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House BILL NO. 141

INTRODUCED BY

Robert Stang

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING TERMS APPLICABLE TO THE TAXATION OF GASOLINE, DIESEL, AND SPECIAL FUEL; PROVIDING AN ALLOWANCE FOR COLLECTING TAXES ON MOTOR FUELS RATHER THAN FOR THE EVAPORATION OF FUEL; ELIMINATING THE REQUIREMENT FOR RECORDKEEPING FOR SEPARATE STORAGE TANKS; CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION HAS 120 WORKING DAYS IN WHICH TO APPROVE OR REJECT A CLAIM FOR A REFUND; ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS FROM THE TRIBAL MOTOR FUELS ADMINISTRATION ACCOUNT; LIMITING THE USE OF RESTRICTIVE ENDORSEMENTS ON NEGOTIABLE INSTRUMENTS; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT DELINQUENT MOTOR FUEL TAXES; AMENDING SECTIONS 15-70-201, 15-70-205, 15-70-222, 15-70-226, AND 15-70-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean

1 gasoline delivered into the supply tank of a motor vehicle.

2 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
3 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
4 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
5 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
6 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
7 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
8 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
9 distributor's license.

10 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
11 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

12 (6) "Distributor" means:

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

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

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

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

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

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

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

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

26 (9) (a) "Gasoline" includes:

27 (i) all products commonly or commercially known or sold as gasolines, including casinghead
28 gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected
29 hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating
30 internal combustion engines; and

1 (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the
2 additive's classifications or uses.

3 (b) Gasoline does not include special fuels as defined in 15-70-301.

4 (10) "Import" ~~includes and~~ means to receive into any person's possession or custody first after its
5 arrival and coming to rest at destination within the state of any gasoline shipped or transported into this
6 state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

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

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

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

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

15 **Section 2.** Section 15-70-205, MCA, is amended to read:

16 "**15-70-205. (Temporary) Distributor's statement and payment -- confidentiality.** (1) Each
17 distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the
18 department of transportation of all gasoline distributed and received by the distributor in this state during
19 the preceding calendar month and containing any other information that the department may reasonably
20 require in order to administer the gasoline license tax law. The statement must be accompanied by a
21 payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under
22 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for
23 ~~evaporation and other loss of gasoline distributed by the distributor~~ collecting the tax; however, an. An
24 allowance may not be deducted from the 3-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
28 not publish or otherwise disseminate information contained in a statement required under this section in
29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
30 construed to prohibit:

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

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

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

8 (d) the inspection by the commissioner of internal revenue of the United States or the proper officer
9 or any representative of either officer of the report or return of any distributor or the furnishing to the
10 officer or authorized representative of an abstract of the report or return, but permission must be granted
11 or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the
12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction.
15 (Terminates on occurrence of contingency--sec. 17, Ch. 642, L. 1993.)

16 **15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment --**
17 **confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true
18 signed statement to the department of transportation of all gasoline distributed and received by the
19 distributor in this state during the preceding calendar month and containing any other information that the
20 department may reasonably require in order to administer the gasoline license tax law. The statement must
21 be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit
22 issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an
23 allowance for ~~evaporation and other loss of gasoline distributed by the distributor~~ collecting the tax;
24 ~~however, an.~~ An allowance may not be deducted from the 2-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
28 not publish or otherwise disseminate information contained in a statement required under this section in
29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
30 construed to prohibit:

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

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

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

8 (d) the inspection by the commissioner of internal revenue of the United States or the proper officer
9 or any representative of either officer of the report or return of any distributor or the furnishing to the
10 officer or authorized representative of an abstract of the report or return, but permission must be granted
11 or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the
12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction."
15

16 **Section 3.** Section 15-70-222, MCA, is amended to read:

17 "**15-70-222. Required records.** (1) Gasoline purchased and delivered into bulk storage for use in
18 motor vehicles on public roads and for nonhighway use must be fully accounted for by detailed withdrawal
19 records to accurately show the manner in which the gasoline was used. Gasoline on hand, determined by
20 actual measurement, ~~shall~~ must be deducted from a claim and ~~shall~~ must be reported as an opening
21 inventory on the next claim.

