

HOUSE BILL NO. 99

INTRODUCED BY E. MCCLAFFERTY

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ADMINISTRATION OF GASOLINE AND SPECIAL FUEL TAXES; COMBINING THE GASOLINE TAX AND SPECIAL FUEL TAX INTO ONE PART OF LAW; ALLOWING FOR THE ISSUANCE OF A PROBATIONARY DISTRIBUTOR'S LICENSE; ELIMINATING THE REISSUANCE FEE FOR A SUSPENDED OR REVOKED DISTRIBUTOR'S LICENSE; REVISING THE TIME PERIOD FOR WHICH DISTRIBUTORS MUST KEEP RECORDS; AMENDING SECTIONS 7-14-301, 7-14-304, 15-30-2618, 15-70-104, 15-70-113, 15-70-121, 15-70-231, 15-70-235, 15-70-236, 15-70-301, 15-70-320, 15-70-326, 15-70-330, 15-70-341, 15-70-343, 15-70-344, 15-70-345, 15-70-348, 15-70-349, 15-70-351, 15-70-352, 15-70-353, 15-70-354, 15-70-356, 15-70-357, 15-70-361, 15-70-362, 15-70-364, 15-70-366, 15-70-503, 15-70-521, 15-70-522, 15-70-719, 60-3-201, 60-3-202, 61-12-206, 67-1-301, 75-11-302, AND 75-11-314, MCA; AND REPEALING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-205, 15-70-206, 15-70-207, 15-70-208, 15-70-209, 15-70-210, 15-70-211, 15-70-212, 15-70-221, 15-70-222, 15-70-223, 15-70-224, 15-70-225, 15-70-226, 15-70-232, 15-70-233, 15-70-242, 15-70-321, 15-70-324, AND 15-70-372, MCA."

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

Section 1. Section 7-14-301, MCA, is amended to read:

"7-14-301. Local option motor fuel excise tax authorized -- definitions. (1) A motor fuel excise tax may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per a gallon and may not exceed 2 cents per a gallon. The tax must be imposed upon on gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon on the public roads and highways, ~~streets, and roads~~ of this state.

(3) The initiative or referendum must specify that the tax is to be collected by the county treasurer.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the



1 initiative or referendum.

2 (5) By the 25th day of each month, each retail seller of gasoline shall render a monthly statement to the
3 county treasurer of all gasoline sold during the preceding calendar month in the county in which it is sold to the
4 ultimate consumer and other information that the county treasurer requires in order to administer the motor fuel
5 excise tax.

6 (6) The county treasurer shall establish procedures to provide a refund to a person who has paid the tax
7 but who can substantiate that the motor fuel was purchased for a use other than on the public roads and
8 highways, streets, and roads of this state.

9 (7) In this part, the terms "gasoline", "motor vehicle", "person", and "use" have the meanings ascribed
10 to them in ~~45-70-204~~ 15-70-301."

11

12 **Section 2.** Section 7-14-304, MCA, is amended to read:

13 **"7-14-304. Collection of delinquent tax -- interest and penalty -- statute of limitations.** (1) Motor
14 fuel excise taxes imposed pursuant to 7-14-301 and collected by a retail seller but not transmitted to the county
15 treasurer are delinquent after the date that they are due to the county treasurer and become a lien ~~upon~~ on all
16 real and personal property owned by the retail seller in the county. The county shall collect the delinquent motor
17 fuel excise taxes in the manner that delinquent personal property taxes are collected.

18 (2) Penalties and interest for ~~any~~ a delinquent motor fuel excise tax are the same as provided for the
19 gasoline license tax under Title 15, chapter 70, part ~~2~~ 3.

20 (3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due
21 date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action
22 must be initiated within 3 years of the discovery."

23

24 **Section 3.** Section 15-30-2618, MCA, is amended to read:

25 **"15-30-2618. Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111,
26 and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided
27 by law, it is unlawful to divulge or make known in any manner:

28 (a) the amount of income or any particulars set forth or disclosed in any individual report or individual
29 return required under this chapter or any other information secured in the administration of this chapter; or

30 (b) any federal return or federal return information disclosed on any return or report required by rule of

1 the department or under this chapter.

2 (2) (a) The officers charged with the custody of the reports and returns may not be required to produce
3 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or
4 proceeding:

5 (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

6 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes
7 when the reports or facts shown by the reports are directly involved in the action or proceedings.

8 (b) The court may require the production of and may admit in evidence only as much of the reports or
9 of the facts shown by the reports as are pertinent to the action or proceedings.

10 (3) This section does not prohibit:

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

13 (b) the publication of statistics classified to prevent the identification of particular reports or returns and
14 the items of particular reports or returns; or

15 (c) the inspection by the attorney general or other legal representative of the state of the report or return
16 of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom
17 an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

18 (4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to
19 the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing
20 separately on the same return. The information being provided to the spouse or reported on the return, including
21 subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and
22 the taxpayer filed the return using a joint filing status for that tax year.

23 (5) Reports and returns must be preserved for at least 3 years and may be preserved until the
24 department orders them to be destroyed.

25 (6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the
26 offender is an officer or employee of the state, the offender must be dismissed from office or employment and
27 may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the
28 case of a former officer or employee, for 1 year after conviction.

29 (7) This section may not be construed to prohibit the department from providing taxpayer return
30 information and information from employers' payroll withholding reports to:

1 (a) the department of labor and industry to be used for the purpose of investigation and prevention of
2 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

3 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,
4 and abuse under the workers' compensation program.

5 (8) The department may permit the commissioner of internal revenue of the United States or the proper
6 officer of any state imposing a tax ~~upon~~ on the incomes of individuals or the authorized representative of either
7 officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative
8 an abstract of the return of income of any individual or supply the officer with information concerning an item of
9 income contained in a return or disclosed by the report of an investigation of the income or return of income of
10 an individual, but the permission may be granted or information furnished only if the statutes of the United States
11 or of the other state grant substantially similar privileges to the proper officer of this state charged with the
12 administration of this chapter.

13 (9) On written request to the director or a designee of the director, the department shall furnish:

14 (a) to the department of justice all information necessary to identify those persons qualifying for the
15 additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of
16 justice to administer the provisions of 61-5-105;

17 (b) to the department of public health and human services information acquired under 15-30-2616,
18 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
19 assistance fraud and abuse, provided notice to the applicant has been given;

20 (c) to the department of labor and industry for the purpose of prevention and detection of fraud and
21 abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs
22 information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and
23 industry is an employee, an independent contractor, or self-employed;

24 (d) to the department of fish, wildlife, and parks specific information that is available from income tax
25 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
26 fishing licenses;

27 (e) to the board of regents information required under 20-26-1111;

28 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax
29 information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget
30 and program planning must be the same as the information provided to the legislative fiscal analyst.

