

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 185

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO FUELS TAX; AMENDING SECTION 63-2401, IDAHO CODE, TO DEFINE TERMS
2 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-2402, IDAHO
3 CODE, TO PROVIDE FOR A TAX ON ELECTRIC FUEL AND TO MAKE A TECHNICAL COR-
4 RECTION; AMENDING SECTION 63-2405, IDAHO CODE, TO PROVIDE FOR ELECTRIC
5 FUEL; AMENDING SECTION 63-2406, IDAHO CODE, TO PROVIDE FOR ELECTRIC
6 FUEL; AMENDING SECTION 63-2427A, IDAHO CODE, TO PROVIDE FOR ELECTRIC
7 FUEL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 24, TITLE
8 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2427D, IDAHO CODE,
9 TO ESTABLISH PROVISIONS REGARDING COMMERCIAL VEHICLE ELECTRIC FUEL;
10 AMENDING SECTION 63-2450, IDAHO CODE, TO PROVIDE FOR ELECTRIC FUEL;
11 AMENDING SECTION 63-2455, IDAHO CODE, TO PROVIDE FOR ELECTRIC FUEL AND
12 TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVID-
13 ING AN EFFECTIVE DATE.
14

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

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

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

1 person on whose behalf it is issued to remit any payment due under the
2 provisions of this chapter.

3 (5) "Commercial motor boat" means any boat, equipped with a motor,
4 ~~which that~~ is wholly or partly used in a profit-making enterprise or in an
5 enterprise conducted with the intent of making a profit.

6 (6) "Commercial vehicle" or "commercial motor vehicle" shall have the
7 same meaning as provided for in section 49-123(d), Idaho Code.

8 ~~(6)~~ (7) "Commission" means the state tax commission of the state of
9 Idaho.

10 ~~(7)~~ (8) "Distributor" means any person who receives motor fuel in this
11 state and includes a special fuels dealer. Any person who sells or receives
12 gaseous special fuels will not be considered a distributor unless:

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

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

18 ~~(8)~~ (9) "Dyed fuel" means diesel fuel that is dyed pursuant to re-
19 quirements of the internal revenue service, or the environmental protection
20 agency.

21 (10) "Electric fuel" means electrical energy delivered or placed into a
22 battery or other energy storage device of a commercial electric motor vehi-
23 cle from a source outside of the motor vehicle for the purpose of propelling
24 such motor vehicle.

25 (11) "Electric fuel charging station" means equipment that is used to
26 deliver electric fuel into a battery or other energy storage device of a com-
27 mercial electric motor vehicle.

28 (12) "Electric fuel receiver" means any person who receives electric
29 fuel from an electric supplier for the purpose of charging a commercial motor
30 vehicle.

31 (13) "Electric supplier" has the same meaning as that term is defined in
32 section 61-332A(4), Idaho Code.

33 ~~(9)~~ (14) "Exported" means delivered by truck or rail across the bound-
34 aries of this state by or for the seller or purchaser from a place of origin in
35 this state.

36 ~~(10)~~ (15) "Gasohol" means gasoline blended with ten percent (10%) or
37 more of anhydrous ethanol.

38 ~~(11)~~ (16) "Gasoline" means any mixture of volatile hydrocarbons suit-
39 able as a fuel for the propulsion of motor vehicles or motor boats. "Gasol-
40 ine" also means aircraft engine fuels when used for the operation or propul-
41 sion of motor vehicles or motor boats and includes gasohol, but does not in-
42 clude special fuels.

43 ~~(12)~~ (17) "Highways" means every place of whatever nature open to the
44 use of the public as a matter of right for the purpose of vehicular travel
45 ~~which that~~ is maintained by the state of Idaho or an agency or taxing subdivi-
46 sion or unit thereof or the federal government or an agency or instrumen-
47 tality thereof. Provided, however, if the cost of maintaining a roadway is
48 primarily borne by a special fuels user who operates motor vehicles on that
49 roadway pursuant to a written contract during any period of time that a spe-
50 cial fuels tax liability accrues to the user, such a roadway shall not be con-

1 sidered a "highway" for any purpose related to calculating that user's spe-
2 cial fuels' tax liability or refund.

