

IN THE SENATE

SENATE BILL NO. 1052

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO DYED FUEL; AMENDING SECTION 63-2402, IDAHO CODE, TO REMOVE REF-  
2 ERENCE TO DYED FUELS; AMENDING SECTION 63-2423, IDAHO CODE, TO PROVIDE  
3 APPLICATION TO DYED FUELS; REPEALING SECTION 63-2425, IDAHO CODE, RE-  
4 LATING TO DYED FUEL; AMENDING SECTION 63-2427A, IDAHO CODE, TO REMOVE  
5 REFERENCE TO DYED FUEL AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING  
6 SECTION 63-2427B, IDAHO CODE, TO REMOVE REFERENCE TO DYED FUEL.  
7

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

9 SECTION 1. That Section 63-2402, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed  
12 upon the distributor who receives motor fuel in this state. The legal inci-  
13 dence of the tax imposed under this section is borne by the distributor. The  
14 tax becomes due and payable upon receipt of the motor fuel in this state by  
15 the distributor unless such tax liability has previously accrued to another  
16 distributor pursuant to this section. The tax shall be imposed without re-  
17 gard to whether use is on a governmental basis or otherwise, unless exempted  
18 by this chapter.

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

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

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

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

- 34 (a) ~~Special fuels that have been dyed at a refinery or terminal under~~  
35 ~~the provisions of 26 U.S.C. section 4082 and regulations adopted there-~~  
36 ~~under, or under the clean air act and regulations adopted thereunder; or~~  
37 ~~(b)~~ Special fuels that are gaseous special fuels, as defined in section  
38 63-2401, Idaho Code, except that part thereof that is delivered into the  
39 fuel supply tank or tanks of a motor vehicle; or  
40 (e**h**) Aircraft engine fuel subject to tax under section 63-2408, Idaho  
41 Code.

1           (6) Should the distributor of first receipt be exempt from imposition  
2 of the tax as a matter of federal law, by virtue of its status as a federally  
3 recognized Indian tribe or member of such tribe, such distributor shall not  
4 bear the tax's legal incidence and must pass the tax through as part of the  
5 selling price of the fuel. Such distributor shall retain the administrative  
6 obligation to remit the tax, and such obligation shall accrue upon receipt  
7 in accordance with subsection (1) of this section. Should a retailer other-  
8 wise subject to the tax be exempt from imposition of the tax as a matter of  
9 federal law, by virtue of its status as a federally recognized Indian tribe  
10 or member of such tribe, the retailer shall not bear the tax's legal inci-  
11 dence and must pass the tax through as part of the selling price of the fuel  
12 to the consumer, unless such consumer is exempt from imposition of the tax  
13 as a matter of federal law, by virtue of its status as a federally recognized  
14 Indian tribe or membership in such tribe, and the retailer shall be entitled  
15 to claim a credit against taxes otherwise due and owing under this chapter or  
16 a tax refund, together with interest, attributable to the fuel purchased by  
17 such consumer.

18           SECTION 2. That Section 63-2423, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20           63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid  
21 his special fuels tax directly to the distributor from whom it was purchased  
22 shall be refunded the amount of:

23           (a) Except as provided in subsection (2) of this section, any special  
24 fuels tax paid on special fuels, whether dyed or not, used for purposes  
25 other than operation or propulsion of motor vehicles upon the highways  
26 in the state of Idaho;

27           (b) Any tax paid on special fuels used in motor vehicles owned or leased  
28 and operated by an instrumentality of the federal government or of the  
29 state of Idaho, including the state and all of its political subdivi-  
30 sions;

31           (c) Any special fuels tax paid on special fuels exported for use out-  
32 side the state of Idaho. Special fuels carried from the state in the  
33 fuel tank of a motor vehicle will not be deemed to be exported from the  
34 state unless it is subject to a like or similar tax in the jurisdiction  
35 to which it is taken and that tax is actually paid to the other jurisdic-  
36 tion; and

37           (d) Any tax, penalty or interest erroneously or illegally paid or col-  
38 lected.

39           (2) No refund of special fuels tax shall be paid on:

40           (a) Special fuels used in a recreational vehicle; or

41           (b) Special fuels used in noncommercial motor boats or in motor boats  
42 operated by a governmental entity; or

43           (c) Special fuels used while idling a registered motor vehicle, pur-  
44 suant to the definition of "idling" as provided in section 63-2401,  
45 Idaho Code.