1 (g) to the department of transportation farm income information based on the most recent income tax
 2 return filed by an applicant applying for a refund under ~~15-70-223~~ or 15-70-362, provided that notice to the
 3 applicant has been given as provided in ~~15-70-223~~ and 15-70-362. The information obtained by the department
 4 of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

5 (h) to the commissioner of insurance's office all information necessary for the administration of the small
 6 business health insurance tax credit provided for in Title 33, chapter 22, part 20."

7

8 **Section 4.** Section 15-70-104, MCA, is amended to read:

9 **"15-70-104. Rules to be established by department.** (1) The department of transportation shall adopt,
 10 publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

11 (2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration
 12 and enforcement of:

13 ~~(a) part 2;~~

14 ~~—— (b) part 3;~~

15 ~~—— (c) part 7; and~~

16 ~~—— (d) parts 3 and 7 and the International Fuel Tax Agreement authorized by 15-70-121."~~

17

18 **Section 5.** Section 15-70-113, MCA, is amended to read:

19 **"15-70-113. Total remittance payable by electronic funds transfer.** (1) Total remittance due the state
 20 may be paid by electronic funds transfer.

21 (2) If the payment of total remittance is by electronic funds transfer under this section and the due date
 22 falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the
 23 Saturday, Sunday, or legal holiday.

24 (3) If the payment of the tax due on gasoline or special fuel pursuant to ~~15-70-205~~ and 15-70-344 is
 25 made by electronic funds transfer, the payment due date is 5 days after the 25th day of each calendar month."

26

27 **Section 6.** Section 15-70-121, MCA, is amended to read:

28 **"15-70-121. International Fuel Tax Agreement.** (1) The department of transportation may enter into
 29 the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor
 30 fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across

1 jurisdictional boundaries. The International Fuel Tax Agreement is not effective unless it is in writing and is signed
2 by the department and the department has adopted rules implementing the agreement.

3 (2) The agreement may determine:

4 (a) the base jurisdiction for motor fuel users;

5 (b) motor fuel user records requirements;

6 (c) audit procedures;

7 (d) procedures for the exchange of information;

8 (e) persons eligible for tax licensing;

9 (f) the definition of qualified motor vehicles;

10 (g) bonding requirements;

11 (h) reporting requirements and periods;

12 (i) uniform penalty and interest rates for late reporting or payment of taxes;

13 (j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and

14 (k) other provisions to facilitate the administration of the agreement.

15 (3) The department may, as required by the terms of the agreement, forward to officers of another
16 jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or
17 shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices,
18 motor vehicles, and other real and personal property of users of motor fuel.

19 (4) The agreement may provide each jurisdiction authority to audit the records of persons based in the
20 jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each
21 jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each
22 jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable
23 use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in
24 the form of an assessment on the person, as though an audit was conducted by the department.

25 (5) The agreement entered into pursuant to this section does not preclude the department from auditing
26 the records of any person covered by the provisions of this chapter.

27 (6) If the specific requirements of the agreement, as the agreement reads on the effective date of
28 adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the
29 department, the rules implementing the cooperative agreement prevail.

30 (7) The legal remedies for a person served with an order or assessment under this section are as

1 prescribed in this chapter.

2 (8) As used in this section:

3 (a) "agreement" means the International Fuel Tax Agreement provided for in this section; and

4 (b) "motor fuel" ~~means~~ includes gasoline ~~as defined in 15-70-201~~ and special fuel as defined in
5 15-70-301."
6

7 **Section 7.** Section 15-70-231, MCA, is amended to read:

8 **"15-70-231. Unlawful use of aviation fuel.** It is unlawful for any person to use aviation fuel or to sell
9 aviation fuel for use in any motorized vehicle operated ~~upon~~ on the public roads and highways ~~or streets~~ of this
10 state. Violation of this section is a misdemeanor subject to the penalties provided in ~~15-70-232~~ 15-70-366."
11

12 **Section 8.** Section 15-70-235, MCA, is amended to read:

13 **"15-70-235. Tribal motor fuels administration account.** (1) There is a tribal motor fuels administration
14 account in the state special revenue account ~~called the tribal motor fuels administration account fund~~.

15 (2) The department must deposit in the tribal motor fuels administration account administrative expenses
16 and ~~refund amounts~~ refunds deducted by the department of transportation under an a cooperative agreement
17 ~~must be deposited in the tribal motor fuels administration account~~ provided for in 15-70-234.

18 (3) The department of transportation or the department of justice may expend the tribal motor fuels
19 administration account ~~may be expended by the department of transportation or by the department of justice~~ only
20 for the purposes of administering the ~~motor fuels tax~~ gasoline tax and providing refunds under an a cooperative
21 agreement."
22

23 **Section 9.** Section 15-70-236, MCA, is amended to read:

24 **"15-70-236. Tribal motor fuels tax account.** (1) There is a tribal motor fuels tax account in the state
25 special revenue ~~account~~ called the tribal motor fuels tax account fund.

26 (2) The department must deposit in the tribal motor fuels tax account the tax collected under 15-70-234,
27 except the administrative expenses and ~~refund amounts~~ refunds deducted under an a cooperative agreement;
28 ~~must be deposited in the tribal motor fuels tax account~~.

29 (3) The money in the tribal motor fuels tax account must be disbursed to the tribe quarterly, as provided
30 for in the agreement entered into pursuant to 15-70-234, ~~on a quarterly basis~~."

1

2 **Section 10.** Section 15-70-301, MCA, is amended to read:

3 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

4 (1) "Agricultural use" means use of gasoline or special fuel by a person who earns income while
5 engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required
6 by the United States internal revenue service.

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

11 ~~(2)~~(3) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from
12 vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the
13 requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock
14 for Distillate Fuels, as adopted by the American society for testing and materials.

15 (b) Biodiesel is also known as "B-100".

16 ~~(3)~~(4) "Bulk delivery" means placing gasoline or special fuel not intended for resale in storage or
17 containers. The term does not mean gasoline or special fuel delivered into the supply tank of a motor vehicle.

18 ~~(4)~~(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a ~~special~~ fuel dealer's
19 unattended pump or dispensing unit for the purpose of delivery of gasoline or special fuel to an authorized user
20 of the unique device.

21 ~~(5)~~(6) "Department" means the department of transportation.

22 ~~(6)~~(7) (a) "Distributed" means, ~~at the time that the withdrawal of gasoline or special fuel is withdrawn,~~
23 ~~the withdrawal~~ from a ~~storage tank,~~ a refinery; or a terminal storage, other than by pipeline, by a licensed
24 distributor in this state for sale or use in this state ~~or for the transportation other than by pipeline to another~~
25 ~~refinery in this state or a pipeline terminal in this state of the following, including:~~

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

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

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

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

3 ~~(e)(b) Special Gasoline or special fuel imported into this state, other than that gasoline or special fuel~~
 4 ~~placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is~~
 5 ~~brought to rest in this state.~~

6 ~~(7)(8)~~ (a) "Distributor" means:

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

9 (ii) an importer who imports gasoline or special fuel for sale, use, or distribution;

10 (iii) a person who engages in the wholesale distribution of gasoline or special fuel in this state and
 11 chooses to become licensed to assume the Montana state gasoline tax or special fuel tax liability; ~~and~~

12 (iv) an exporter;

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

14 (vi) a person in Montana who blends ethanol with gasoline.