3 ~~(13)~~ (18) "Idling" means the period of time greater than twenty-five
4 hundredths (.25) of an hour when a motor vehicle is stationary with the en-
5 gine operating at less than one thousand two hundred (1,200) revolutions per
6 minute (RPM), without the power take-off (PTO) unit engaged, with the trans-
7 mission in the neutral or park position, and with the parking brake set.

8 ~~(14)~~ (19) "Imported" means delivered by truck or rail across the bound-
9 aries of this state by or for the seller or purchaser from a place of origin
10 outside this state.

11 ~~(15)~~ (20) "International fuel tax agreement" and "IFTA" mean the inter-
12 national fuel tax agreement required by the intermodal surface transporta-
13 tion efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, and re-
14 ferred to in 49 U.S.C. 31701, including subsequent amendments to that agree-
15 ment.

16 ~~(16)~~ (21) "Jurisdiction" means a state of the United States, the Dis-
17 trict of Columbia, a province or territory of Canada, or a state, territory
18 or agency of Mexico in the event that the state, territory or agency partici-
19 pates in the international fuel tax agreement.

20 ~~(17)~~ (22) "Licensed motor fuel distributor" means any distributor who
21 has obtained a license under the provisions of section 63-2427A, Idaho Code.

22 ~~(18)~~ (23) "Motor fuel" means gasoline, ethanol, ethanol blended fuel,
23 gasoline blend stocks, natural gasoline, special fuels, aircraft engine fu-
24 els, electric fuel, or any other fuels suitable for the operation or propul-
25 sion of motor vehicles, motor boats or aircraft.

26 ~~(19)~~ (24) "Motor vehicle" means every self-propelled vehicle designed
27 for operation, or required to be licensed for operation, upon a highway.

28 ~~(20)~~ (25) "Person" means any individual, firm, fiduciary, copartner-
29 ship, association, limited liability company, corporation, governmental
30 instrumentality including the state and all of its agencies and political
31 subdivisions, or any other group or combination acting as a unit, and the
32 plural as well as the singular number, unless the intent to give a more
33 limited meaning is disclosed by the context. Whenever used in any clause
34 prescribing and imposing a fine or imprisonment, or both, the term "person"
35 as applied to an association means the partners or members, and as applied to
36 corporations, the officers.

37 ~~(21)~~ (26) "Recreational vehicle" means a snowmobile as defined in sec-
38 tion 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in
39 section 49-114, Idaho Code; any recreational vehicle as defined in sec-
40 tion 49-119, Idaho Code; and an all-terrain vehicle as defined in section
41 67-7101, Idaho Code.

42 ~~(22)~~ (27) "Retail dealer" means any person engaged in the retail sale of
43 motor fuels to the public or for use in the state.

44 ~~(23)~~ (28) "Special fuels" means:

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

46 (b) A compressed or liquefied gas obtained as a by-product in petroleum
47 refining or natural gasoline manufacture, such as butane, isobutane,
48 propane, propylene, butylenes, and their mixtures; and

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

1 ~~(24)~~ (29) "Special fuels dealer" means "distributor" under subsection
2 (7) of this section.

3 ~~(25)~~ (30) "Special fuels user" means any person who uses or consumes
4 special fuels for the operation or propulsion of motor vehicles owned or
5 controlled by him upon the highways of this state.

6 ~~(26)~~ (31) "Use" means either:

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

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

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

15 63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed
16 upon the distributor who receives motor fuel or electric fuel for commercial
17 vehicles from an electric supplier in this state. The legal incidence of the
18 tax imposed under this section is borne by the distributor. The tax becomes
19 due and payable upon receipt of the motor fuel or electric fuel in this state
20 by the distributor unless such tax liability has previously accrued to an-
21 other distributor pursuant to this section. The tax shall be imposed with-
22 out regard to whether use is on a governmental basis or otherwise, unless ex-
23 empted by this chapter.

24 (2) The tax imposed in this section shall be at the rate of thirty-two
25 cents (32¢) per gallon of motor fuel received and eight-tenths of a cent
26 (.8¢) per kilowatt hour of electric fuel received for use in a commercial
27 vehicle. This tax shall be subject to the exemptions, deductions and refunds
28 set forth in this chapter.

