

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 363

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1  
2 RELATING TO FUELS TAX; AMENDING SECTION 63-2401, IDAHO CODE, TO REVISE THE  
3 DEFINITION OF "DISTRIBUTOR" AND TO MAKE TECHNICAL CORRECTIONS; AND  
4 AMENDING SECTION 63-2402, IDAHO CODE, TO PROVIDE FOR THE TAXATION OF  
5 GASEOUS SPECIAL FUELS THAT ARE DELIVERED INTO A BULK FUEL TANK UPON  
6 AGREEMENT BETWEEN THE SELLER AND THE CUSTOMER.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 63-2401, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 63-2401. DEFINITIONS. In this chapter:  
11 (1) "Aircraft engine fuel" means:  
12 (a) Aviation gasoline, defined as any mixture of volatile hydrocarbons  
13 used in aircraft reciprocating engines; and  
14 (b) Jet fuel, defined as any mixture of volatile hydrocarbons used in  
15 aircraft turbojet and turboprop engines.  
16 (2) "Biodiesel" means any fuel that is derived in whole or in part from  
17 agricultural products or animal fats or the wastes of such products and is  
18 suitable for use as fuel in diesel engines.  
19 (3) "Biodiesel blend" means any fuel produced by blending biodiesel  
20 with petroleum-based diesel to produce a fuel suitable for use in diesel  
21 engines.  
22 (4) "Bond" means:  
23 (a) A surety bond, in an amount required by this chapter, duly executed  
24 by a surety company licensed and authorized to do business in this state  
25 conditioned upon faithful performance of all requirements of this chap-  
26 ter, including the payment of all taxes, penalties and other obliga-  
27 tions arising out of the provisions of this chapter; or  
28 (b) A deposit with the commission by any person required to be licensed  
29 pursuant to this chapter under terms and conditions as the commission  
30 may prescribe, of a like amount of lawful money of the United States or  
31 bonds or other obligations of the United States, the state of Idaho, or  
32 any county of the state; or  
33 (c) An irrevocable letter of credit issued to the commission by a bank  
34 doing business in this state payable to the state upon failure of the  
35 person on whose behalf it is issued to remit any payment due under the  
36 provisions of this chapter.  
37 (5) "Commercial motor boat" means any boat, equipped with a motor,  
38 which is wholly or partly used in a profit-making enterprise or in an enter-  
39 prise conducted with the intent of making a profit.  
40 (6) "Commission" means the state tax commission of the state of Idaho.

1 (7) "Distributor" means any person who receives motor fuel in this  
2 state, and includes a special fuels dealer. Any person who sells or receives  
3 gaseous special fuels will not be considered a distributor unless:

4 (a) ~~The~~ gaseous special fuel is delivered into the fuel supply tank or  
5 tanks of a motor vehicle not then owned or controlled by him; or

6 (b) The gaseous special fuel is placed in certain gaseous special fu-  
7 els bulk tanks upon which the seller may charge tax as the result of an  
8 agreement with the customer.

9 (8) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements  
10 of the internal revenue service, or the environmental protection agency.

11 (9) "Exported" means delivered by truck or rail across the boundaries  
12 of this state by or for the seller or purchaser from a place of origin in this  
13 state.

14 (10) "Gasohol" means gasoline blended with ten percent (10%) or more of  
15 anhydrous ethanol.

16 (11) "Gasoline" means any mixture of volatile hydrocarbons suitable as  
17 a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also  
18 means aircraft engine fuels when used for the operation or propulsion of mo-  
19 tor vehicles or motor boats and includes gasohol, but does not include spe-  
20 cial fuels.

21 (12) "Highways" means every place of whatever nature open to the use of  
22 the public as a matter of right for the purpose of vehicular travel which is  
23 maintained by the state of Idaho or an agency or taxing subdivision or unit  
24 thereof or the federal government or an agency or instrumentality thereof.  
25 Provided, however, if the cost of maintaining a roadway is primarily borne by  
26 a special fuels user who operates motor vehicles on that roadway pursuant to  
27 a written contract during any period of time that a special fuels tax liabil-  
28 ity accrues to the user, such a roadway shall not be considered a "highway"  
29 for any purpose related to calculating that user's special fuels' tax lia-  
30 bility or refund.

31 (13) "Idling" means the period of time greater than twenty-five hun-  
32 dredths (.25) of an hour when a motor vehicle is stationary with the engine  
33 operating at less than one thousand two hundred (1,200) revolutions per  
34 minute (RPM), without the power take-off (PTO) unit engaged, with the trans-  
35 mission in the neutral or park position, and with the parking brake set.

36 (14) "Imported" means delivered by truck or rail across the boundaries  
37 of this state by or for the seller or purchaser from a place of origin outside  
38 this state.

39 (15) "International fuel tax agreement" and "IFTA" mean the interna-  
40 tional fuel tax agreement required by the intermodal surface transportation  
41 efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, and referred to  
42 in ~~title 49, U.S.C., section~~ 31701, including subsequent amendments to that  
43 agreement.

44 (16) "Jurisdiction" means a state of the United States, the District of  
45 Columbia, a province or territory of Canada, or a state, territory or agency  
46 of Mexico in the event that the state, territory or agency participates in  
47 the international fuel tax agreement.

48 (17) "Licensed motor fuel distributor" means any distributor who has  
49 obtained a license under the provisions of section 63-2427A, Idaho Code.

1 (18) "Motor fuel" means gasoline, ethanol, ethanol blended fuel, gaso-  
2 line blend stocks, natural gasoline, special fuels, aircraft engine fuels or  
3 any other fuels suitable for the operation or propulsion of motor vehicles,  
4 motor boats or aircraft.