15 (b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste
 16 vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person ~~upon~~
 17 on the public roads and highways of the state.

18 (9) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR,
 19 parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.

20 (10) "Ethanol-blended gasoline" means gasoline blended with ethanol. The percentage of ethanol in the
 21 blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol
 22 and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline would
 23 be reflected as E-85.

24 ~~(8)(11)~~ "Export" means to transport out of Montana, by any means other than in the fuel supply tank of
 25 a motor vehicle, gasoline or special fuel received from a refinery or pipeline terminal within Montana.

26 ~~(9)(12)~~ "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle,
 27 gasoline or special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana
 28 for sale, use, or consumption outside Montana.

29 (13) (a) "Gasoline" includes:

30 (i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead

1 gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected
2 hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal
3 combustion engines; and

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

6 (b) "Gasoline" does not include special fuels as defined in this section.

7 ~~(10)~~(14) "Import" means to first receive gasoline or special fuel into possession or custody after its arrival
8 and coming to rest at a destination within the state or to first receive any gasoline or special fuel shipped or
9 transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor
10 vehicle.

11 ~~(11)~~(15) "Importer" means a person who transports or arranges for the transportation of gasoline
12 or special fuel into Montana for sale, use, or distribution.

13 ~~(12)~~(16) "Improperly imported fuel" means gasoline or special fuel that is:

14 (a) consigned to a Montana destination and imported into the state without the distributor first having
15 obtained a Montana ~~special fuel~~ distributor license as required in 15-70-341; or

16 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15,
17 chapter 70.

18 ~~(13)~~(17) "Motor vehicle" means all vehicles that are operated ~~upon~~ on the public roads and highways ~~or~~
19 ~~streets~~ of this state and that are operated in whole or in part by the combustion of gasoline or special fuel.

20 ~~(14)~~(18) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
21 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both,
22 as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied
23 to joint-stock companies and corporations, the officers.

24 ~~(15)~~(19) "Public roads and highways of this state" means all streets, roads, highways, and related
25 structures:

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

28 (b) dedicated to public use;

29 (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

30 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any

1 political subdivision of the state.

2 ~~(16)~~(20) "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually
3 of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by
4 the person ~~upon~~ on the public roads and highways of the state.

5 ~~(17)~~(21) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
6 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
7 petroleum gas, when actually sold for use in motor vehicles operating ~~upon~~ on the public roads and highways
8 ~~within the of this state of Montana~~. The term ~~special fuel~~ "special fuel" includes biodiesel and additives of all types
9 when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

10 ~~(18)~~ "Special fuel dealer" means:

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

13 ~~—— (b) a person who sells special fuel at a location unattended by the dealer through an unattended pump~~
14 ~~by use of a cardrol, keylock, or similar device; or~~

15 ~~—— (c) a person who provides a facility, with or without attended services, from which more than one special~~
16 ~~fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.~~

17 ~~(19)~~(22) (a) "Special fuel user" means a person who consumes ~~in this state~~ special fuel for the operation
18 of motor vehicles owned or controlled by the person ~~upon~~ on the public roads and highways of this state.

19 (b) The term does not include:

20 (i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state;

21 or

22 (ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the
23 operation of motor vehicles owned or controlled by the person ~~upon~~ on the public roads and highways of ~~the~~ this
24 state.

25 ~~(20)~~(23) "Use"; ~~when the term relates to a special fuel user, means the consumption by a special fuel user~~
26 ~~of special fuels in the operation of a motor vehicle on the public roads and highways of this state or of any political~~
27 subdivision of this state.

28 ~~(24)~~(24) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food
29 processors."
30

1 **Section 11.** Section 15-70-320, MCA, is amended to read:

2 **"15-70-320. Exemption from special fuel tax.** (1) Subject to the conditions of this section, a special
3 biodiesel fuel producer is exempt from the special fuel tax imposed by ~~15-70-324~~ 15-70-343 on biodiesel
4 produced by the producer from waste vegetable oil feedstock.

5 (2) This section does not apply to special fuel used for agricultural purposes pursuant to 15-70-362.

6 (3) To qualify for the exemption under this section, the special biodiesel fuel producer shall:

7 (a) register annually with the department; and

8 (b) report on the amount of biodiesel produced and used by the producer in a calendar year by February
9 15 of the succeeding year."

10

11 **Section 12.** Section 15-70-326, MCA, is amended to read:

12 **"15-70-326. Computation.** (1) The tax imposed on the distributor under 15-70-343(1) may be rounded
13 to the nearest whole dollar amount.

14 (2) The tax imposed by this part under 15-70-343(4) on owners or operators of the motor vehicles
15 operating on the public roads and highways of this state must be computed, with respect to gasoline or special
16 fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special
17 fuel user, by multiplying the corresponding tax rate per gallon as provided in this part 15-70-343(1) by the number
18 of gallons of gasoline or special fuel consumed by the special fuel user person in the operation of motor vehicles
19 on the public roads and highways of this state."

20

21 **Section 13.** Section 15-70-330, MCA, is amended to read:

22 **"15-70-330. Special fuel Dyed special fuel restrictions -- penalties.** ~~(1) Whenever a special fuel user~~
23 ~~files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or~~
24 ~~fraction of a month from the date on which the tax was due to the date of payment in full must be added to the~~
25 ~~amount due and unpaid.~~

26 ~~(2)~~(1) (a) A person may not use dyed special fuel to operate a motor vehicle ~~upon~~ on the public roads
27 and highways of this state unless:

28 (i) the motor vehicle has a gross vehicle weight of greater than 12,000 pounds, exclusive of any towed
29 units, is equipped with a feed delivery box that is permanently affixed to the vehicle, and is used solely for the
30 feeding of livestock; or

1 (ii) the use is permitted pursuant to rules adopted under subsection (2)(c).

2 (b) ~~(i)~~ The purposeful or knowing use of dyed special fuel in a motor vehicle operating ~~upon~~ on the public
3 roads and highways of this state in violation of this subsection ~~(2)~~ (1) is subject to the civil penalty imposed under
4 ~~15-70-372(2)~~ subsection (1)(b)(ii). Each use is a separate offense. The civil penalty may be in addition to criminal
5 penalties imposed under 15-70-366.

6 (ii) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty
7 not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation
8 of the provisions of this section. A subsequent offense is subject to criminal penalties imposed under 15-70-366.

9 (c) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles
10 traveling from one location to another on the public roads and highways, public roads, or streets of this state when
11 using dyed special fuel or nontaxed fuel.

12 ~~(3)~~(2) The operator of the vehicle is liable for the tax imposed in ~~15-70-324~~ 15-70-343. If the operator
13 refuses or fails to pay the tax, in whole or in part, the seller of the dyed special fuel is jointly and severally liable
14 for the tax imposed under ~~15-70-324~~ 15-70-343 and for the penalties described in this section if the seller knows
15 or has reason to know that the fuel will be used for a taxable purpose."