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

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

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

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

44 (b) Special fuels that are gaseous special fuels, as defined in section
45 63-2424, Idaho Code, except that part thereof that is delivered into the
46 fuel supply tank or tanks of a motor vehicle or certain gaseous special
47 fuels bulk tanks. Upon agreement with the customer, the licensed dis-
48 tributor may charge tax when placing gaseous special fuels into the cus-
49 tomer's bulk tanks; or

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

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

20 SECTION 3. That Section 63-2405, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 63-2405. PAYMENT OF TAX. The excise tax imposed by section 63-2402,
23 Idaho Code, is to be paid by the distributor, and measured by the total num-
24 ber of gallons of motor fuel or kilowatt hours of electric fuel, or both, re-
25 ceived by him, at the rate specified in section 63-2402, Idaho Code. That
26 tax, together with any penalty and/or interest due, shall be remitted with
27 the monthly distributor's report required in section 63-2406, Idaho Code.

28 SECTION 4. That Section 63-2406, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 63-2406. DISTRIBUTOR REPORTS. (1) Each distributor shall, not later
31 than the last day of each calendar month or for such other reporting period as
32 the commission may authorize, render to the commission an accurate report of
33 all motor fuel or electric fuel, or both, received by him in this state during
34 the preceding reporting period. The report shall be made in the manner and on
35 forms required by the commission.

36 (2) The distributor's report shall include:

37 (a) An itemized statement of the total number of gallons of motor fuel
38 received during the preceding calendar month; and

39 (b) Other information as the commission may require for the proper ad-
40 ministration of this chapter.

41 (3) The report shall be accompanied by a remittance of the tax shown to
42 be due on the report together with any applicable interest and penalty, un-
43 less the amounts due are paid by electronic funds transfer in the manner pro-
44 vided by section 67-2026, Idaho Code.

45 (4) Any distributor required to pay the tax imposed by this chapter who
46 fails to pay such tax shall be liable to the commission for the amount of tax

1 not remitted plus any applicable penalty or interest. The commission may
2 collect such amounts in the manner provided in section 63-2434, Idaho Code.

3 (5) The commission may prescribe rules providing standards consis-
4 tent with section 63-115, Idaho Code, for determining which returns must be
5 transmitted electronically. The commission may not require any person to
6 transmit returns electronically unless such person is required to report on
7 the return at least twenty-five (25) transactions involving the receipt or
8 disbursement of motor fuel or electric fuel, or both, during the period to
9 which the return relates. In promulgating such rules, the commission shall
10 take into account, among other relevant factors, the ability of the taxpayer
11 to comply, at a reasonable cost, with the requirements of such rules.

12 SECTION 5. That Section 63-2427A, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 63-2427A. MOTOR FUEL DISTRIBUTOR LICENSE. (1) It is unlawful for a
15 person to act as a motor fuel distributor without a motor fuel distributor
16 license. A person required to obtain such license is the first receiver of
17 taxable motor fuel or electric fuel for use in commercial vehicles in Idaho.
18 A person is not required to obtain a motor fuel distributor license when the
19 person:

20 (a) Only purchases motor fuel or electric fuel for use in commercial ve-
21 hicles on which any tax due under this chapter has previously been im-
22 posed upon a licensed distributor; or

23 (b) Only purchases dyed fuel upon which the transfer fee imposed in sec-
24 tion 41-4909, Idaho Code, has been imposed upon a licensed distributor;
25 or

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

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

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

41 (a) Is a person who formerly held a license under the provisions of this
42 chapter, or any predecessor statute, under the laws of any other juris-
43 diction, or under the laws of the United States, which license, prior to
44 the time of filing this application, had been revoked for cause within
45 five (5) years from the date of such application; or

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

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

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

9 (e) ~~Who is~~ Is not the real party in interest and the real party in inter-
10 est is a person described in paragraph (a), (b), (c) or (d) of this sub-
11 section.

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

14 (5) No license shall be transferable.

