

Effective dates. — Laws 2009, ch. 196, § 3 made Laws 2009, ch. 196, § 1 effective July 1, 2009.

Severability. — Laws 2009, ch. 196, § 2 provided that if any part or application of Laws 2009, ch. 196, § 1 is held invalid, the remainder or its application to other situations or persons shall not be affected.

ARTICLE 16

Special Fuels Tax (Repealed.)

7-16-1 to 7-16-26. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 51, § 23 repealed 7-16-1 to 7-16-3; 7-16-3.2 to 7-16-7; 7-16-8.1, 7-16-8.2, 7-16-10 to 7-16-13; 7-16-15 and 7-16-18 NMSA 1978, relating to the special fuels tax, effective January 1, 1993. For provisions of former sections, see the 1991 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

Laws 1990, ch. 124, § 23 repealed 7-16-3.1, as enacted by Laws 1988, ch. 70, § 11, relating to petroleum storage cleanup fund surcharge, effective July 1, 1990. For provisions of former section, see the 1989 NMSA 1978 on *NMOneSource.com*.

Laws 1980, ch. 98, § 15, repealed 7-16-8 and 7-16-9 NMSA 1978, relating to exemptions to temporary user permits and who qualifies to pay special fuel tax, effective July 1, 1980.

Laws 1988, ch. 73, § 56 repealed 7-16-14 NMSA 1978, as amended by Laws 1983, ch. 133, § 5, relating to retention of records by special fuel dealers, effective July 1, 1988.

Laws 1988, ch. 73, § 56 repealed 7-16-16 and 7-16-17 NMSA 1978, as amended by Laws 1977, ch. 250, § 82, and Laws 1987, ch. 347, § 16, relating to falsification of statements, doing business without a license, and distribution of tax and license fee revenue, effective July 1, 1988.

Laws 1988, ch. 73, § 56 repealed 7-16-19 to 7-16-26 NMSA 1978, as amended by Laws 1977, ch. 250, §§ 84, 86; 1978, ch. 56, § 1; 1978, ch. 57, § 1; 1983, ch. 133, §§ 7, 8; 1985, ch. 45, § 1; and as enacted by Laws 1983, ch. 133, § 9, effective July 1, 1988.

ARTICLE 16A

Special Fuels Supplier Tax

7-16A-1. Short title.

Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act".

History: Laws 1992, ch. 51, § 1; 1993, ch. 272, § 3.

ANNOTATIONS

Cross references. — For the Natural Gas and Crude Oil Production Incentive Act, see 7-29B-1 NMSA 1978.

The 1993 amendment, substituted "Chapter 7, Article 16A NMSA 1978" for "This act".

Compiler's notes. — Laws 1993, ch. 272 included both an emergency clause making the act effective immediately and an effective date provision providing that the act was effective January 1, 1993. See N.M. Const., Art. IV, § 23.

7-16A-2. Definitions.

As used in the Special Fuels Supplier Tax Act:

A. "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels;

B. "blended biodiesel" means a diesel engine fuel that contains at least two percent biodiesel;

C. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

D. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

E. "dealer" means any person who sells and delivers special fuel to a user;

F. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] issued by:

(1) the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

H. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

I. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

J. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

K. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

L. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

M. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

N. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

O. "sale" means any delivery, exchange, gift or other disposition;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "special fuel" means any diesel-engine fuel, biodiesel, blended biodiesel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

R. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

S. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

T. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

U. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

V. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act, and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

W. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

X. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not deliver special fuel into the supply tanks of motor vehicles.

History: 1978 Comp., § 7-16A-2, enacted by Laws 1992, ch. 51, § 2; 1993, ch. 272, § 4; 1995, ch. 16, § 14; 1997, ch. 192, § 5; 2005, ch. 109, § 8; 2013, ch. 109, § 1.

ANNOTATIONS

The 2013 amendment, effective May 1, 2013, defined "biodiesel" and "blended biodiesel"; clarified the definition of "special fuel"; added Subsections A and B; and in Subsection Q, after "diesel-engine fuel", added "biodiesel, blended biodiesel".

Laws 2013, ch. 109, § 6 provided the effective date of Laws 2013, ch. 109, was May 1, 2013, provided that prior to May 1, 2013 the provisions of the act were enacted into law. Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

Applicability. — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or

B. July 1, 2013.

The 2005 amendment, effective January 1, 2006, added the definition of "retailer" in Subsection L; added an exception in Subsection O to the definition of "special fuel" for fuel used in aircraft propelled by turbo-prop or jet engines; provided in Subsection T that "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement; and added the definition of "wholesaler" in Subsection V.

The 1997 amendment, effective June 1, 1997, redesignated former Paragraphs E(1) and (2) as Paragraphs E(1) to (3), inserted "identifying the vehicle as belonging to the state of New Mexico" in Paragraph E(2), inserted "either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is" in Subsection H, rewrote Subsections J and N, inserted "a rack operator or" in Subsection Q, deleted "within the meaning of 'received' as defined in this section" from the end of Subsection Q, deleted former Subsection T defining "use", redesignated former Subsection U as Subsection T, and made minor stylistic changes throughout the section.