16

17 **Section 14.** Section 15-70-341, MCA, is amended to read:

18 **"15-70-341. License and security of ~~special fuel distributors -- denial or revocation of license~~**
19 **~~disciplinary action -- reissuance fee.~~** (1) (a) Each Prior to doing business, each gasoline or special fuel
20 distributor, including an exporter and importer, as those terms are defined in 15-70-301, ~~prior to the~~
21 ~~commencement of doing business,~~ shall file:

22 (i) an application for a license with the department, on forms prescribed and furnished by the department,
23 setting forth the information that may be requested by the department; and

24 (ii) security with the department in an amount to be determined by the department.

25 (b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice
26 the estimated amount of gasoline or special fuel taxes the distributor will pay to this state each month.

27 (ii) The minimum required security for a distributor who imports or exports ~~special fuel, or both,~~ is
28 \$25,000.

29 (c) Upon approval of the application, the department shall issue to the distributor a nonassignable license
30 that is in force until surrendered or revoked.

1 (2) The department may deny the issuance of a ~~special fuel~~ distributor license or ~~revoke a special fuel~~
 2 ~~distributor license~~ take disciplinary action against the distributor if it determines that the applicant or distributor:

3 (a) has violated any provision of this chapter or any rule of the department relating to gasoline or special
 4 fuel, or both;

5 (b) fails to provide the security required by the department;

6 (c) has had a distributor license revoked or denied by the department or another jurisdiction within a
 7 3-year period;

8 (d) is not in compliance with motor fuels laws in other jurisdictions; or

9 (e) fails to pay the gasoline or special fuel license tax.

10 (3) Disciplinary action against a distributor may result in revocation of the license or issuance of a
 11 probationary license. At its discretion, the department may issue a probationary license to a distributor who
 12 repeatedly fails to report in the manner prescribed. The probationary license must be issued for a specified time
 13 period and may require the distributor to attend motor fuel tax training conducted by the department. If a
 14 distributor issued a probationary license fails to provide accurate reports by the end of the time period specified
 15 by the probationary license, the department may revoke the distributor license.

16 ~~(3)(4)~~ (4) If an application for a ~~special fuel~~ distributor license is denied or revoked or if the distributor is
 17 under disciplinary action, the applicant or distributor has the right to appeal the department's decision pursuant
 18 to Title 2, chapter 4, part 6.

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

20 ~~(5)~~ Only a licensed distributor may withdraw gasoline or special fuel from a refinery or terminal.

21 ~~(5)(6)~~ (6) Failure to obtain a ~~special fuel~~ distributor license as required in this section subjects the distributor
 22 to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

23 ~~(6)(7)~~ (7) As used in this section, "security" means:

24 (a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of
 25 Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this
 26 part, including the payment of all taxes and penalties; or

27 (b) ~~(f)~~ a deposit made by the distributor with the department, under the conditions that the department
 28 may prescribe; or

29 ~~(f)(c)~~ (c) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal
 30 deposit insurance corporation.

1 ~~(7)~~(8) The owner of a commercial motor vehicle that is engaged in transporting gasoline or special fuel
2 for a distributor is not subject to the provisions of this section.

3 ~~(8)~~(9) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot
4 be licensed, the distributor is required to buy biodiesel fuel on which the special fuel tax has been paid.

5 (10) A distributor who blends ethanol with gasoline must be licensed by the department. If the distributor
6 cannot be licensed, the distributor is required to buy ethanol-blended gasoline on which the gasoline tax has been
7 paid."

8

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

10 "**15-70-343. Special Gasoline and special fuel license tax -- rate incidence -- rates.** (1) The
11 incidence of the fuel tax is on the distributor for the privilege of engaging in and carrying on business in this state.
12 Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and
13 carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of
14 special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has
15 not been paid by any other distributor. in an amount equal to:

16 (a) 27 cents for each gallon of gasoline distributed by the distributor within the state and upon which the
17 gasoline tax has not been paid by any other distributor;

18 (b) 27 3/4 cents for each gallon of special fuel distributed by the distributor within the state and on which
19 the special fuel tax has not been paid by any other distributor; and

20 (c) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,
21 which is allocated to the department as provided by 67-1-301.

22 (2) ~~Special Gasoline or special fuel~~ may not be included in the measure of the distributor's ~~license~~ tax
23 if it is:

24 ~~(a) dyed by injector at a refinery or terminal for off-highway use; or~~

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

27 (3) Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at a
28 refinery or terminal for off-highway use.

29 (4) When no Montana fuel tax has been paid by a distributor or any other person, the department shall
30 collect or cause to be collected from the owners or operators of motor vehicles operating on the public roads and

1 highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and subsection
 2 (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special fuel as defined
 3 in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American
 4 petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on the public
 5 roads and highways of this state.

6 (5) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that
 7 is equipped with a feed delivery box if:

8 (a) the feed delivery box is permanently affixed to the vehicle;

9 (b) the vehicle is used exclusively for the feeding of livestock; and

10 (c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.

11 (6) All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I.
 12 (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the internal
 13 combustion of any engines, including stationary engines, and used in connection with any work performed under
 14 any contracts pertaining to the construction, reconstruction, or improvement of a highway or street and its
 15 appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political
 16 subdivisions, must be undyed fuel on which Montana fuel tax has been paid.

17 (7) Material used for construction, reconstruction, or improvement in connection with work performed
 18 under a contract as provided in subsection (6) must be produced using fuel on which Montana fuel tax has been
 19 paid."

20

21 **Section 16.** Section 15-70-344, MCA, is amended to read:

22 **"15-70-344. Distributor's statement and payment -- confidentiality.** (1) Each distributor shall, not later
 23 than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the department of
 24 transportation a signed statement that specifies all gasoline or special fuel distributed and received by the
 25 distributor in this state during the preceding calendar month and that contains other information the department
 26 may reasonably require in order to administer the ~~special fuel license~~ tax law. The statement must be
 27 accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued
 28 under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for
 29 collection. An allowance may not be deducted from the 4-cent tax on aviation fuel.

30 (2) A distributor engaged in or carrying on a business at more than one location in this state may include

1 all places of business in one statement.