22 ~~(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and~~
23 ~~in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery.~~
24 ~~No further record is required, provided refunds are claimed only on the number of gallons delivered into the~~
25 ~~unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles~~
26 ~~will invalidate this method of determining refundable gallonage.~~

27 ~~(3)(2)~~ Special storage facilities used for certain periods must be identified and explained. If ~~such~~
28 special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records
29 will be required other than purchase invoices showing the delivery into ~~such~~ special storage.

30 ~~(4)(3)~~ Service stations, bulk dealers, and marinas must prepare a separate and complete invoice

1 for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

2 ~~(5)~~(4) When no highway use of gasoline is deducted from the claim, the applicant ~~must~~ shall
3 substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the
4 department of transportation.

5 ~~(6)~~(5) Any person who operates a licensed motor vehicle on and off the public roads for commercial
6 purposes may claim a refund of the state license tax on the gasoline used to operate the vehicle on roads
7 or property in private ownership if ~~such~~ the person has maintained the following records:

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

9 (b) total gallons of gasoline used in each vehicle;

10 (c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels
11 purchased at service stations or received from other sources.

12 ~~(7)~~(6) An exporter or any other person who transports gasoline out of Montana for sale, use, or
13 consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal,
14 transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by
15 the department of transportation."
16

17 **Section 4.** Section 15-70-226, MCA, is amended to read:

18 "**15-70-226. Approval or rejection of claim.** (1) The department ~~shall have~~ has 120 working days
19 after receiving the claim to approve or reject it. If approved, the department of transportation shall issue
20 a credit in lieu of refund for the amount of the claim if the claimant is a distributor, ~~for.~~ For all other
21 persons, a warrant ~~shall~~ must be drawn upon the state treasurer for the amount of the claim.

22 (2) If the department determines that any claim has been fraudulently presented or is supported
23 by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully
24 false and made for the purpose of misleading, the department shall reject ~~such~~ the claim in full. If a claim
25 is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year."
26

27 **Section 5.** Section 15-70-235, MCA, is amended to read:

28 "**15-70-235. Tribal motor fuels administration account.** (1) There is a special revenue account
29 called the tribal motor fuels administration account.

30 (2) The administrative expenses and refund amounts deducted by the department of transportation

1 under 15-70-234(3) must be deposited in the tribal motor fuels administration account.

2 (3) The tribal motor fuels administration account may be expended by the department of
3 transportation or by the department of justice only for the purposes of administering the motor fuels tax
4 and providing refunds under 15-70-234."

5
6 **NEW SECTION. Section 6. Payment of taxes by negotiable instrument.** The department of
7 transportation is not bound by a special, qualified, conditional, or restrictive endorsement placed on a
8 negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability
9 or other liabilities unless:

10 (1) the debtor and the department have previously entered into a written agreement that specifies
11 the amount of the debtor's liability; and

12 (2) the amount tendered is in accordance with the written agreement.

13
14 **NEW SECTION. Section 7. Authority to collect delinquent motor fuel taxes -- offset -- hearing.**

15 (1) The department of transportation shall collect motor fuel taxes that are delinquent as determined under
16 this chapter.

17 (2) To collect delinquent taxes after the time for appeal has expired, the department may direct the
18 offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions
19 of 25-13-614 and retirement benefits.

20 (3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any
21 offset by the department.

22 (4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required
23 before funds are available for offset.

24 (5) The department shall provide the taxpayer with notice of the right to request a hearing under
25 the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department's
26 intent to file a claim on behalf of the taxpayer. A request for hearing must be made within 30 days of the
27 date of the notice. If a hearing is requested, it must be held within 20 days of the request.

28
29 **NEW SECTION. Section 8. Codification instruction.** [Sections 6 and 7] are intended to be codified
30 as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply

1 to [sections 6 and 7].

2

3 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
5 act].

