on a bond furnished by a special fuel
10 user, as provided in this section, must be released and
11 discharged from any liability to the state accruing on the
12 bond after the expiration of 30 days from the date when the
13 surety has lodged with the department a written request to
14 be released and discharged, but this provision may not
15 operate to relieve, release, or discharge the surety from
16 any liability already accrued or that accrues before the
17 expiration of the 30-day period. The department shall,
18 promptly upon receiving a release request, notify the
19 special fuel user who furnished the bond, and unless the
20 special fuel user, on or before the expiration of the 30-day
21 period, files a new bond in accordance with the requirements
22 of this section or makes a deposit in lieu of a bond as
23 provided in 15-70-301(3)(2), the department shall cancel the
24 special fuel user's permit.

25 (4) The department may require a special fuel user to

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

11 **Section 6.** Section 15-70-305, MCA, is amended to read:

12 "15-70-305. Issuance of permit or--authorization --
13 grounds for refusal -- hearing. (1) Except as provided in
14 subsection (4)(3), upon receipt of the application and bond
15 in proper form, the department shall issue to the applicant
16 a permit to operate as a special fuel user. Each special
17 fuel user's permit is valid until suspended or revoked for
18 cause or otherwise canceled.

19 (2)--Except--as-provided-in-subsection-(4)--upon-receipt
20 of-the-application-in--proper--form--the--department--shall
21 issue--to--the--applicant--an--authorization--A-holder-of-an
22 authorization-is-not-required-to-furnish--bond--as--provided
23 under--15-70-304--The-authorization-must-be-issued-annually
24 and-is-valid-from-the-date-of-its-issuance-through--December
25 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}{2} If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of \$100.

+4+{3} The department may refuse to issue a special fuel user's permit ~~or authorization~~ to any person:

(a) who formerly held a 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 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.

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

(6) A special fuel user's permit ~~or authorization~~ is not transferable."

Section 7. Section 15-70-306, MCA, is amended to read:

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

(1) The department may revoke the permit ~~or authorization~~ of any special fuel user or any special fuel vehicle permit for

reasonable cause. Before revoking a permit ~~or authorization~~, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring 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 permit ~~or authorization~~ should not be revoked; ~~provided, however, that~~. However, at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit ~~or authorization~~.

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

Section 8. 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, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor

1 carrier services division employees, Montana highway patrol
2 officers, and other enforcing agents that the department may
3 prescribe by order or rule.

4 (2) Any nonresident upon entering the state with
5 agricultural harvesting equipment that is over 26,000 pounds
6 gross vehicle weight or registered gross vehicle weight and
7 that is powered by special fuel and operating upon the
8 public roads and highways of this state who fails or
9 neglects to carry in or on equipment a valid special fuel
10 vehicle permit, as provided by 15-70-302, is required to
11 purchase a nonresident agricultural harvesting equipment
12 special fuel permit. The permit must be issued by motor
13 carrier services division employees, Montana highway patrol
14 officers, and other enforcing agents that the department may
15 prescribe by order or rule.

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

21 **Section 9.** Section 15-70-321, MCA, is amended to read:

22 "15-70-321. Tax on diesel fuel and volatile liquids.

23 (1) The department shall, under the provisions of rules
24 issued by it, collect or cause to be collected from the
25 owners or operators of motor vehicles a tax, as provided in

1 subsection (2):

2 (a) for each gallon of undyed diesel fuel or other
3 volatile liquid, except liquid petroleum gas, of less than
4 46 degrees A.P.I. (American petroleum institute) gravity
5 test when actually sold or used to produce motor power to
6 operate motor vehicles upon the public highways or streets
7 within the state; and

8 (b) for each gallon of diesel fuel or other volatile
9 liquid, except liquid petroleum gas, of less than 46 degrees
10 A.P.I. (American petroleum institute) gravity test when
11 actually sold or used in motor vehicles, motorized
12 equipment, and the internal combustion of any engines,
13 including stationary engines, used in connection with any
14 work performed under any contracts pertaining to the
15 construction, reconstruction, or improvement of any highway
16 or street and their appurtenances awarded by any public
17 agencies, including federal, state, county, municipal, or
18 other political subdivisions.

19 (2) The tax imposed in subsection (1) is:

20 (a) 24 cents per gallon beginning July 1, 1993;

21 (b) 24 3/4 cents per gallon beginning January 1, 1994;

22 and

23 (c) 27 3/4 cents per gallon beginning July 1, 1994."