2 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not
3 publish or otherwise disseminate information contained in a statement required under this section in a form that
4 allows identification of a distributor or a purchaser of ~~special~~ fuel. This section does not prohibit:

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

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

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

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

19 (e) the compliance of the department with any order of a court of competent jurisdiction."
20

21 **Section 17.** Section 15-70-345, MCA, is amended to read:

22 "**15-70-345. Recordkeeping requirements.** Each distributor or any other person dealing in,
23 transporting, receiving, or storing gasoline or special fuel shall keep ~~for a period not to exceed 3 years~~ the
24 records, receipts, and invoices and any other pertinent papers and information that the department of
25 transportation may require for a minimum of 3 years."
26

27 **Section 18.** Section 15-70-348, MCA, is amended to read:

28 "**15-70-348. Invoice of distributors and aviation dealers.** Each distributor and aviation dealer in this
29 state shall at the time of delivery, except when authorized by the department of transportation, issue to the
30 purchaser an invoice that states the number of gallons of gasoline or special fuel covered by the invoice and any

1 other information the department may require."
2

3 **Section 19.** Section 15-70-349, MCA, is amended to read:

4 **"15-70-349. Examination of records.** (1) The department or its authorized representative may examine
5 the books, papers, records, and equipment of any ~~special fuel distributor, special fuel user, or any~~ person dealing
6 in, transporting, or storing gasoline or special fuel, as defined in this part, and may investigate the character of
7 the disposition that any person makes of the gasoline or special fuel in order to ~~ascertain and~~ determine whether
8 all ~~license~~ taxes due are being properly reported and paid. If the books, papers, records, and equipment are not
9 maintained in this state at the time of demand, they must be furnished at the direction of the department for review
10 either in the offices of the department or at the business location of the taxpayer.

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

15 (3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and
16 downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized
17 by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction for the first
18 offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each
19 subsequent conviction. Each refusal is a separate offense.

20 (4) For the purpose of enforcing the provisions of this part, the fact that a person has placed or received
21 gasoline or special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie
22 evidence that all of the gasoline or special fuel has been delivered by the person into the fuel supply tanks of
23 motor vehicles and consumed in the operation of motor vehicles on the public roads and highways of this state
24 unless the contrary is established by satisfactory evidence.

25 (5) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles
26 propelled by special fuel. A person who purposely or knowingly refuses to permit an inspection authorized by this
27 section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction of the first offense,
28 not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent
29 conviction. Each refusal is a separate offense.

30 (6) The department shall, upon request from officials entrusted to enforce the fuel tax laws of any other

1 state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada,
2 forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other
3 disposition of motor fuel by any distributor or special fuel user if the other state or states furnish similar information
4 to this state."

5

6 **Section 20.** Section 15-70-351, MCA, is amended to read:

7 **"15-70-351. Information reports -- penalty -- confidentiality.** (1) A person receiving gasoline or special
8 fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls,
9 receives, transports, or ships gasoline or special fuel from any other state or foreign country into this state or from
10 this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point
11 within this state shall submit to the department of transportation, upon its request and within the time specified,
12 a statement showing the number of gallons of gasoline or special fuel contained in each shipment in interstate
13 commerce and the movement of the products from any refinery or pipeline terminal located within this state to
14 another point within this state during the preceding calendar month, the names and addresses of the consignor
15 and the consignee, and the date of delivery to the consignee.

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

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

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

24 (b) the inspection by the attorney general or other legal representative of the state of the report or
25 statement of a person if a person or distributor brings an action to set aside or review the tax based on the report
26 or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against
27 that person or distributor;

28 (c) the publication of statistics classified to prevent the identification of particular reports or statements
29 and the items in the reports or statements;

30 (d) the inspection by the commissioner of internal revenue of the United States or by the proper officer

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

7 (e) the compliance of the department with any order of a court of competent jurisdiction."
 8

9 **Section 21.** Section 15-70-352, MCA, is amended to read:

10 "**15-70-352. Penalties for delinquency.** (1) Any ~~license~~ fuel tax not paid within the time provided in
 11 15-70-113(3) and 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the
 12 rate of 1%, prorated daily, on the tax due for each calendar month. Upon a showing of good cause by the
 13 distributor, the department may waive the penalty.

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

17 (3) The department shall set forth the information it requires in the statement and determine the amount
 18 of the ~~license~~ tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever
 19 is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have
 20 been made and the ~~license~~ tax should have been paid.

21 (4) The department shall proceed to collect the ~~license~~ tax, with penalties and interest. At the request
 22 of the department, the attorney general shall commence and prosecute to final determination in any court of
 23 competent jurisdiction an action to collect the ~~license~~ tax."
 24

25 **Section 22.** Section 15-70-353, MCA, is amended to read:

26 "**15-70-353. Fraudulent returns -- penalty.** If a ~~special fuel~~ distributor files a false or fraudulent return
 27 with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the
 28 department of transportation a penalty equal to 25% of the deficiency, together with interest at the rate of 1% per
 29 a month, prorated daily, ~~or fraction of a month~~ on the deficiency from the date the tax was due to the date of
 30 payment, in addition to all other penalties prescribed by law."

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Section 23. Section 15-70-354, MCA, is amended to read:

"15-70-354. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the ~~license~~ tax."

Section 24. Section 15-70-356, MCA, is amended to read:

"15-70-356. Refund or credit authorized. (1) A person who purchases and uses any gasoline or special fuel on which the Montana gasoline or special fuel ~~license~~ tax has been paid for denaturing ethanol to be used in ethanol-blended gasoline, operating stationary gasoline or special fuel engines used off the public roads and highways and streets of this state, or for any commercial use other than operating vehicles ~~upon~~ on any of the public roads and highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline or special fuel used if the person has records, as provided in 15-70-361, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (6), a refund is not allowed for the tax per gallon on aviation fuel allocated to the department of transportation as provided in 67-1-301.

(2) (a) 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.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

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

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline or 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

1 accounts as bad debts for federal or state income tax purposes.

2 (b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared
3 worthless must be reported to the department and the tax due must be prorated on the collected amount and
4 must be paid to the department.

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

7 (5) A person who purchases and exports for sale, use, or consumption outside Montana any gasoline
8 or special fuel on which the Montana gasoline or special fuel tax has been paid is entitled to a credit or refund
9 of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is
10 destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or
11 refund.

12 (6) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2
13 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline tax has been paid.
14 The refund must be paid from the account established in 67-1-301(3)(a)(ii)."

15

16 **Section 25.** Section 15-70-357, MCA, is amended to read:

17 **"15-70-357. Improperly imported fuel -- seizure.** (1) As used in this section, the following definitions
18 apply:

19 (a) "Conveyance" means a tank car, vehicle, or vessel that is used to transport fuel.

20 (b) "Department" means the department of transportation.

21 (c) "Peace officer" means an employee of the department of transportation designated or appointed as
22 a peace officer under 61-10-154 or 61-12-201.

23 (2) Pursuant to 61-12-206(5), a peace officer may:

24 (a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that
25 the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax
26 responsibilities; and

27 (b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid
28 Montana gasoline or special fuel distributor license as required in ~~15-70-202~~ and 15-70-341.

29 (3) The peace officer shall obtain authorization from the director of the department of transportation or
30 the director's designee before seizing fuel.