6

7 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0141, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying terms applicable to the taxation of gasoline, diesel, and special fuel; providing an allowance for collecting taxes on motor fuels rather than for the evaporation of fuel; eliminating the requirement for record keeping for separate storage tanks; clarifying that the Department of Transportation has 120 working days in which to approve or reject a claim for a refund; allowing the Department of Justice to expend funds from the tribal motor fuels administration account; limiting the use of restrictive endorsements on negotiable instruments; authorizing the Department of Transportation to collect delinquent motor fuel taxes.

ASSUMPTIONS:

1. Provision of an allowance for tax collection in lieu of an evaporation allowance would not result in a change in current tax revenues.
2. Elimination of the "two-tank" refund option would affect approximately 159 accounts. These accounts would be required to file using one of two alternative options available. The tax revenues collected would not materially change by these 159 accounts moving to one of the remaining two refund options.
3. There is currently a statutory appropriation pursuant to 18-11-112, MCA, for expenditure of funds in the tribal motor fuels administration account. HB0141 would merely authorize a second state agency to expend from this account but would not affect the amount of funds available for this purpose.

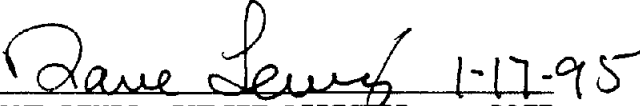
FISCAL IMPACT:

Expenditures:

There will be no net impact on expenditures.

Revenues:

There will be no material impact on revenues.


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


ROBERT STORY, PRIMARY SPONSOR DATE

Fiscal Note for HB0141, as introduced

HB 141

HOUSE BILL NO. 141

INTRODUCED BY STORY

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING TERMS APPLICABLE TO THE TAXATION OF GASOLINE, DIESEL, AND SPECIAL FUEL; PROVIDING AN ALLOWANCE FOR COLLECTING TAXES ON MOTOR FUELS RATHER THAN FOR THE EVAPORATION OF FUEL; ELIMINATING THE REQUIREMENT FOR RECORDKEEPING FOR SEPARATE STORAGE TANKS; CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION HAS 120 WORKING DAYS IN WHICH TO APPROVE OR REJECT A CLAIM FOR A REFUND; ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS FROM THE TRIBAL MOTOR FUELS ADMINISTRATION ACCOUNT; LIMITING THE USE OF RESTRICTIVE ENDORSEMENTS ON NEGOTIABLE INSTRUMENTS; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT DELINQUENT MOTOR FUEL TAXES; AMENDING SECTIONS 15-70-201, 15-70-205, 15-70-222, 15-70-226, AND 15-70-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES."

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

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean

1 gasoline delivered into the supply tank of a motor vehicle.

2 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
3 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
4 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
5 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
6 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
7 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
8 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
9 distributor's license.

10 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
11 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

12 (6) "Distributor" means:

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

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

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

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

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

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

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

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

26 (9) (a) "Gasoline" includes:

27 (i) all products commonly or commercially known or sold as gasolines, including casinghead
28 gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected
29 hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating
30 internal combustion engines; and

1 (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the
 2 additive's classifications or uses.

3 (b) Gasoline does not include special fuels as defined in 15-70-301.

4 (10) "Import" ~~includes and~~ means to receive into any person's possession or custody first after its
 5 arrival and coming to rest at destination within the state of any gasoline shipped or transported into this
 6 state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

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

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

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

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

14

15 **Section 2.** Section 15-70-205, MCA, is amended to read:

16 **"15-70-205. (Temporary) Distributor's statement and payment -- confidentiality.** (1) Each
 17 distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the
 18 department of transportation of all gasoline distributed and received by the distributor in this state during
 19 the preceding calendar month and containing any other information that the department may reasonably
 20 require in order to administer the gasoline license tax law. The statement must be accompanied by a
 21 payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under
 22 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for
 23 ~~evaporation and other loss of gasoline distributed by the distributor collecting the tax; however, an.~~ An
 24 allowance may not be deducted from the 3-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
 28 not publish or otherwise disseminate information contained in a statement required under this section in
 29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
 30 construed to prohibit:

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

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

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

8 (d) the inspection by the commissioner of internal revenue of the United States or the proper officer
9 or any representative of either officer of the report or return of any distributor or the furnishing to the
10 officer or authorized representative of an abstract of the report or return, but permission must be granted
11 or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the
12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction.
15 (Terminates on occurrence of contingency--sec. 17, Ch. 642, L. 1993.)