24 **Section 10.** Section 15-70-324, MCA, is amended to read:

25 "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 may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to may investigate the character of the disposition which that any person makes of special fuel in order to ascertain and determine whether all excise 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 and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 UPON CONVICTION FOR THE FIRST OFFENSE, NOT TO EXCEED \$1,000 UPON CONVICTION FOR THE SECOND OFFENSE, AND NOT TO EXCEED \$2,000 or imprisonment for a term not to exceed 60 days, or both FOR EACH SUBSEQUENT CONVICTION. Each refusal is a separate offense.

~~(4)~~(5) 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 Canada, forward to the officials any information which that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state."

Section 11. 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~~ Special fuel penalties. (1) In the case of any a 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 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 of a month during which the refusal or failure continues; provided, however, that if any special fuel user establishes to the satisfaction of the department that 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) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, there must be added to the amount due and unpaid interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

(3) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public highways or streets within the state unless the fuel is subject to taxation under 15-70-321(1)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public highways or streets within the state in violation of this subsection is a misdemeanor punishable by a fine not to exceed \$500 UPON CONVICTION FOR THE FIRST OFFENSE, NOT TO EXCEED \$1,000 UPON CONVICTION FOR THE SECOND OFFENSE, AND NOT TO EXCEED \$2,000 or--imprisonment--for-a-term-not-to

exceed-60-days-or-both FOR EACH SUBSEQUENT CONVICTION. Each use is a separate offense."

Section 12. Section 15-70-341, MCA, is amended to read:

"15-70-341. (Effective January 1, 1994) 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)~~(7)(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."

Section 13. Section 15-70-343, MCA, is amended to read:

"15-70-343. (Effective January 1, 1994) 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~~ imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

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

(a) ~~to the United States government, state of Montana,~~

~~any other state, and any county, incorporated city, town, and school district of this state~~ dyed at a refinery or terminal for off-highway use; or

(b) ~~in bulk delivery quantities of 200 gallons or more, or~~

~~(c) sold~~ for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined."

Section 14. Section 15-70-349, MCA, is amended to read:

"15-70-349. (Effective January 1, 1994) 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

1 person dealing in, transporting, or storing special fuel
2 must be open and subject to inspection by the department or
3 its authorized representative during business hours in order
4 to ascertain the amount of license tax due.

5 (3) The department may physically inspect terminals,
6 dyes, dyeing equipment, storage facilities, and downstream
7 storage facilities. A person who purposely or knowingly
8 refuses to permit an inspection authorized by this section
9 is guilty of a misdemeanor punishable by a fine not to
10 exceed \$500 UPON CONVICTION FOR THE FIRST OFFENSE, NOT TO
11 EXCEED \$1,000 UPON CONVICTION FOR THE SECOND OFFENSE, AND
12 NOT TO EXCEED \$2,000 or--imprisonment--for--a--term--not--to
13 exceed 60 days--or--both FOR EACH SUBSEQUENT CONVICTION. Each
14 refusal is a separate offense."

15 **Section 15.** Section 15-70-356, MCA, is amended to read:

16 "15-70-356. (Effective January 1, 1994) Refund or
17 credit authorized. (1) A person who purchases and uses any
18 special fuel on which the Montana special fuel license tax
19 has been paid for operating stationary special fuel engines,
20 tractors used off the public highways and streets, or for
21 any commercial use other than operating vehicles upon any of
22 the public highways or streets of this state is allowed a
23 refund of the amount of tax paid directly or indirectly on
24 the special fuel so used. The refund may not exceed the tax
25 paid or to be paid to the state.

1 (2) The United States government, the state of Montana,
2 any other state, or any county, incorporated city, town, or
3 school district of this state is entitled to a refund of the
4 taxes paid on special fuel regardless of the use of the
5 special fuel.

6 ~~(2)~~(3) A distributor who pays the special fuel license
7 tax to this state erroneously is allowed a credit or refund
8 of the amount of tax paid.

9 ~~(3)--A distributor who sells special fuel that is not~~
10 ~~subject to taxation under 15-70-343 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
23 (4)(a), any amount collected on the accounts declared
24 worthless must be reported to the department and the tax due
25 must be prorated on the collected amount and must be paid to

1 the department.

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

5 (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 15-70-351, the department shall authorize the credit
12 or refund."