5 (19) "Motor vehicle" means every self-propelled vehicle designed for  
6 operation, or required to be licensed for operation, upon a highway.

7 (20) "Person" means any individual, firm, fiduciary, copartnership,  
8 association, limited liability company, corporation, governmental instru-  
9 mentality including the state and all of its agencies and political subdivi-  
10 sions, or any other group or combination acting as a unit, and the plural as  
11 well as the singular number, unless the intent to give a more limited meaning  
12 is disclosed by the context. Whenever used in any clause prescribing and  
13 imposing a fine or imprisonment, or both, the term "person" as applied to an  
14 association means the partners or members, and as applied to corporations,  
15 the officers.

16 (21) "Recreational vehicle" means a snowmobile as defined in section  
17 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section  
18 49-114, Idaho Code; any recreational vehicle as defined in section 49-119,  
19 Idaho Code; and an all-terrain vehicle as defined in section 67-7101, Idaho  
20 Code.

21 (22) "Retail dealer" means any person engaged in the retail sale of mo-  
22 tor fuels to the public or for use in the state.

23 (23) "Special fuels" means:

24 (a) All fuel suitable as fuel for diesel engines;

25 (b) A compressed or ~~liquified~~ liquefied gas obtained as a by-product  
26 in petroleum refining or natural gasoline manufacture, such as butane,  
27 isobutane, propane, propylene, butylenes, and their mixtures; and

28 (c) Natural gas, either liquid or gas, and hydrogen, used for the gener-  
29 ation of power for the operation or propulsion of motor vehicles.

30 (24) "Special fuels dealer" means "distributor" under subsection (7) of  
31 this section.

32 (25) "Special fuels user" means any person who uses or consumes special  
33 fuels for the operation or propulsion of motor vehicles owned or controlled  
34 by him upon the highways of this state.

35 (26) "Use" means either:

36 (a) The receipt, delivery or placing of fuels by a licensed distributor  
37 or a special fuels dealer into the fuel supply tank or tanks of any motor  
38 vehicle not owned or controlled by him while the vehicle is within this  
39 state; or

40 (b) The consumption of fuels in the operation or propulsion of a motor  
41 vehicle on the highways of this state.

42 SECTION 2. That Section 63-2402, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed  
45 upon the distributor who receives motor fuel in this state. The legal inci-  
46 dence of the tax imposed under this section is borne by the distributor. The  
47 tax becomes due and payable upon receipt of the motor fuel in this state by  
48 the distributor unless such tax liability has previously accrued to another  
49 distributor pursuant to this section. The tax shall be imposed without re-

1 gard to whether use is on a governmental basis or otherwise, unless exempted  
2 by this chapter.

3 (2) The tax imposed in this section shall be at the rate of thirty-two  
4 cents (32¢) per gallon of motor fuel received. This tax shall be subject to  
5 the exemptions, deductions and refunds set forth in this chapter.

6 (3) Nothing in this chapter shall prohibit the distributor who is li-  
7 able for payment of the tax imposed under subsection (1) of this section from  
8 including as part of the selling price an amount equal to such tax on motor  
9 fuels sold or delivered by such distributor; provided however, that nothing  
10 in this chapter shall be deemed to impose tax liability on any person to whom  
11 such fuel is sold or delivered except as provided in subsection (6) of this  
12 section.

13 (4) Any person coming into this state in a motor vehicle may transport  
14 in the manufacturer's original tank of that vehicle, for his own use only,  
15 not more than thirty (30) gallons of motor fuel for the purpose of operating  
16 that motor vehicle, without complying with the provisions of this chapter.

17 (5) The tax imposed in this section does not apply to:

18 (a) Special fuels that have been dyed at a refinery or terminal under  
19 the provisions of 26 U.S.C. section 4082 and regulations adopted there-  
20 under, or under the clean air act and regulations adopted thereunder; or

21 (b) Special fuels that are gaseous special fuels, as defined in sec-  
22 tion ~~63-2401~~ 63-2424, Idaho Code, except that part thereof that is de-  
23 livered into the fuel supply tank or tanks of a motor vehicle or certain  
24 gaseous special fuels bulk tanks. Upon agreement with the customer, the  
25 licensed distributor may charge tax when placing gaseous special fuels  
26 into the customer's bulk tanks; or

27 (c) Aircraft engine fuel subject to tax under section 63-2408, Idaho  
28 Code.

29 (6) Should the distributor of first receipt be exempt from imposition  
30 of the tax as a matter of federal law, by virtue of its status as a federally  
31 recognized Indian tribe or member of such tribe, such distributor shall not  
32 bear the tax's legal incidence and must pass the tax through as part of the  
33 selling price of the fuel. Such distributor shall retain the administrative  
34 obligation to remit the tax, and such obligation shall accrue upon receipt  
35 in accordance with subsection (1) of this section. Should a retailer other-  
36 wise subject to the tax be exempt from imposition of the tax as a matter of  
37 federal law, by virtue of its status as a federally recognized Indian tribe  
38 or member of such tribe, the retailer shall not bear the tax's legal inci-  
39 dence and must pass the tax through as part of the selling price of the fuel  
40 to the consumer, unless such consumer is exempt from imposition of the tax  
41 as a matter of federal law, by virtue of its status as a federally recognized  
42 Indian tribe or membership in such tribe, and the retailer shall be entitled  
43 to claim a credit against taxes otherwise due and owing under this chapter or  
44 a tax refund, together with interest, attributable to the fuel purchased by  
45 such consumer.