46           (3) Refunds authorized in this section shall be claimed in the same man-  
47 ner as applies to refunds of gasoline tax under section 63-2410, Idaho Code,  
48 and shall be subject to interest computed pursuant to subsection (5) of that  
49 section.

1 SECTION 3. That Section [63-2425](#), Idaho Code, be, and the same is hereby  
2 repealed.

3 SECTION 4. That Section 63-2427A, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 63-2427A. MOTOR FUEL DISTRIBUTOR LICENSE. (1) It is unlawful for a  
6 person to act as a motor fuel distributor without a motor fuel distributor  
7 license. A person required to obtain such license is the first receiver of  
8 taxable motor fuel in Idaho. A person is not required to obtain a motor fuel  
9 distributor license when the person:

10 (a) Only purchases motor fuel on which any tax due under this chapter  
11 has previously been imposed upon a licensed distributor; or

12 (b) Only purchases ~~dyed~~ motor fuel upon which the motor fuel tax imposed  
13 in this chapter and transfer fee imposed in section 41-4909, Idaho Code,  
14 ~~has~~ have been imposed upon a licensed distributor; or

15 (c) Only produces five thousand (5,000) gallons or less of biodiesel in  
16 a calendar year for that person's personal consumption. Any producer  
17 who sells or transfers any quantity of biodiesel to any other person is  
18 the first receiver of the biodiesel and is required to obtain a motor  
19 fuel distributor license.

20 (2) Application for a license shall be made upon forms furnished and  
21 in a manner prescribed by the commission and shall contain information as it  
22 deems necessary. An application will not be accepted unless it is accompa-  
23 nied by a bond in the amount required in section 63-2428, Idaho Code. The  
24 commission shall not issue a motor fuel distributor license to any person who  
25 does not consent to be sued in Idaho district court for purposes of the state  
26 enforcing any provision of this chapter.

27 (3) Upon receipt of the application and bond in proper form the commis-  
28 sion shall issue the applicant a license to act as a distributor unless the  
29 applicant:

30 (a) Is a person who formerly held a license under the provisions of this  
31 chapter, any predecessor statute, under the laws of any other jurisdic-  
32 tion, or under the laws of the United States which license, prior to the  
33 time of filing this application, had been revoked for cause within five  
34 (5) years from the date of such application; or

35 (b) Is a person who has outstanding fuel tax liabilities to or is in vi-  
36 olation of the motor fuel laws of this state, any other jurisdiction or  
37 the United States government; or

38 (c) Is a person who has been convicted, under the laws of the United  
39 States or any state or jurisdiction or subdivision thereof, of fraud,  
40 tax evasion, or a violation of the laws governing the reporting and pay-  
41 ment of fees or taxes for petroleum products within five (5) years from  
42 the date of making such application; or

43 (d) Is a person who has been convicted of a felony or been granted a  
44 withheld judgment following an adjudication of guilt of a felony within  
45 five (5) years from the date of such application; or

46 (e) ~~Who i~~ Is not the real party in interest and the real party in interest  
47 is a person described in paragraph (a), (b), (c) or (d) of this subsec-  
48 tion.

1 (4) Upon approval of the application, the license shall be valid until  
2 it is canceled by the licensee or revoked for cause.

3 (5) No license shall be transferable.

4 (6) The commission shall furnish each licensed distributor with a list  
5 of all distributors licensed pursuant to this section. The list shall be  
6 supplemented by the commission from time to time to reflect additions and  
7 deletions.

8 SECTION 5. That Section 63-2427B, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 63-2427B. LICENSED GASEOUS FUELS DISTRIBUTORS -- REPORTS. (1) In lieu  
11 of the motor fuel distributor license required by section 63-2427A, Idaho  
12 Code, the commission may issue a gaseous fuels distributor license to a dis-  
13 tributor who applies for the license and who does not deal in fuel, other than  
14 gaseous fuels, except fuel which is either:

15 (a) Motor fuel on which any tax due under this chapter has previously  
16 been imposed upon a licensed distributor; or

17 (b) Dyed Motor fuel upon which the motor fuel tax imposed in this chap-  
18 ter and transfer fee imposed in section 41-4909, Idaho Code, has have  
19 been imposed upon a licensed distributor.

20 (2) Licensed gaseous fuels distributors shall, not later than the last  
21 day of each calendar month or for such other reporting period as the com-  
22 mission may authorize, render to the commission an accurate report of all  
23 gaseous fuels that are subject to tax under this chapter during the preced-  
24 ing reporting period. The report shall be made in the manner and on forms re-  
25 quired by the commission and shall include such other information as the com-  
26 mission may require for the proper administration of this chapter.