16 **15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment --**
17 **confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true
18 signed statement to the department of transportation of all gasoline distributed and received by the
19 distributor in this state during the preceding calendar month and containing any other information that the
20 department may reasonably require in order to administer the gasoline license tax law. The statement must
21 be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit
22 issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an
23 allowance for ~~evaporation and other loss of gasoline distributed by the distributor~~ collecting the tax;
24 ~~however, an~~ An allowance may not be deducted from the 2-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
28 not publish or otherwise disseminate information contained in a statement required under this section in
29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
30 construed to prohibit:

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4 or return of a distributor who brings an action to set aside or review the tax based on the report or return
5 or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

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

8 (d) the inspection by the commissioner of internal revenue of the United States or the proper officer
9 or any representative of either officer of the report or return of any distributor or the furnishing to the
10 officer or authorized representative of an abstract of the report or return, but permission must be granted
11 or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the
12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction."
15

16 **Section 3.** Section 15-70-222, MCA, is amended to read:

17 "**15-70-222. Required records.** (1) Gasoline purchased and delivered into bulk storage for use in
18 motor vehicles on public roads and for nonhighway use must be fully accounted for by detailed withdrawal
19 records to accurately show the manner in which the gasoline was used. Gasoline on hand, determined by
20 actual measurement, ~~shall~~ must be deducted from a claim and ~~shall~~ must be reported as an opening
21 inventory on the next claim.

22 ~~(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and~~
23 ~~in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery.~~
24 ~~No further record is required, provided refunds are claimed only on the number of gallons delivered into the~~
25 ~~unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles~~
26 ~~will invalidate this method of determining refundable gallonage.~~

27 ~~(3)(2)~~ Special storage facilities used for certain periods must be identified and explained. If ~~such~~
28 special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records
29 will be required other than purchase invoices showing the delivery into ~~such~~ special storage.

30 ~~(4)(3)~~ Service stations, bulk dealers, and marinas must prepare a separate and complete invoice

1 for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

2 ~~(5)(4)~~ When no highway use of gasoline is deducted from the claim, the applicant ~~must~~ shall
3 substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the
4 department of transportation.

5 ~~(6)(5)~~ Any person who operates a licensed motor vehicle on and off the public roads for commercial
6 purposes may claim a refund of the state license tax on the gasoline used to operate the vehicle on roads
7 or property in private ownership if ~~such~~ the person has maintained the following records:

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

9 (b) total gallons of gasoline used in each vehicle;

10 (c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels
11 purchased at service stations or received from other sources.

12 ~~(7)(6)~~ An exporter or any other person who transports gasoline out of Montana for sale, use, or
13 consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal,
14 transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by
15 the department of transportation."
16

17 **Section 4.** Section 15-70-226, MCA, is amended to read:

18 "**15-70-226. Approval or rejection of claim.** (1) The department ~~shall have~~ has 120 working days
19 after receiving the claim to approve or reject it. If approved, the department of transportation shall issue
20 a credit in lieu of refund for the amount of the claim if the claimant is a distributor; ~~for.~~ For all other
21 persons, a warrant ~~shall~~ must be drawn upon the state treasurer for the amount of the claim.

22 (2) If the department determines that any claim has been fraudulently presented or is supported
23 by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully
24 false and made for the purpose of misleading, the department shall reject ~~such~~ the claim in full. If a claim
25 is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year."
26

27 **Section 5.** Section 15-70-235, MCA, is amended to read:

28 "**15-70-235. Tribal motor fuels administration account.** (1) There is a special revenue account
29 called the tribal motor fuels administration account.

30 (2) The administrative expenses and refund amounts deducted by the department of transportation

1 under 15-70-234(3) must be deposited in the tribal motor fuels administration account.

2 (3) The tribal motor fuels administration account may be expended by the department of
3 transportation or by the department of justice only for the purposes of administering the motor fuels tax
4 and providing refunds under 15-70-234."