13 **Section 16.** Section 15-70-361, MCA, is amended to read:

14 "15-70-361. (Effective January 1, 1994) Required
15 records. (1) Special Except as provided in subsection (5),
16 special fuel purchased and delivered into bulk storage for
17 use in motor vehicles on public roads and nonhighway use
18 must be fully accounted for by detailed withdrawal records
19 to accurately show the manner in which it was used. Special
20 fuel on hand, determined by actual measurement, must be
21 deducted from a claim and must be reported as an opening
22 inventory on the next claim.

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

1 claimed.

2 (3) When a highway use of special fuel is not deducted
3 from the claim, the applicant shall substantiate purchases
4 of special fuel and miles traveled for licensed motor
5 vehicles upon request of the department of transportation.

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

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

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

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

18 (5) The United States government, the state of Montana,
19 any other state, or any county, incorporated city, town, or
20 school district of this state is not required to keep
21 dispersal records in order to claim a refund of special fuel
22 taxes.

23 ~~t5~~(6) An exporter or any other person who transports
24 special fuel out of Montana for sale, use, or consumption
25 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."

Section 17. Section 15-70-364, MCA, is amended to read:

"15-70-364. (Effective January 1, 1994) 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 or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state, 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."

Section 18. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory

appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due,

that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 19. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) ~~sections 15-70-302 through 15-70-307;~~

~~(e) sections 15-70-311 through 15-70-314~~ Title 15, chapter 70, parts 2 and 3;

~~(f)~~ (e) sections 15-71-101 through 15-71-105;

~~(g)~~ (f) section 61-3-502(1);

~~(h)~~ (g) sections 61-10-201, 61-10-203, 61-10-206,

61-10-209, and 61-10-211 through 61-10-215;

~~††~~(h) sections 61-10-222 through 61-10-224;

~~††~~(i) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section."

NEW SECTION. Section 20. Repealer. Sections 15-70-309 and 15-70-315, MCA, are repealed.

NEW SECTION. Section 21. Effective dates --
retroactive applicability. (1) [Sections 1, 18, and 22 and this section] are effective on passage and approval.

(2) [Sections 2 through 17, 19, and 20] are effective January 1, 1994.

NEW SECTION. Section 22. Retroactive applicability.
[Sections 1 and 18] apply retroactively, within the meaning of 1-2-109, to July 1, 1993.

-End-

HOUSE BILL NO. 15
INTRODUCED BY LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the

provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) \$16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) \$54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) \$6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid

1 interstate system and the federal-aid primary system;

2 (ii) 40% in the ratio that the rural population in each
3 county outside incorporated cities and towns bears to the
4 total rural population in the state outside incorporated
5 cities and towns;

6 (iii) 20% in the ratio that the land area of each county
7 bears to the total land area of the state;

8 (c) \$10,389,000 must be divided among the incorporated
9 cities and towns in the following manner:

10 (i) 50% of the sum in the ratio that the population
11 within the corporate limits of the city or town bears to the
12 total population within corporate limits of all the cities
13 and towns in Montana;

14 (ii) 50% in the ratio that the city or town street and
15 alley mileage, exclusive of the federal-aid interstate
16 system and the federal-aid primary system, within corporate
17 limits bears to the total street and alley mileage,
18 exclusive of the federal-aid interstate system and
19 federal-aid primary system, within the corporate limits of
20 all cities and towns in Montana.

21 (2) All funds allocated by this section to counties,
22 cities, and towns must be used for the construction,
23 reconstruction, maintenance, and repair of rural roads or
24 city or town streets and alleys or for the share that the
25 city, town, or county might otherwise expend for

1 proportionate matching of federal funds allocated for the
2 construction of roads or streets that are part of the
3 federal-aid primary or secondary highway system or urban
4 extensions to those systems, except that the governing body
5 of a town or third-class city, as defined in 7-1-4111, may
6 each year expend no more than 25% of the funds allocated to
7 that town or third-class city for the purchase of capital
8 equipment and supplies to be used for the maintenance and
9 repair of town or third-class city streets and alleys.

10 (3) All funds allocated by this section to counties,
11 cities, and towns must be disbursed to the lowest
12 responsible bidder according to applicable bidding
13 procedures followed in all cases in which the contract for
14 construction, reconstruction, maintenance, or repair is in
15 excess of \$4,000.

16 (4) For the purposes of this section in which
17 distribution of funds is made on a basis related to
18 population, the population must be determined by the last
19 preceding official federal census.

20 (5) For the purposes of this section in which
21 determination of mileage is necessary for distribution of
22 funds, it is the responsibility of the cities, towns, and
23 counties to furnish to the department of transportation a
24 yearly certified statement indicating the total mileage
25 within their respective areas applicable to this chapter.

