

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 9

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO MOTOR FUELS TAX AND TRANSFER FEE ON BIODIESEL;
2 AMENDING SECTION 41-4903, IDAHO CODE, TO REVISE THE DEFINITION
3 OF LICENSED DISTRIBUTOR; AMENDING SECTION 63-2421, IDAHO CODE,
4 TO CLARIFY THAT A PERSON ACTING AS A DISTRIBUTOR WHO ONLY
5 PRODUCES FIVE THOUSAND GALLONS OR LESS OF BIODIESEL IN A
6 CALENDAR YEAR IS SUBJECT TO THE MOTOR FUEL USE TAX ON
7 CONSUMERS; AND AMENDING SECTION 63-2427A, IDAHO CODE, TO
8 EXCLUDE FROM THE REQUIREMENT TO OBTAIN A MOTOR FUEL
9 DISTRIBUTOR'S LICENSE A PERSON ACTING AS A DISTRIBUTOR WHO
10 ONLY PRODUCES FIVE THOUSAND GALLONS OR LESS OF BIODIESEL IN A
11 CALENDAR YEAR.
12

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

14 SECTION 1. That Section 41-4903, Idaho Code, be, and the same is hereby amended to
15 read as follows:

16 41-4903. DEFINITIONS. For the purposes of this chapter:

17 (1) "Aboveground storage tank" means any one (1) or a combination of tanks, including
18 pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum
19 products, and the volume of which, including the volume of pipes connected thereto, is less
20 than ten percent (10%) beneath the surface of the ground. This term does not include a heating
21 tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons
22 or less.

23 (2) "Accidental release" means any sudden or nonsudden release of petroleum from a
24 storage tank that results in a need for corrective action or compensation for bodily injury or
25 property damage neither expected nor intended by the tank owner or operator.

26 (3) "Administrator" means the state insurance fund or any person employed by the board
27 of trustees to replace the state insurance fund, employed by the board to administer the Idaho
28 petroleum clean water trust fund.

29 (4) "Application fee" means the amount paid or payable by an owner or operator
30 applying for a contract of insurance with the trust fund to offset the costs of issuing contracts of
31 insurance and other costs of administering this fund.

32 (5) "Board" means the board of trustees appointed by the governor.

33 (6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any
34 person and caused by an occurrence defined in subsection (19) of this section.

35 (7) "Contamination" means the presence of petroleum or petroleum products in surface
36 or subsurface soil, surface water, or ground water.

37 (8) "Commission" means the state tax commission of the state of Idaho.

1 (9) "Corrective action" means those actions as are reasonably necessary to satisfy
2 applicable federal and state standards in the event of a release into the environment from a
3 petroleum storage tank. Corrective action includes initial corrective action response or actions
4 consistent with a remedial action to clean up contaminated soil and ground water or address
5 residual effects after initial corrective action is taken, as well as actions necessary to monitor,
6 assess and evaluate a release. Corrective action also includes the cost of removing a tank
7 which is releasing or has been releasing petroleum products and the release cannot be corrected
8 without removing the tank; but corrective action does not include the cost of replacing this tank
9 with another tank.

10 (10) "Department" means the department of insurance of the state of Idaho.

11 (11) "Director" means the director of the department of insurance.

12 (12) "Farm tank" means any tank with a capacity of more than one hundred ten (110)
13 gallons but less than one thousand one hundred (1,100) gallons situated above ground or
14 underground which is used for storing motor fuel for noncommercial purposes and which is
15 located on a tract of land devoted to the production of crops or raising animals, including
16 fish, and associated residences and improvements. A farm tank must be located on the farm
17 property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

18 (13) "Free product" means petroleum or petroleum products in the nonaqueous phase,
19 (e.g., liquid not dissolved in water).

20 (14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

21 (15) "Heating tank" means any tank with a capacity of more than one hundred ten
22 (110) gallons situated above ground or underground which is used for storing heating oil for
23 consumptive use on the premises where stored.