- 1 (4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:
- 2 (a) direct the rerouting or transfer of the fuel to a location designated by the department. The department
- 3 shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the
- 4 department.
- 5 (b) unload the fuel; and
- 6 (c) take three samples of the fuel from the cargo tank for examination.
- 7 (5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of
- 8 right to file claim for the return of interest or title to the fuel. The notice must be issued to:
- 9 (a) the original owner of the fuel;
- 10 (b) the owner of the transportation company that conveyed the fuel; and
- 11 (c) any other interested party.
- 12 (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title
- 13 to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the
- 14 department shall:
- 15 (a) provide the opportunity for a hearing;
- 16 (b) if requested, conduct the hearing within 5 days after receiving the claim;
- 17 (c) make a final determination of the party to take interest or title to the fuel within 2 working days after
- 18 the hearing; and
- 19 (d) mail notice of the department's determination to interested parties.
- 20 (7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:
- 21 (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established
- 22 in department administrative rule; or
- 23 (ii) use the forfeited fuel for a public purpose determined by the department.
- 24 (b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized
- 25 fuel.
- 26 (c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:
- 27 (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue
- 28 account in the state special revenue fund, as required in 15-70-101; and
- 29 (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly
- 30 imported fuel.

1 (8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel,
2 the department may:

3 (a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day
4 of the seizure; or

5 (b) return the fuel.

6 (9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

7 (a) fails to file a claim for the seized fuel within the time allowed in subsection (6); or

8 (b) is determined to be guilty of violating fuel tax laws.

9 (10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal
10 fuel importation in Title 15, chapter 70."

11

12 **Section 26.** Section 15-70-361, MCA, is amended to read:

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

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

20 ~~(3) Special storage facilities used for certain periods must be identified and explained. If gasoline or~~
21 ~~special fuel withdrawn from special storage is used entirely for off-highway purposes and is not used in licensed~~
22 ~~vehicles, no records will be required other than purchase invoices showing the delivery into special storage.~~

23 ~~(3)(4)~~ (4) When a no highway use of gasoline or special fuel is ~~not~~ deducted from the claim, the applicant
24 shall substantiate purchases of gasoline or special fuel and miles traveled for licensed motor vehicles ~~upon~~ on
25 request of the department of transportation.

26 ~~(4)(5)~~ (5) Any person who operates a licensed motor vehicle on and off the public roads for commercial
27 purposes may claim refund of the state ~~license~~ tax on the gasoline or special fuel used to operate the vehicle on
28 roads or property in private ownership if the person has maintained the following records:

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

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

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

2 ~~(5)(6)~~ The United States government, the state of Montana, any other state, or any county, incorporated
3 city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of
4 special fuel taxes.

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

9

10 **Section 27.** Section 15-70-362, MCA, is amended to read:

11 **"15-70-362. Estimate allowed for agricultural use -- seller's signed statement acceptable on**
12 **keylock or cardtrol purchases.** (1) An applicant whose use qualifies as agricultural use may apply for a refund
13 of the applicable tax on the gallons of gasoline or special fuel as indicated by bulk delivery invoices or by
14 evidence of keylock or cardtrol purchases as an estimate of ~~off-roadway~~ off-highway use. To ensure that the
15 applicant's use qualifies as agricultural use, the department of transportation may request state or federal income
16 tax information from the applicant or the department of revenue to determine the ratio of the applicant's gross
17 earned farm income to total gross earned income, excluding unearned income, provided that the department of
18 transportation gives notice to the applicant.

19 (2) For purposes of application for a refund under subsection (1), the department shall accept, as
20 evidence of keylock or cardtrol purchases, a statement of the sale of gasoline or special fuel with applicable
21 Montana tax that identifies the purchaser and specifically identifies the transaction as a keylock or cardtrol
22 purchase.

23 ~~(2)(3)~~ An applicant may apply for a refund of the applicable tax on gallons of gasoline or special fuel as
24 ~~evidenced~~ indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the
25 applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as
26 follows:

27 (a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline or special fuel
28 tax;

29 (b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline or
30 special fuel tax;

1 (c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline or
 2 special fuel tax; and

3 (d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline or special fuel tax
 4 under this section.

5 ~~(3)~~(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the
 6 highest ratio must be used to calculate the eligible refund.

7 ~~(4)~~(5) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's
 8 claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing
 9 other evidence that may be required by the department of transportation.

10 ~~(5)~~(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain
 11 records as required by 15-70-361."

12

13 **Section 28.** Section 15-70-364, MCA, is amended to read:

14 **"15-70-364. Application for refund or credit -- filing -- correction by department.** (1) (a) Except as
 15 provided in subsection (1)(b), the application for a refund must be a signed statement on a form furnished by the
 16 department. Except for a claim for a credit for taxes paid on unpaid accounts or special fuel taxes paid by the
 17 United States government, the state of Montana, any other state, or any county, incorporated city, town, or school
 18 district of this state or except for a claim for a refund filed electronically, the form must be accompanied by the
 19 original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and
 20 must show the total amount of gasoline or special fuel purchased; or aviation fuel purchased by a certified
 21 scheduled passenger air carrier, the total amount of gasoline or special fuel on which a refund is claimed, and
 22 the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor
 23 did not receive compensation must be accompanied by documents or copies of documents showing that the
 24 accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further
 25 information pertaining to a claim must be furnished as required by the department.

26 (b) A claim for a refund that is filed electronically in the manner specified by the department does not
 27 require a signature or the original invoices.

28 (c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records
 29 ~~upon~~ on which the claim for a refund is based.

30 (2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as

1 defined in 15-70-301, is not valid for refund purposes.

2 (3) All applications for refunds must be filed with the department within 36 months after the date on which
3 the gasoline or special fuel was purchased as shown by invoices or after the date on which the tax was
4 erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid
5 by the distributor on unpaid accounts within 3 years after the date of payment.

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

9

10 **Section 29.** Section 15-70-366, MCA, is amended to read:

11 **"15-70-366. Penalties.** A distributor or other person who fails, neglects, or refuses to make and file the
12 statements required by this part in the manner or within the time provided, who is delinquent in the payment of
13 any ~~license~~ gasoline or special fuel tax imposed by this part, who makes any false statement with reference to
14 the distributor's business, who makes any false statement on any claim for refund, or who violates any provision
15 of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall
16 be fined ~~in~~ an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or
17 both."

18

19 **Section 30.** Section 15-70-503, MCA, is amended to read:

20 **"15-70-503. Definitions.** As used in this part, the definitions in ~~15-70-204~~ 15-70-301 and the following
21 definitions apply:

22 (1) "Department" means the department of transportation.

23 (2) "Ethanol distributor" means any person who, for the purpose of making ethanol-blended gasoline,
24 engages in the business of producing ethanol for sale, use, or distribution.

25 (3) "Ethanol-blended gasoline dealer" means any person who blends ethanol with gasoline to produce
26 ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.

27 (4) ~~"Export" means to transport out of Montana from any point of origin within Montana by any means
28 other than in the fuel supply tank of a motor vehicle."~~

29

30 **Section 31.** Section 15-70-521, MCA, is amended to read:

1 **"15-70-521. Denaturing ethanol -- refund authorized.** An ethanol distributor who, for the purpose of
2 denaturing ethanol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid
3 is entitled to a refund, computed as allowed in ~~45-70-224~~ 15-70-356, of tax paid on the gasoline used."