1 All mileage submitted is subject to review and approval by
2 the department of transportation.

3 (6) Except by a town or third-class city as provided in
4 subsection (2), the funds authorized by this section may not
5 be used for the purchase of capital equipment.

6 (7) Funds authorized by this section must be used for
7 construction and maintenance programs only."

8 **Section 2.** Section 15-70-301, MCA, is amended to read:

9 "15-70-301. Definitions. As used in this part, the
10 following definitions apply:

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

14 (2) ~~"Authorisation"-means-an--uncanceled--special--fuel~~
15 ~~tax-prepaid-authorization-issued-by-the-department-~~

16 ~~†3†~~ "Bond" means:

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

23 (b) a deposit with the department by the special fuel
24 user, under terms and conditions the department may
25 prescribe, of certificates of deposit or irrevocable letters

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

3 ~~†4†~~(3) "Bulk delivery" means placing special fuel not
4 intended for resale in storage or containers. The term does
5 not mean special fuel delivered into the supply tank of a
6 motor vehicle.

7 ~~†5†~~(4) "Cardtrol" or "keylock" means any unique device
8 intended to allow access to a special fuel dealer's
9 unattended pump or dispensing unit for the purpose of
10 delivery of special fuel to an authorized user of the unique
11 device.

12 ~~†6†~~(5) "Department" means the department of
13 transportation.

14 ~~†7†~~(6) (a) "Distributed" means, at the time special
15 fuel is withdrawn, the withdrawal from a storage tank, a
16 refinery, or a terminal storage in this state for sale or
17 use in this state or for the transportation other than by
18 pipeline to another refinery in this state or a pipeline
19 terminal in this state of the following:

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

23 (ii) special fuel transferred from a refinery or
24 pipeline terminal in this state and placed in tanks at the
25 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)~~(7) "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)~~(8) "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)~~(9) "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)~~(10) "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)~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(13)~~(12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~(13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~(14) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

1 (a) built and maintained with appropriated funds of the
2 United States, the state of Montana, or any political
3 subdivision of the state;

4 (b) dedicated to public use;

5 (c) acquired by eminent domain; or

6 (d) acquired by adverse use by the public, jurisdiction
7 having been assumed by the state or any political
8 subdivision of the state.

9 ~~†16†~~(15) "Special fuel" means those combustible gases
10 and liquids commonly referred to as diesel fuel or any other
11 volatile liquid of less than 46 degrees A.P.I. (American
12 petroleum institute) gravity test, except liquid petroleum
13 gas, when actually sold for use in motor vehicles operating
14 upon the public roads and highways within the state of
15 Montana.

16 ~~†17†~~(16) "Special fuel dealer" means:

17 (a) any person in the business of handling special fuel
18 who delivers any part of the fuel into the fuel supply tank
19 or tanks of a motor vehicle not then owned or controlled by
20 the person;

21 (b) any person who sells special fuel at a location
22 unattended by the dealer through an unattended pump by use
23 of a cardtrol, keylock, or similar device; or

24 (c) any person who provides any facility, with or
25 without attended services, from which more than one special

1 fuel user obtains special fuel for use in the fuel supply
2 tank of a motor vehicle not then controlled by the dealer.

3 ~~†18†~~(17) "Special fuel user" means any person other than
4 a county, incorporated city or town, or school district of
5 this state who consumes in this state special fuel for the
6 operation of motor vehicles owned or controlled by the
7 person upon the highways of this state.

8 ~~†19†~~(18) "Use", when the term relates to a special fuel
9 user, means the consumption by a special fuel user of
10 special fuels in the operation of a motor vehicle on the
11 highways of this state."

12 **Section 3.** Section 15-70-302, MCA, is amended to read:

13 "15-70-302. Special fuel user's permits required --
14 exceptions. (1) A special fuel user shall obtain a special
15 fuel user's permit annually from the department, prior to
16 the use of special fuel for the operation of a motor vehicle
17 or vehicles in this state, ~~a special fuel user's permit~~ in
18 excess of 26,000 pounds gross vehicle weight or registered
19 gross vehicle weight. Except as provided in subsection (3),
20 a special fuel user shall at all times display the original
21 or a reproduced copy of the permit in each special fuel
22 vehicle operated by the special fuel user upon the public
23 roads and highways. The permit or copy must be exhibited for
24 inspection on request of any motor carrier services division
25 employee, Montana highway patrol officer, authorized

1 employee of the department, or any other law enforcement
2 officer. The special fuel user is responsible for
3 reproducing clear and legible copies of the permit.