24 (16) "Legal defense costs" means any expense that an owner or operator or the trust fund
25 incurs in defending against claims or actions brought by the federal environmental protection
26 agency or a state agency to require corrective action or to recover the costs of corrective action;
27 or by or on behalf of a third party for bodily injury or property damage caused by a release.

28 (17) "Licensed distributor" means any distributor who has obtained a license under the
29 provisions of section 63-2427A, Idaho Code. If a person subject to the fee imposed by section
30 41-4909(7), Idaho Code, is not required to obtain a distributor's license under ~~the provisions~~
31 ~~of chapter 24, title 63, Idaho Code~~ paragraph (a) or (b) of subsection (1) of section 63-2427A,
32 Idaho Code, such person shall apply to the commission for a limited license for the purpose of
33 complying with the requirements of this chapter. Such a limited license shall not be valid for
34 any other purpose. No bond shall be required for a limited license. A holder of a limited
35 license is a "licensed distributor" for the purposes of filing reports, paying fees and other
36 actions necessary to the proper administration and enforcement of this chapter.

37 (18) "Noncommercial purposes" means not for resale, with respect to motor fuels.

38 (19) "Occurrence" means an accident, including continuous or repeated exposure to
39 conditions, which resulted in a release into the environment of petroleum products from a
40 petroleum storage tank.

41 (20) "Operator" means any person in control, or having responsibility for, the daily
42 operations of a petroleum storage tank.

43 (21) "Owner" means the owner of a petroleum storage tank, except that "owner" does not
44 include any person who, without participation in the management of a petroleum storage tank,
45 holds indicia of ownership primarily to protect the owner's security interest in the tank.

1 (22) "Person" means any corporation, association, partnership, one (1) or more
2 individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

3 (23) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof,
4 which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees
5 fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term
6 includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and
7 aviation fuel. Biodiesel and biodiesel blends as those terms are defined in section 63-2401,
8 Idaho Code, are also petroleum or petroleum products.

9 (24) "Property damage" means injury or destruction to tangible property caused by an
10 occurrence.

11 (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,
12 or disposing from a petroleum storage tank into ground water, surface water, or surface or
13 subsurface soils.

14 (26) "Residential tank" means any tank with a capacity of more than one hundred ten
15 (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground
16 or underground which is used for storing motor fuel for noncommercial purposes and which is
17 located on property used primarily for dwelling purposes.

18 (27) "Site" means a single parcel of property where petroleum or petroleum products
19 are stored in a petroleum storage tank and includes all contiguous land, structures, other
20 appurtenances, surface water, ground water, surface and subsurface soil, and subsurface strata
21 within and beneath the property boundary.

22 (28) "State" means the state of Idaho or any office, department, agency, authority,
23 commission, board, institution, hospital, college, university or other instrumentality thereof.

24 (29) "Tank" means a stationary device designed to contain an accumulation of petroleum
25 or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that
26 provide structural support.

27 (30) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who are
28 appointed by the governor pursuant to this chapter.

29 (31) "Underground storage tank" means any one (1) or combination of tanks, including
30 underground pipes connected thereto, that is used to contain an accumulation of petroleum
31 or petroleum products, and the volume of which, including the volume of underground pipes
32 connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term
33 does not include any:

34 (a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity
35 used for storing motor fuel for noncommercial purposes;

36 (b) Tank used solely for storing heating oil for consumptive use on the premises where
37 stored;

38 (c) Septic tank;

39 (d) Pipeline facility including gathering lines regulated under:

40 (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or

41 (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et
42 seq.); or

43 (iii) State laws comparable to the provisions of the law referred to in paragraph

44 (d)(i) or (d)(ii) of this subsection as an intrastate pipeline facility;

45 (e) Surface impoundment, pit, pond or lagoon;

46 (f) Storm water or wastewater collection system;

1 (g) Flow-through process tank;

2 (h) Liquid trap or associated gathering lines directly related to oil or gas production and
3 gathering operations;

4 (i) Storage tank situated in an underground area (such as a basement, cellar,
5 mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the
6 surface of the floor;

7 (j) Tanks with a capacity of one hundred ten (110) gallons or less.