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

19 SECTION 6. That Chapter 24, Title 63, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 63-2427D, Idaho Code, and to read as follows:

22 63-2427D. COMMERCIAL VEHICLE ELECTRIC FUEL. (1) An electric fuel re-
23 ceiver who is the first receiver of electric fuel shall be required to use a
24 meter to measure the amount of electric fuel distributed to commercial ve-
25 hicles pursuant to the provisions of this chapter. Such electric fuel meter
26 may be built into a charging station or may be a separate meter provided by an
27 electric supplier at the expense of the first receiver.

28 (2) A person who purchases electric fuel to charge a commercial elec-
29 tric vehicle for resale of such electric fuel shall separately state on any
30 invoice or billing document provided to the customer the amount of the tax
31 imposed pursuant to section 63-2402, Idaho Code. Such tax amount shall not
32 be billed to the customer except as provided for in section 63-2402(3), Idaho
33 Code.

34 (3) An electric supplier shall not be required to obtain a motor fuel
35 distributor license pursuant to 63-2427A, Idaho Code, unless such electric
36 supplier distributes electric fuel to its own commercial motor vehicles as
37 such term is defined in section 49-123(d), Idaho Code.

38 (4) An electric fuel receiver shall keep records relating to the pur-
39 chase of electric fuel for three (3) years. The state tax commission is au-
40 thorized to request and review such records.

41 (5) The tax on electric fuel provided for in this chapter shall be ef-
42 fective January 1, 2024.

43 (6) For all electric fuel charging stations that are installed prior to
44 December 1, 2023, a person shall provide the state tax commission with docu-
45 mentation of a meter used for dispensing electric fuel upon obtaining a motor
46 fuel distributor license. Such documentation shall be provided to the state
47 tax commission by December 31, 2023.

48 (7) The owner of a charging station to be installed after December 1,
49 2023, shall obtain from the state tax commission a motor fuel distributor li-

1 cense prior to completion of such installation and shall provide the state
2 tax commission with documentation of a meter prior to dispensing electric
3 fuel into a commercial vehicle.

4 (8) The state tax commission is authorized to promulgate rules if nec-
5 essary to implement the provisions of this chapter.

6 SECTION 7. That Section 63-2450, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 63-2450. VIOLATIONS IN GENERAL. (1) It is unlawful for any person in
9 the state of Idaho to:

10 (a) Refuse or knowingly and intentionally fail to make and file any
11 statement required by this chapter in the manner or within the time re-
12 quired;

13 (b) Fail to pay any tax due or any fee required by this chapter or any
14 related penalties or interest;

15 (c) Knowingly make any false statement or conceal any material fact in
16 any record, return or affidavit provided for in this chapter with intent
17 to evade or to aid in the evasion of the tax imposed by this chapter;

18 (d) Conduct any activities requiring a license under this chapter with-
19 out an active license;

20 (e) Fail to keep and maintain the books and records required by this
21 chapter;

22 (f) Use dyed or untaxed fuel in a manner prohibited by this chapter;

23 (g) Violate any other provision of this chapter.

24 (2) It is unlawful to purchase, receive, or accept any untaxed motor
25 fuel or untaxed electric fuel unless authorized by this chapter.

26 (3) It is unlawful to sell or transfer any untaxed motor fuel or untaxed
27 electric fuel unless authorized by this chapter.

28 SECTION 8. That Section 63-2455, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 63-2455. SPECIFIC VIOLATIONS. (1) It is unlawful for any person to
31 operate a motor vehicle or consume any motor fuel, or electric fuel in the
32 propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maxi-
33 mum gross weight on the highways of this state, except as provided in section
34 63-2438, Idaho Code, unless:

35 (a) Such person is exempt from such requirement under section 63-2440,
36 Idaho Code, or any other provision of state or federal law; or

37 (b) In the case of vehicles using a gaseous special fuel, such person
38 has complied with section 63-2424, Idaho Code.

39 (2) It is unlawful to display any international fuels tax agreement
40 (IFTA) cab card or decal or temporary permit that:

41 (a) Is fictitious or counterfeit; or

42 (b) Is owned by a person other than the owner, operator or lessee of the
43 vehicle on which it is displayed.

44 SECTION 9. An emergency existing therefor, which emergency is hereby
45 declared to exist, this act shall be in full force and effect on and after
46 July 1, 2023.