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

14 (3) A special fuel user need not display the original
15 or reproduced copy of the special fuel user's permit as
16 required by subsection (1) if the special fuel user is
17 registered and licensed pursuant to the International Fuel
18 Tax Agreement as authorized by 15-70-121 and the vehicle
19 displays a license or decal issued pursuant to the
20 agreement.

21 ~~{4}--A person whose use of special fuel is in special~~
22 ~~fuel vehicles up to 26,000 pounds gross vehicle weight or~~
23 ~~registered gross vehicle weight shall obtain annually from~~
24 ~~the department an authorization, as provided in 15-70-309,~~
25 ~~if the special fuel is not subject to taxation under~~

1 ~~15-70-343,~~"

2 **Section 4.** Section 15-70-303, MCA, is amended to read:

3 "15-70-303. Application for permit or authorization.

4 (1) Application for a special fuel user's permit or
5 authorization must be made to the department unless
6 otherwise provided in this part.

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

10 **Section 5.** Section 15-70-304, MCA, is amended to read:

11 "15-70-304. Bonding, release of surety, and additional
12 bond. (1) Except as provided in this section, a special fuel
13 user's permit may not be issued to a person or continued in
14 force unless the person has furnished a bond, as defined in
15 15-70-301 and in a form as the department may require, to
16 secure its compliance with this part and the payment of any
17 taxes, interest, and penalties due and to become due under
18 this part. The department shall waive the bond requirement
19 of a special fuel user not subject to the provisions of
20 subsection (2)(a) or (2)(b).

21 (2) The total amount of the bond or bonds required of a
22 special fuel user must be equivalent to twice the special
23 fuel user's estimated quarterly tax payments as provided in
24 this part, determined as the department considers proper;
25 however, the total amount of the bond or bonds may not be

1 less than:

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

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

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

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

9 (3) A surety on a bond furnished by a special fuel
10 user, as provided in this section, must be released and
11 discharged from any liability to the state accruing on the
12 bond after the expiration of 30 days from the date when the
13 surety has lodged with the department a written request to
14 be released and discharged, but this provision may not
15 operate to relieve, release, or discharge the surety from
16 any liability already accrued or that accrues before the
17 expiration of the 30-day period. The department shall,
18 promptly upon receiving a release request, notify the
19 special fuel user who furnished the bond, and unless the
20 special fuel user, on or before the expiration of the 30-day
21 period, files a new bond in accordance with the requirements
22 of this section or makes a deposit in lieu of a bond as
23 provided in 15-70-301(3)(2), the department shall cancel the
24 special fuel user's permit.

25 (4) The department may require a special fuel user to

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

11 **Section 6.** Section 15-70-305, MCA, is amended to read:

12 "15-70-305. Issuance of permit or--authorization --
13 grounds for refusal -- hearing. (1) Except as provided in
14 subsection (4)(3), upon receipt of the application and bond
15 in proper form, the department shall issue to the applicant
16 a permit to operate as a special fuel user. Each special
17 fuel user's permit is valid until suspended or revoked for
18 cause or otherwise canceled.

19 (2)--Except--as-provided-in-subsection-(4)--upon-receipt
20 of-the-application-in--proper--form--the--department--shall
21 issue--to--the--applicant--an--authorization--A-holder-of-an
22 authorization-is-not-required-to-furnish--bond--as--provided
23 under--15-70-304--The-authorization-must-be-issued-annually
24 and-is-valid-from-the-date-of-its-issuance-through--December
25 31--of--the--calendar-year--unless-a-motor-vehicle-for-which

1 ~~the tax is prepaid is sold, or until--suspended--or--revoked~~
 2 ~~for cause or otherwise canceled.~~

3 ~~†3†~~(2) If the special fuel user's permit is surrendered
 4 or revoked, the special fuel user shall pay a reissuance fee
 5 of \$100.

6 ~~†4†~~(3) The department may refuse to issue a special
 7 fuel user's permit or authorization to any person:

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

11 (b) who is not the real party in interest and the
 12 permit or--authorization of the real party in interest has
 13 been revoked for cause prior to the time of filing the
 14 application; or

15 (c) upon other sufficient cause being shown.

16 (5) Before refusal to issue a permit or authorization,
 17 the department shall grant the applicant a hearing and shall
 18 grant the applicant at least 10 days' written notice of the
 19 time and place of hearing.

20 (6) A special fuel user's permit or authorization is
 21 not transferable."

