

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 135

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO MOTOR FUEL TAX AND TRANSPORTATION; AMENDING SECTION
 2 40-701, IDAHO CODE, TO REVISE APPORTIONMENT FROM THE HIGHWAY
 3 DISTRIBUTION ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS;
 4 AMENDING CHAPTER 7, TITLE 40, IDAHO CODE, BY THE ADDITION OF
 5 A NEW SECTION 40-701A, IDAHO CODE, TO PROVIDE FOR THE HIGHWAY
 6 MAINTENANCE, PRESERVATION AND RESTORATION FUND, TO PROVIDE
 7 FOR MONEYS DEPOSITED INTO THE FUND, TO PROVIDE FOR INTEREST,
 8 TO PROVIDE FOR APPORTIONMENT OF FUND MONEYS, TO PROVIDE FOR
 9 CONTINUOUS APPROPRIATION AND TO PROVIDE FOR EXPENDITURES; AND
 10 AMENDING SECTION 63-2402, IDAHO CODE, TO REVISE THE TAX UPON
 11 MOTOR FUEL.
 12

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

14 SECTION 1. That Section 40-701, Idaho Code, be, and the same is hereby amended to
 15 read as follows:

16 40-701. HIGHWAY DISTRIBUTION ACCOUNT – APPORTIONMENT. (1) There is
 17 established in the state treasury an account known as the "Highway Distribution Account," to
 18 which shall be credited:

- 19 (a) Moneys as provided by sections 63-2412(1)(e)4. and 63-2418(3), Idaho Code;
- 20 (b) All moneys collected by the department, their agents and vendors, and county
- 21 assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise
- 22 specifically provided for; and
- 23 (c) All other moneys as may be provided by law.

24 (2) The highway distribution account shall be apportioned as follows:

25 (a) An amount equal to the motor fuel tax exceeding twenty-five cents (25¢) per
 26 gallon shall be deposited to the highway maintenance, preservation and restoration fund
 27 established in section 40-701A, Idaho Code.

28 (b) Thirty-eight percent (38%) to local units of government as provided in section
 29 40-709, Idaho Code;

30 (bc) Fifty-seven percent (57%) to the state highway account established in section
 31 40-702, Idaho Code; and

32 (ed) Five percent (5%) to the law enforcement ~~account~~ fund, established in section
 33 67-2914, Idaho Code. The state controller shall cause the remittance of the moneys
 34 apportioned to local units of government not later than January 25, April 25, July 25
 35 and October 25 of each year, and to the state highway account and the law enforcement
 36 ~~account~~ fund as the moneys become available to the highway distribution account.

37 (3) Interest earned on the investment of idle moneys in the highway distribution account
 38 shall be paid to the highway distribution account.

1 (4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts
 2 established from highway user revenues, reimbursements, fees or permits shall be invested by
 3 the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with
 4 respect to other surplus or idle moneys in the state treasury. Interest earned on the investments
 5 shall be returned to the various highway trust or asset accounts and subaccounts.

6 SECTION 2. That Chapter 7, Title 40, Idaho Code, be, and the same is hereby amended
 7 by the addition thereto of a NEW SECTION, to be known and designated as Section 40-701A,
 8 Idaho Code, and to read as follows:

9 40-701A. ESTABLISHMENT OF HIGHWAY MAINTENANCE, PRESERVATION
 10 AND RESTORATION FUND – APPORTIONMENT. (1) There is hereby established in the
 11 state treasury a fund known as the "Highway Maintenance, Preservation and Restoration Fund,"
 12 to which shall be credited:

13 (a) Moneys as provided in section 40-701(2)(a), Idaho Code; and

14 (b) All other moneys as may be provided by law.

15 (c) Interest earned on the investment of idle moneys in the highway maintenance,
 16 preservation and restoration fund shall be paid to the fund.

17 (2) Moneys in the highway maintenance, preservation and restoration fund shall be
 18 apportioned as follows:

19 (a) Forty percent (40%) to local units of government as provided in section 40-709,
 20 Idaho Code; and

21 (b) Sixty percent (60%) to remain in the highway maintenance, preservation and
 22 restoration fund established in this section for expenditure by the Idaho transportation
 23 department in accordance with the provisions of subsection (3) of this section.

24 (3) Moneys in the highway maintenance, preservation and restoration fund as provided
 25 in subsection (2)(b) of this section are hereby continuously appropriated to the Idaho
 26 transportation department. Expenditures of moneys from the fund by the department shall be
 27 made only for the maintenance, preservation and restoration of existing state highways that
 28 are in use by motorists of this state as of the effective date of this act. In no event shall
 29 expenditures be made from this dedicated fund for capacity expansion projects. Provided
 30 however, that no moneys shall be expended from such fund unless and until the department
 31 has implemented a statewide pavement management system or similar management tool that
 32 is efficient, effective and widely accepted in the trade or practice for coordinating a statewide
 33 system for the management of pavement maintenance.

34 SECTION 3. That Section 63-2402, Idaho Code, be, and the same is hereby amended to
 35 read as follows:

36 63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed
 37 upon the distributor who receives motor fuel in this state. The legal incidence of the tax
 38 imposed under this section is borne by the distributor. The tax becomes due and payable upon
 39 receipt of the motor fuel in this state by the distributor unless such tax liability has previously
 40 accrued to another distributor pursuant to this section. The tax shall be imposed without regard
 41 to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

1 (2) The tax imposed in this section shall be at the rate of twenty-~~five~~seven cents (~~25~~27¢)
2 per gallon of motor fuel received. This tax shall be subject to the exemptions, deductions and
3 refunds set forth in this chapter.

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

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

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

14 (a) Special fuels that have been dyed at a refinery or terminal under the provisions of
15 26 U.S.C. section 4082 and regulations adopted thereunder, or under the clean air act and
16 regulations adopted thereunder except as provided in section 63-2425, Idaho Code; or

17 (b) Special fuel dispensed into a motor vehicle which uses gaseous special fuels and
18 which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

19 (c) Special fuels that are gaseous special fuels, as defined in section 63-2401, Idaho
20 Code, except that part thereof that is delivered into the fuel supply tank or tanks of a
21 motor vehicle; or

22 (d) Aircraft engine fuel subject to tax under section 63-2408, Idaho Code.

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