8 The term "underground storage tank" does not include any pipes connected to any tank which is
9 described in paragraphs (a) through (i) of this definition.

10 (32) "Underground storage tank regulations" means regulations for petroleum storage
11 tanks promulgated by the United States environmental protection agency (EPA) pursuant to
12 subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery
13 act, regulations promulgated by the state of Idaho as part of a state program for underground
14 storage tank regulation under subtitle I, or other regulations affecting underground storage tank
15 operations and management, including the international fire code adopted by the state of Idaho.

16 SECTION 2. That Section 63-2421, Idaho Code, be, and the same is hereby amended to
17 read as follows:

18 63-2421. USE TAX – RETURNS AND PAYMENT OF USE TAX BY
19 CONSUMERS. (1) For the privilege of using the highways of this state, any person, including
20 a person described in paragraph (c) of subsection (1) of section 63-2427A, Idaho Code, who
21 consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this
22 state, or which is required to be licensed under the laws of another jurisdiction and is operated
23 on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has
24 not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from
25 tax by this chapter, shall be liable for the tax.

26 (2) Except for motor vehicles licensed under IFTA or operating with a temporary permit
27 under section 49-432, Idaho Code, a person liable under subsection (1) of this section shall
28 report the amount of tax liability and pay the taxes due in conjunction with his income or
29 franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner
30 and form prescribed by the commission. Payment of motor fuels taxes shall be made in
31 conjunction with any other taxes due on that return and motor fuels taxes due may be offset
32 against refunds of any other taxes shown on the return to be due the taxpayer.

33 (3) In the case of a person liable under subsection (1) of this section other than one who
34 consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this
35 section and not required to file a return under chapter 30, title 63, Idaho Code, the tax shall be
36 paid annually, on a calendar year basis, in the manner and form required by the commission.
37 The return and payment for each calendar year shall be due on or before April 15 of the
38 immediately succeeding calendar year.

39 (4) In the case of a person liable under subsection (1) of this section whose motor
40 vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and
41 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code,
42 the tax shall be paid in the manner required by those provisions.

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

1 63-2427A. DISTRIBUTOR'S LICENSE. (1) It is unlawful for a person to act as a
2 distributor without a license unless the person: ~~only purchases fuel which is either or both:~~

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

5 (b) Only purchases dyed fuel upon which the transfer fee imposed in section 41-4909,
6 Idaho Code, has been imposed upon a licensed distributor; or

7 (c) Only produces five thousand (5,000) gallons or less of biodiesel in a calendar year for
8 that person's personal consumption.

9 (2) Application for a license shall be made upon forms furnished and in a manner
10 prescribed by the commission and shall contain information as it deems necessary, and be
11 accompanied by a bond in the amount required in section 63-2428, Idaho Code.

12 (3) Upon receipt of the application and bond in proper form the commission shall issue
13 the applicant a license to act as a distributor unless the applicant:

14 (a) Is a person who formerly held a license under the provisions of this chapter, any
15 predecessor statute, under the laws of any other jurisdiction, or under the laws of the
16 United States which license, prior to the time of filing this application, had been revoked
17 for cause within five (5) years from the date of such application; or

18 (b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction
19 or the United States government; or

20 (c) Is a person who has been convicted, under the laws of the United States or any state
21 or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws
22 governing the reporting and payment of fees or taxes for petroleum products within five
23 (5) years from the date of making such application; or

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

27 (e) Who is not the real party in interest and the real party in interest is a person described
28 in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

29 (4) The commission shall not issue a distributor's license to any person until that person
30 has submitted to the commission a consent to be sued in Idaho district court for purposes of the
31 state enforcing any provision of this chapter. The consent shall be submitted in such form and
32 include such information as the commission may by rule require.

33 (5) Upon approval of the application the distributor's license shall be valid until it is
34 suspended or revoked for cause, for failure to maintain the bond required in section 63-2428,
35 Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and
36 fees due with a return required in this chapter, or is otherwise canceled.

37 (6) No distributor's license shall be transferable.

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