22 **Section 7.** Section 15-70-306, MCA, is amended to read:

23 "15-70-306. Revocation, suspension, and cancellation.

24 (1) The department may revoke the permit or authorization of
 25 any special fuel user or any special fuel vehicle permit for

1 reasonable cause. Before revoking a permit or authorization,
 2 the department shall notify the permittee of its intention,
 3 by certified mail addressed to the permittee's last-known
 4 address shown in the files of the department, requiring the
 5 permittee to appear before the department on a day and hour
 6 specified in the notice, not more than 30 days or less than
 7 10 days from date of notice, and show cause, if any, why the
 8 permit or authorization should not be revoked--provided,
 9 however--that. However, at any time prior to and pending the
 10 hearing, the department may in the exercise of reasonable
 11 discretion suspend the permit or authorization.

12 (2) Upon revocation of a permit by the department of
 13 any--permit--or--authorization, the holder shall immediately
 14 surrender the permit or authorization to the department for
 15 cancellation."

16 **Section 8.** Section 15-70-311, MCA, is amended to read:

17 "15-70-311. Special fuel user's temporary trip permits
 18 -- nonresident agricultural harvesting equipment special
 19 fuel permit. (1) Any person operating a special fuel-powered
 20 vehicle over 26,000 pounds gross vehicle weight or
 21 registered gross vehicle weight upon the public roads and
 22 highways of this state who fails or neglects to carry in the
 23 vehicle a valid special fuel vehicle permit, as provided by
 24 15-70-302, is required to purchase a special fuel user's
 25 temporary trip permit. The permits must be issued by motor

1 carrier services division employees, Montana highway patrol
2 officers, and other enforcing agents that the department may
3 prescribe by order or rule.

4 (2) Any nonresident upon entering the state with
5 agricultural harvesting equipment that is over 26,000 pounds
6 gross vehicle weight or registered gross vehicle weight and
7 that is powered by special fuel and operating upon the
8 public roads and highways of this state who fails or
9 neglects to carry in or on equipment a valid special fuel
10 vehicle permit, as provided by 15-70-302, is required to
11 purchase a nonresident agricultural harvesting equipment
12 special fuel permit. The permit must be issued by motor
13 carrier services division employees, Montana highway patrol
14 officers, and other enforcing agents that the department may
15 prescribe by order or rule.

16 ~~{3}--A--resident--or--nonresident--operating--a--special~~
17 ~~fuel-powered-vehicle--up--to--26,000--pounds--gross--vehicle~~
18 ~~weight--or--registered-gross-vehicle-weight-in-this-state-is~~
19 ~~exempt-from-obtaining-an-authorization--under--15-70-309--if~~
20 ~~the-special-fuel-tax-is-paid-at-the-time-of-purchase."~~

21 **Section 9.** Section 15-70-321, MCA, is amended to read:

22 "15-70-321. Tax on diesel fuel and volatile liquids.
23 (1) The department shall, under the provisions of rules
24 issued by it, collect or cause to be collected from the
25 owners or operators of motor vehicles a tax, as provided in

1 subsection (2);

2 (a) for each gallon of undyed diesel fuel or other
3 volatile liquid, except liquid petroleum gas, of less than
4 46 degrees A.P.I. (American petroleum institute) gravity
5 test when actually sold or used to produce motor power to
6 operate motor vehicles upon the public highways or streets
7 within the state; and

8 (b) for each gallon of diesel fuel or other volatile
9 liquid, except liquid petroleum gas, of less than 46 degrees
10 A.P.I. (American petroleum institute) gravity test when
11 actually sold or used in motor vehicles, motorized
12 equipment, and the internal combustion of any engines,
13 including stationary engines, used in connection with any
14 work performed under any contracts pertaining to the
15 construction, reconstruction, or improvement of any highway
16 or street and their appurtenances awarded by any public
17 agencies, including federal, state, county, municipal, or
18 other political subdivisions.

19 (2) The tax imposed in subsection (1) is:

20 (a) 24 cents per gallon beginning July 1, 1993;

21 (b) 24 3/4 cents per gallon beginning January 1, 1994;

22 and

23 (c) 27 3/4 cents per gallon beginning July 1, 1994."

24 **Section 10.** Section 15-70-324, MCA, is amended to read:

25 "15-70-324. Examination of records -- enforcement of

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

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

17 (3) For the purpose of enforcing the provisions of this
18 part, the fact that a special fuel user has placed or
19 received special fuel into storage or dispensing equipment
20 designed to fuel motor vehicles is prima facie evidence that
21 all of the special fuel has been delivered by the special
22 fuel user into the fuel supply tanks of motor vehicles and
23 consumed in the operation of motor vehicles upon the
24 highways unless the contrary is established by satisfactory
25 evidence.