5
6 **NEW SECTION. Section 6. Payment of taxes by negotiable instrument.** The department of
7 transportation is not bound by ~~a special, qualified, conditional, or restrictive endorsement~~ **CONDITIONS**
8 **PERTAINING TO ENDORSEMENT BY THE DEPARTMENT THAT ARE** placed on a negotiable instrument by
9 the maker or drawer, tendered to the department for the payment of a tax liability or other liabilities, unless:

10 (1) the debtor and the department have previously entered into a written agreement that specifies
11 the amount of the debtor's liability; and

12 (2) the amount tendered is in accordance with the written agreement.

13
14 **NEW SECTION. Section 7. Authority to collect delinquent motor fuel taxes -- offset -- hearing.**

15 (1) The department of transportation shall collect motor fuel taxes that are delinquent as determined under
16 this chapter.

17 (2) To collect delinquent taxes after the time for appeal has expired, the department may direct the
18 offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions
19 of 25-13-614 and retirement benefits.

20 (3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any
21 offset by the department.

22 (4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required
23 before funds are available for offset.

24 (5) The department shall provide the taxpayer with notice of the right to request a hearing under
25 the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department's
26 intent to file a claim on behalf of the taxpayer. A request for hearing must be made within 30 days of the
27 date of the notice. If a hearing is requested, it must be held within 20 days of the request.

28
29 **NEW SECTION. Section 8. Codification instruction.** [Sections 6 and 7] are intended to be codified
30 as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply

1 to [sections 6 and 7].

2

3 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
5 act].

6

7 NEW SECTION. **Section 10. Effective date DATES.** (1) ~~[This act] is~~ SECTIONS 1, 2, AND 4
8 THROUGH 9 AND THIS SECTION] ARE effective on passage and approval.

9 (2) [SECTION 3] IS EFFECTIVE JANUARY 1, 1996.

10

-END-

1 HOUSE BILL NO. 141

2 INTRODUCED BY STORY

3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING TERMS APPLICABLE TO THE TAXATION OF
6 GASOLINE, DIESEL, AND SPECIAL FUEL; PROVIDING AN ALLOWANCE FOR COLLECTING TAXES ON
7 MOTOR FUELS RATHER THAN FOR THE EVAPORATION OF FUEL; ELIMINATING THE REQUIREMENT FOR
8 RECORDKEEPING FOR SEPARATE STORAGE TANKS; CLARIFYING THAT THE DEPARTMENT OF
9 TRANSPORTATION HAS 120 WORKING DAYS IN WHICH TO APPROVE OR REJECT A CLAIM FOR A
10 REFUND; ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS FROM THE TRIBAL MOTOR
11 FUELS ADMINISTRATION ACCOUNT; LIMITING THE USE OF RESTRICTIVE ENDORSEMENTS ON
12 NEGOTIABLE INSTRUMENTS; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT
13 DELINQUENT MOTOR FUEL TAXES; AMENDING SECTIONS 15-70-201, 15-70-205, 15-70-222,
14 15-70-226, AND 15-70-235, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE~~ DATES."

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

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14 15-70-226, AND 15-70-235, MCA; AND PROVIDING ~~AN IMMEDIATE~~ EFFECTIVE DATE DATES."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1718 **Section 1.** Section 15-70-201, MCA, is amended to read:19 "15-70-201. **Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:21 (1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source
22 of earned income is from the business of farming or ranching.23 (2) "Aviation dealer" means any person in this state engaged in the business of selling aviation fuel,
24 either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as
25 provided in this section.26 (3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may
27 be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and
28 all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States
29 for use by its military forces in aircraft.

30 (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean

1 gasoline delivered into the supply tank of a motor vehicle.

2 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
3 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
4 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
5 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
6 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
7 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
8 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
9 distributor's license.

10 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
11 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

12 (6) "Distributor" means:

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

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

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

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

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

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

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

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

26 (9) (a) "Gasoline" includes:

27 (i) all products commonly or commercially known or sold as gasolines, including casinghead
28 gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected
29 hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating
30 internal combustion engines; and

1 (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the
2 additive's classifications or uses.