4

5 **Section 32.** Section 15-70-522, MCA, is amended to read:

6 **"15-70-522. Tax incentive for production of ethanol -- rules.** (1) (a) If the ethanol ~~was~~ is produced
7 in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol ~~was~~
8 is produced from non-Montana agricultural products when Montana products are not available, there is a tax
9 incentive payable to ethanol distributors for distilling ethanol that:

- 10 (i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana;
11 (ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline; or
12 (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.
13 (b) Payment must be made by the department out of the amount collected under ~~45-70-204~~ 15-70-343.

14 (2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled
15 in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana
16 products, with the amount of the tax incentive for each gallon reduced proportionately, based ~~upon~~ on the amount
17 of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax
18 incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility
19 shall file a business plan with the department at least 2 years before the estimated beginning date of production.
20 After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding
21 any changes to the business plan.

22 (3) Regardless of the ethanol tax incentive provided in subsection (2):

- 23 (a) the total payments made for the incentive under this part may not exceed \$6 million in any
24 consecutive 12-month period;
25 (b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard
26 prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase; and
27 (c) an ethanol distributor is not eligible to receive the tax incentive unless at least:
28 (i) 20% Montana product is used to produce ethanol at the facility in the first year of production;
29 (ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;
30 (iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;

- 1 (iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;
- 2 (v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and
- 3 (vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.
- 4 (4) (a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed
- 5 \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may
- 6 receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall
- 7 report its production to the department pursuant to ~~15-70-205~~ 15-70-344.
- 8 (b) The distributor's report must include:
- 9 (i) the total number of gallons produced for the month;
- 10 (ii) the total amount of products purchased for the production of ethanol;
- 11 (iii) the percentage of the total amount of products purchased that are Montana products; and
- 12 (iv) other information that the department determines is necessary.
- 13 (5) (a) A plant shall apply for the incentive payment by submitting an application to the department when
- 14 the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department
- 15 shall respond to the applicant with approval of the application within 45 days of receipt of the application, after
- 16 confirming the lending commitment. Upon approval of the application, the department shall enter into a contract
- 17 with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.
- 18 (b) If the department is not able to confirm a lending commitment, the department shall deny the
- 19 application.
- 20 (6) After the department has verified production, the application provisions of subsection (5) are met, and
- 21 the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives
- 22 based on actual production according to the terms of subsections (2) and (4).
- 23 (7) The department shall adopt rules necessary to carry out the provisions of this section. The
- 24 department shall coordinate and request information and input from the ethanol production industry as a part of
- 25 the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."
- 26

27 **Section 33.** Section 15-70-719, MCA, is amended to read:

28 **"15-70-719. Warrant for distraint.** If all or part of the tax imposed by this part is not paid when due, the

29 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has

30 precedence over any other claim, lien, or demand filed or recorded after the lien is filed by the department. An

1 action may not be maintained to enjoin the collection of all or any part of the ~~license~~ tax."

2

3 **Section 34.** Section 60-3-201, MCA, is amended to read:

4 **"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received
5 in payment of ~~license taxes~~ the gasoline tax under ~~the Distributor's Gasoline License Tax Act 15-70-343,~~ except
6 those amounts paid out of the department's suspense account for gasoline tax refund, must be used and
7 expended as provided in this section. The portion of that money on hand at any time that is needed to pay
8 highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment
9 of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing
10 the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After
11 deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as
12 follows:

13 (a) 9/10 of 1% to the state park account;

14 (b) 15/28 of 1% to a snowmobile account in the state special revenue fund;

15 (c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; ~~and~~

16 (d) 1/25 of 1% to the aeronautics revenue fund of the department under the provisions of 67-1-301-; and

17 (e) ~~The remainder of the money must be used~~ the remaining amount:

18 (i) for use by the department on the highways in this state selected and designated by the commission;

19 (ii) for collection of the ~~license~~ fuel taxes; and

20 (iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of
21 this state.

22 (2) The department shall, in expending this money, carry forward construction from year to year, using
23 the money expended in accordance with this title. Nothing in this title conflicts with Title 23, ~~U.S.C.~~, of the United
24 States Code and the rules by which it is administered.

25 (3) The department may enter into cooperative agreements with the national park service and the federal
26 highway administration for the purpose of maintaining national park approach roads in Montana.

27 (4) Money credited to the state park account in the state special revenue fund may be used only for the
28 creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that
29 of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have
30 been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

1 (5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities
2 open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and
3 for the control of noxious weeds.

4 (b) Of the amounts deposited in the snowmobile account:

5 (i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote
6 snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be
7 used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the
8 enforcement of snowmobile laws.

9 (ii) 1% of the amount deposited must be credited to the noxious weed management special revenue fund
10 provided for in 80-7-816.

11 (c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines,
12 except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered
13 snowmobiles in this state.

14 (6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to
15 develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged
16 by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the
17 off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money
18 deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway
19 vehicles.

20 (b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines,
21 except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles
22 in this state.

23 (7) Money credited to the aeronautics account of the department of transportation may be used only to
24 develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety.
25 The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except
26 fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state."
27

28 **Section 35.** Section 60-3-202, MCA, is amended to read:

29 **"60-3-202. Funding highway system maintenance.** For the purpose of funding the increased cost of
30 maintaining the state highway system as designated in 60-2-128, 1/4 cent per gallon of the special fuel tax

1 collected under ~~15-70-324~~ 15-70-343 and 1/4 cent per gallon of the gasoline license tax collected under
2 ~~15-70-204~~ 15-70-343 are allocated for highway maintenance."

3

4 **Section 36.** Section 61-12-206, MCA, is amended to read:

5 **"61-12-206. Offenses for which arrest authorized.** Employees designated or appointed as peace
6 officers under 61-10-154 or 61-12-201 may make arrests for violations of the following statutory provisions:

7 (1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;

8 (2) chapter 10 of this title;

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

10 (4) 15-24-201 through 15-24-205;

11 (5) Title 15, chapter 70, ~~parts 2 and~~ part 3;

12 (6) 61-10-154 and safety rules adopted under that section; and

13 (7) Title 69, chapter 12."

14

15 **Section 37.** Section 67-1-301, MCA, is amended to read:

16 **"67-1-301. Money -- receipt and disbursement.** (1) All costs and expenses of administering this title,
17 including the salaries of employees of the department engaged in functions pertaining to aeronautics, the
18 expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title,
19 must be paid out of the following revenue:

20 (a) all gifts and all legislative appropriations to the department for aeronautics; and

21 (b) all money received from any branch or department of the federal government or from other sources
22 for the purposes of this title or for the furtherance of aeronautics generally in this state.

23 (2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the
24 department.