1 (4) The department may establish vehicle inspection
2 sites and may stop, detain, and inspect vehicles. A person
3 who purposely or knowingly refuses to permit an inspection
4 authorized by this section is guilty of a misdemeanor
5 punishable by a fine not to exceed \$500 UPON CONVICTION FOR
6 THE FIRST OFFENSE, NOT TO EXCEED \$1,000 UPON CONVICTION FOR
7 THE SECOND OFFENSE, AND NOT TO EXCEED \$2,000 ~~or imprisonment~~
8 ~~for a term not to exceed 60 days, or both~~ FOR EACH
9 SUBSEQUENT CONVICTION. Each refusal is a separate offense.

10 ~~††~~(5) The department shall, upon request from
11 officials to whom are entrusted the enforcement of the
12 special fuel tax law of any other state, the District of
13 Columbia, the United States, its territories and
14 possessions, or the provinces of Canada, forward to the
15 officials any information ~~which~~ that it may have relative to
16 the receipt, storage, delivery, sale, use, or other
17 disposition of special fuel by any special fuel user,
18 provided the other state or states furnish like information
19 to this state."

20 **Section 11.** Section 15-70-330, MCA, is amended to read:

21 ~~"15-70-330. Penalties for refusal or failure to file~~
22 ~~return or pay tax when due~~ Special fuel penalties. (1) In
23 the case of any a special fuel user who refuses or fails to
24 file a return required by this part within the time
25 prescribed by 15-70-103 and 15-70-325, there is 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 of a month during which the refusal or failure continues; provided, however, that if any special fuel user establishes to the satisfaction of the department that 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) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, there must be added to the amount due and unpaid interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

(3) (A) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public highways or streets within the state unless the fuel is subject to taxation under 15-70-321(1)(b) OR THE USE IS PERMITTED PURSUANT TO RULES ADOPTED UNDER SUBSECTION (3)(B). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public highways or streets within the state in violation of this subsection is a misdemeanor punishable by a fine not to exceed \$500 UPON CONVICTION FOR THE FIRST OFFENSE, NOT TO EXCEED \$1,000 UPON CONVICTION FOR

THE SECOND OFFENSE, AND NOT TO EXCEED \$2,000 or imprisonment for a term not to exceed 60 days, or both FOR EACH SUBSEQUENT CONVICTION. Each use is a separate offense.

(B) THE DEPARTMENT SHALL ADOPT AND ENFORCE REASONABLE RULES FOR THE MOVEMENT OF OFF-HIGHWAY VEHICLES TRAVELING FROM ONE LOCATION TO ANOTHER ON PUBLIC HIGHWAYS, PUBLIC ROADS, OR STREETS WHEN USING DYED FUEL OR NONTAXED FUEL."

Section 12. Section 15-70-341, MCA, is amended to read:

"15-70-341. (Effective January 1, 1994) 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~~(e)~~(7)(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."

Section 13. Section 15-70-343, MCA, is amended to read:

"15-70-343. (Effective January 1, 1994) 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~~ imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon

which the special fuel license tax has not been paid by any other distributor.

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

(a) ~~to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state~~ died at a refinery or terminal for off-highway use; or

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

~~(c) sold~~ for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined."

Section 14. Section 15-70-349, MCA, is amended to read:

"15-70-349. (Effective January 1, 1994) 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.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 UPON CONVICTION FOR THE FIRST OFFENSE, NOT TO EXCEED \$1,000 UPON CONVICTION FOR THE SECOND OFFENSE, AND NOT TO EXCEED \$2,000 or imprisonment for a term not to exceed 60 days or both FOR EACH SUBSEQUENT CONVICTION. Each refusal is a separate offense."

Section 15. Section 15-70-356, MCA, is amended to read:

"15-70-356. (Effective January 1, 1994) 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) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

~~{2}~~(3) 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 15-70-343 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 (4)(a), 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 15-70-351, the department shall authorize the credit or refund."

Section 16. Section 15-70-361, MCA, is amended to read:

"15-70-361. (Effective January 1, 1994) Required records. (1) Special Except as provided in subsection (5), 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) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep

1 dispersal records in order to claim a refund of special fuel
2 taxes.