3 (b) Gasoline does not include special fuels as defined in 15-70-301.

4 (10) "Import" ~~includes and~~ means to receive into any person's possession or custody first after its
5 arrival and coming to rest at destination within the state of any gasoline shipped or transported into this
6 state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

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

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

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

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

14

15 **Section 2.** Section 15-70-205, MCA, is amended to read:

16 **"15-70-205. (Temporary) Distributor's statement and payment -- confidentiality.** (1) Each
17 distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the
18 department of transportation of all gasoline distributed and received by the distributor in this state during
19 the preceding calendar month and containing any other information that the department may reasonably
20 require in order to administer the gasoline license tax law. The statement must be accompanied by a
21 payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under
22 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for
23 ~~evaporation and other loss of gasoline distributed by the distributor collecting the tax; however, an~~ An
24 allowance may not be deducted from the 3-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
28 not publish or otherwise disseminate information contained in a statement required under this section in
29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
30 construed to prohibit:

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

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

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

8 (d) the inspection by the commissioner of internal revenue of the United States or the proper officer
9 or any representative of either officer of the report or return of any distributor or the furnishing to the
10 officer or authorized representative of an abstract of the report or return, but permission must be granted
11 or information must be furnished to the officer or the officer's representative ~~only~~ if the statutes of the
12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction.
15 (Terminates on occurrence of contingency--sec. 17, Ch. 642, L. 1993.)

16 **15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment --**
17 **confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true
18 signed statement to the department of transportation of all gasoline distributed and received by the
19 distributor in this state during the preceding calendar month and containing any other information that
20 department may reasonably require in order to administer the gasoline license tax law. The statement must
21 be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit
22 issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an
23 allowance for ~~evaporation and other loss of gasoline distributed by the distributor~~ collecting the tax;
24 ~~however, an~~ An allowance may not be deducted from the 2-cent tax on aviation fuel.

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

27 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may
28 not publish or otherwise disseminate information contained in a statement required under this section in
29 a form that allows identification of a distributor or a purchaser of gasoline. This section may not be
30 construed to prohibit:

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12 United States or the other state grant substantially similar privileges to the proper officer of this state
13 charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

14 (e) the compliance of the department with any order of a court of competent jurisdiction."
15

16 **Section 3.** Section 15-70-222, MCA, is amended to read:

17 "**15-70-222. Required records.** (1) Gasoline purchased and delivered into bulk storage for use in
18 motor vehicles on public roads and for nonhighway use must be fully accounted for by detailed withdrawal
19 records to accurately show the manner in which the gasoline was used. Gasoline on hand, determined by
20 actual measurement, ~~shall~~ must be deducted from a claim and ~~shall~~ must be reported as an opening
21 inventory on the next claim.

22 ~~(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and~~
23 ~~in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery.~~
24 ~~No further record is required, provided refunds are claimed only on the number of gallons delivered into the~~
25 ~~unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles~~
26 ~~will invalidate this method of determining refundable gallonage.~~

27 ~~(3)~~(2) Special storage facilities used for certain periods must be identified and explained. If ~~such~~
28 special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records
29 will be required other than purchase invoices showing the delivery into ~~such~~ special storage.

30 ~~(4)~~(3) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice

1 for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

2 ~~(5)(4)~~ When no highway use of gasoline is deducted from the claim, the applicant ~~must~~ shall
3 substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the
4 department of transportation.

5 ~~(6)(5)~~ Any person who operates a licensed motor vehicle on and off the public roads for commercial
6 purposes may claim a refund of the state license tax on the gasoline used to operate the vehicle on roads
7 or property in private ownership if ~~each~~ the person has maintained the following records:

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

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23 before funds are available for offset.

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27 date of the notice. If a hearing is requested, it must be held within 20 days of the request.

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30 as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply

1 to [sections 6 and 7].

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3 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
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7 NEW SECTION. Section 10. Effective date DATES. (1) [This act] is SECTIONS 1, 2, AND 4
8 THROUGH 9 AND THIS SECTION) ARE effective on passage and approval.

9 (2) [SECTION 3] IS EFFECTIVE JANUARY 1, 1996.

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