25 (3) (a) Except as provided in subsection (5), the following amounts must be deposited from the proceeds
26 of the 4-cent-a-gallon tax imposed on aviation fuel by ~~15-70-204(1)(a)~~ 15-70-343(1)(c):

27 (i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of
28 2 cents a gallon collected under ~~15-70-204(1)(a)~~ 15-70-343(1)(c) for the sole purpose of carrying out its functions
29 pertaining to aeronautics; and

30 (ii) in a separate account in the state special revenue fund to the credit of the department, an amount

1 equal to the proceeds of 2 cents a gallon to provide refunds pursuant to ~~45-70-224(5)~~ 15-70-356(6), to provide
2 grants to municipalities for airport development or improvement programs, and to provide navigational aids, safety
3 improvements, weather reporting services, and other aeronautical services for airports and landing fields and for
4 the state's airways.

5 (b) Money deposited in the account created in 67-1-306 may, with the approval of the board, be used
6 only to provide loans to local governments and state agencies for aeronautical purposes, including airport
7 improvement. The board shall establish procedures, including the interest rate charged, for providing loans.
8 Proceeds of all repayments of loans, including interest, made under this subsection (3)(b) must be deposited in
9 the account created in 67-1-306.

10 (c) Money deposited in the separate account established in subsection (3)(a)(ii) may, after refunds are
11 provided pursuant to ~~45-70-224(5)~~ 15-70-356(6) and with the approval of the board, be used only to provide
12 grants to municipalities for airport development or improvement programs and to provide navigational aids, safety
13 improvements, weather reporting services, and other aeronautical services for airports and landing fields and for
14 the state's airways. The board shall establish procedures for the awarding of grants.

15 (4) Except as provided in ~~45-70-224~~ 15-70-356, the gasoline license tax imposed by the laws of this state
16 on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

17 (5) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under
18 14 CFR, part 121 or 135, 25% must be deposited in an account separate from the account established in
19 subsection (3)(a)(ii) to be used only for pavement preservation grants, with the approval of the board, on airports
20 served by these air carriers."

21

22 **Section 38.** Section 75-11-302, MCA, is amended to read:

23 **"75-11-302. Definitions.** Except as provided in subsections (2), (14), and (25), the following definitions
24 apply to this part:

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

28 (2) "Aviation gasoline" means aviation fuel as defined in ~~45-70-204~~ 15-70-301. For the purposes of this
29 chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

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

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

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

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

8 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

9 (8) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in ~~15-70-202~~
10 15-70-341, and who:

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

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

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

16 (d) is an exporter;

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

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

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

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

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

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

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

29 (14) "Gasoline" means gasoline as defined in ~~15-70-204~~ 15-70-301. For the purposes of this chapter,
30 gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

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

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

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

11 (18) (a) "Owner" means:

12 (i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

13 (ii) a person that owns the property on which a petroleum storage tank from which a release occurred
14 was located.

15 (b) The term does not include a person that holds an interest in a storage tank solely for financial
16 security, unless through foreclosure or other related actions the holder of a security interest has taken possession
17 of the tank.

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

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

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

26 (a) an underground storage tank as defined in 75-11-503;

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

29 (c) an aboveground storage tank with a capacity of less than 30,000 gallons; or

30 (d) aboveground or underground pipes associated with tanks under subsections (21)(b) and (21)(c),

1 except that pipelines regulated under the following laws are excluded:

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

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

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

6 (22) "Properly designed and installed double-walled tank system" means a petroleum storage tank and
7 associated product piping that is designed and constructed with rigid inner and outer walls separated by an
8 interstitial space and that is capable of being monitored for leakage. The design and construction of these tank
9 systems must meet any applicable standards of the department and the department of justice fire prevention and
10 investigation bureau. The material used in construction must be compatible with the liquid to be stored in the
11 system, and the system must be designed to prevent the release of any stored liquid.

12 (23) "Property damage" means:

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

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

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

18 (25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile
19 liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For
20 the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel
21 supply center."

22

23 **Section 39.** Section 75-11-314, MCA, is amended to read:

24 **"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint**
25 **-- statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department
26 of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel,
27 or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other
28 distributor. The fee must equal:

29 (a) 0.75 cent for each gallon of gasoline;

30 (b) 0.75 cent for each gallon of aviation gasoline;

1 (c) 0.75 cent for each gallon of special fuel; ~~and or~~

2 (d) 0.75 cent for each gallon of heating oil.

3 (2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state
4 must be included in the measure of a distributor's fee.

5 (3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee
6 provided in subsection (1).

7 (4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar
8 quarter after the unobligated balance in the fund equals or exceeds \$10 million. Whenever the unobligated fund
9 balance, less claims anticipated for board approval within the next 90 days, is less than \$6 million, the department
10 of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first
11 day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must
12 be imposed and collected until the unobligated fund balance again equals or exceeds \$10 million.

13 (5) The department of transportation shall collect the fee in the same manner as the basic gasoline
14 ~~license tax and special fuel tax~~ under Title 15, chapter 70, part 2 ~~3~~. The provisions of 15-70-103, 15-70-111,
15 ~~15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232~~ 15-70-341,
16 15-70-344, 15-70-345, 15-70-351 through 15-70-355, 15-70-356(3), and 15-70-366 apply to the fee. The
17 provisions of ~~15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224~~ 15-70-343, 15-70-348,
18 15-70-356(1), and 15-70-361 do not apply to the fee."
19

20 **NEW SECTION. Section 40. Repealer.** The following sections of the Montana Code Annotated are
21 repealed:

22 15-70-201. Definitions.

23 15-70-202. License and security of gasoline distributors -- denial or revocation of license.

24 15-70-204. Gasoline license tax -- rate.

25 15-70-205. Distributor's statement and payment -- confidentiality.

26 15-70-206. Recordkeeping requirements.

27 15-70-207. Invoice of distributors and aviation dealers.

28 15-70-208. Examination of records.

29 15-70-209. Information reports -- confidentiality.

30 15-70-210. Tax penalty for delinquency.

- 1 15-70-211. Warrant for distraint.
2 15-70-212. Statute of limitations.
3 15-70-221. Refund or credit authorized.
4 15-70-222. Required records.
5 15-70-223. Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or
6 cardtrol purchases.
7 15-70-224. Determination of highway use.
8 15-70-225. Application for refund or credit -- filing -- correction by department.
9 15-70-226. Approval or rejection of claim.
10 15-70-232. Penalties.
11 15-70-233. Improperly imported fuel -- seizure.
12 15-70-242. Civil penalty.
13 15-70-321. Tax on special fuel and volatile liquids.
14 15-70-324. Examination of records -- enforcement of part.
15 15-70-372. Civil penalties.

16
17 **NEW SECTION. Section 41. Directions to code commissioner.** (1) The code commissioner is
18 instructed to renumber sections currently in Title 15, chapter 70, parts 2 and 3, into a new part in Title 15, chapter
19 70.

20 (2) The code commissioner is instructed to change all internal references within and to the renumbered
21 sections in the Montana Code Annotated, including within sections enacted or amended by the 2015 legislature,
22 to reflect the new section numbers assigned pursuant to this section.

23 (3) Any section enacted by the 2015 legislature that is to be codified in Title 15, chapter 70, part 2 or 3,
24 must be codified as an integral part of the new part, and the provisions of the new part apply to the enacted
25 sections.

26 - END -