3 (5)(6) An exporter or any other person who transports
4 special fuel out of Montana for sale, use, or consumption
5 outside Montana shall maintain detailed and current records
6 of withdrawal, transportation, ownership, and delivery of
7 the special fuel to destinations outside Montana as required
8 by the department."

9 **Section 17.** Section 15-70-364, MCA, is amended to read:

10 "15-70-364. (Effective January 1, 1994) Application for
11 refund or credit -- filing -- correction by department. (1)
12 The application for a refund must be a signed statement on a
13 form furnished by the department of transportation. Except
14 for a claim for a credit for taxes paid on unpaid accounts
15 or taxes paid by the United States government, the state of
16 Montana, any other state, or any county, incorporated city,
17 town, or school district of this state, the form must be
18 accompanied by the original bulk delivery invoice or
19 invoices issued to the claimant at the time of each purchase
20 and delivery and must show the total amount of special fuel
21 purchased, the total amount of special fuel on which a
22 refund is claimed, and the amount of the tax claimed for
23 refund. A claim for a credit for taxes paid on accounts for
24 which the distributor did not receive compensation must be
25 accompanied by documents or copies of documents showing that

1 the accounts were worthless and claimed as bad debts on the
2 distributor's federal income tax return. Any further
3 information pertaining to a claim must be furnished as
4 required by the department.

5 (2) A bulk delivery invoice issued by a dealer for a
6 sale that does not qualify as a bulk delivery, as defined in
7 15-70-301, is not valid for refund purposes.

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

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

19 **Section 18.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --
21 requisites for validity. (1) A statutory appropriation is an
22 appropriation made by permanent law that authorizes spending
23 by a state agency without the need for a biennial
24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136;

82-11-161; 85-1-220; 85-2-707; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)"

Section 19. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

- (a) part 1, chapter 10, of this title;
- (b) part 3, chapter 4, of this title;
- (c) sections 15-24-201 through 15-24-205;
- (d) ~~sections 15-70-302 through 15-70-307;~~

1 ~~{e}--sections--15-70-311--through--15-70-314~~ Title 15,
2 chapter 70, parts 2 and 3;
3 ~~{f}(e)~~ sections 15-71-101 through 15-71-105;
4 ~~{g}(f)~~ section 61-3-502(1);
5 ~~{h}(g)~~ sections 61-10-201, 61-10-203, 61-10-206,
6 61-10-209, and 61-10-211 through 61-10-215;
7 ~~{i}(h)~~ sections 61-10-222 through 61-10-224;
8 ~~{j}(i)~~ sections 61-10-231 through 61-10-233.
9 (2) These employees may not arrest for violations other
10 than specified in this section."
11 NEW SECTION. Section 20. Repealer. Sections 15-70-309
12 and 15-70-315, MCA, are repealed.
13 NEW SECTION. Section 21. Effective dates --
14 retroactive applicability. (1) [Sections 1, 18, and 22 and
15 this section] are effective on passage and approval.
16 (2) [Sections 2 through 17, 19, and 20] are effective
17 January 1, 1994.
18 NEW SECTION. Section 22. Retroactive applicability.
19 [Sections 1 and 18] apply retroactively, within the meaning
20 of 1-2-109, to July 1, 1993.

-End-

HOUSE BILL NO. 15

INTRODUCED BY LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR FUEL; STATUTORILY APPROPRIATING MOTOR FUEL TAXES TO COUNTIES AND INCORPORATED CITIES AND TOWNS; CLARIFYING THE SPECIAL FUEL LICENSE TAX RATE; EXEMPTING DYED SPECIAL FUEL FROM TAXATION; PROVIDING THAT DYED FUEL MAY BE USED FOR OFF-HIGHWAY USE; PROVIDING A TAX REFUND FOR SPECIAL FUEL USED OFF-HIGHWAY; PROVIDING A REFUND FOR SPECIAL FUEL USED BY GOVERNMENT AGENCIES; REVISING THE ENFORCEMENT OF MOTOR FUEL LAWS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS OF THE MOTOR FUELS LAWS; AMENDING SECTIONS 15-70-101, 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-311, 15-70-321, 15-70-324, 15-70-330, 15-70-341, 15-70-343, 15-70-349, 15-70-356, 15-70-361, 15-70-364, 17-7-502, AND 61-12-206, MCA; REPEALING SECTIONS 15-70-309 AND 15-70-315, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. **Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the

THERE ARE NO CHANGES IN THIS BILL.
PLEASE REFER TO THIRD READING (BLUE)
FOR COMPLETE TEXT.