The 1995 amendment, effective January 1, 1996, substituted "motor vehicle or combination motor vehicle" for "vehicle" in Subsection F; inserted "including toll roads" near the beginning of Subsection G; substituted "or any other legal entity" for "firm, partnership, company, corporation, cooperative association, receiver, estate, joint venture, syndicate, limited liability company or other association" in Subsection I; in Subsection N, deleted "kerosene, all other liquid fuels, including liquified petroleum gases and natural gas" following "diesel-engine fuel" and added the language beginning "or alternative fuel" at the end; and inserted "vehicle" in Subsection O.

The 1993 amendment, inserted "limited liability company" in Subsection I; substituted "twenty-six thousand pounds" for "twelve thousand pounds" in Subsection O; added "and any activity ancillary to that propulsion" at the end of Paragraph (2) of Subsection T; rewrote Subsection U, which read " 'user' means any person other than the United States government or an Indian nation, tribe or pueblo who uses special fuel to propel a motor vehicle on the highways"; and made minor stylistic changes throughout the section.

7-16A-2.1. When special fuel received or used; who is required to pay tax.

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack

operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay the tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, that person receives the special fuel and is required to pay the tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the tax, unless the tax has been paid by a previous owner.

E. Except as provided in Subsection F of this section, special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.

F. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act [7-16A-19.1 NMSA 1978], the special fuel user does not use special fuel in this state.

History: 1978 Comp., § 7-16A-2.1, enacted by Laws 1997, ch. 192, § 6; 2018, ch. 77, § 2.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, provided an exception for the payment of the special fuel excise tax to special fuel users who hold a valid border crossing special fuel user permit, and made technical changes; in Subsection E, added "Except as provided in Subsection F of this section"; and added Subsection F.

7-16A-3. Imposition and rate of tax; denomination as special fuel excise tax.

A. For the privilege of receiving or using special fuel in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of special fuel received in New Mexico.

B. The tax imposed by Subsection A of this section shall be twenty-one cents (\$.21) per gallon of special fuel received or used in New Mexico.

C. The tax imposed by this section may be called the "special fuel excise tax".

History: Laws 1992, ch. 51, § 3; 1993, ch. 357, § 10; 2003 (1st S.S.), ch. 3, § 9.

ANNOTATIONS

The 2003 (1st S.S.) amendment, effective July 1, 2004, substituted "twenty-one cents (\$.21)" for "eighteen cents (\$.18)" in Subsection B.

7-16A-4. Special fuel inventory tax; imposition of tax; date payment of tax due.

A. A "special fuel inventory tax" is imposed measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which an increase in the special fuel excise tax rate is effective. The taxable event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which an increase in the special fuel excise tax rate is effective. The rate of the special fuel inventory tax applicable to each gallon of special fuel held in inventory by a supplier or bulk storage use, as provided in Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act, shall be the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is increased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate increase is effective, expressed in cents per gallon.

B. The special fuel inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1992, ch. 51, § 4.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 51, § 24 made Laws 1992, ch. 51, § 4 effective January 1, 1993.

7-16A-5. Special fuel inventories.

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due.

History: Laws 1992, ch. 51, § 5; 2005, ch. 109, § 9.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, deleted Subsection C, which required dealers to maintain a record of total gallons of fuel in inventory prior the day on which an the special fuel excise tax rate changes and which prohibited dealers from changing the price of special fuel sold until the inventory was sold.

7-16A-5.1. Manifest or bill of lading required when transporting special fuels.

Every person transporting special fuels from a refinery or other facility at which special fuel is produced, refined, manufactured, blended or compounded or from a pipeline terminal in this state, importing special fuels into this state or exporting special fuels from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the special fuel or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting special fuels without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the special fuels so transported were legally acquired by a registered supplier who assumed liability for payment of the tax imposed by the Special Fuels Supplier Tax Act.

History: Laws 1997, ch. 192, § 14.

ANNOTATIONS

Emergency clauses. — Laws 1997, ch. 192, § 17 contained an emergency clause and was approved April 10, 1997.

7-16A-6. Special fuel inventory tax refund.

A "special fuel inventory tax refund" is established measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which a decrease in the special fuel excise tax rate is effective. The refund event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which a decrease in the special fuel excise tax rate is effective. The refund is to be calculated by determining the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is decreased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate decrease is effective, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act.

History: Laws 1992, ch. 51, § 6.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 51, § 24 made Laws 1992, ch. 51, § 6 effective January 1, 1993.

7-16A-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 16, § 16 repealed 7-16A-7 NMSA 1978, as enacted by Laws 1992, ch. 51, § 7, relating to flat tax for liquefied petroleum gas-powered and natural gas-powered vehicles, effective January 1, 1996. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 7-16B-4 NMSA 1978.

7-16A-8. Repealed.

History: Laws 1992, ch. 51, § 8; 1993, ch. 272, § 5; 1997, ch. 192, § 7; 2006, ch. 74, § 3.

ANNOTATIONS

Repeals. — Laws 2006, ch. 74, § 3, repealed 7-16A-8 NMSA 1978, as enacted by Laws 1992, ch. 51, § 8, relating to special bulk storage user permits, effective May 17, 2006. For provisions of former section, see the 2005 NMSA 1978 on *NMOneSource.com*.

7-16A-9. Tax returns; payment of tax.

Rack operators and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be

made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received.

History: Laws 1992, ch. 51, § 9; 1997, ch. 192, § 8; 2005, ch. 109, § 10.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provided that the taxation and revenue department may require that tax returns be provided by electronic means if an exception is given to rack operator with limited amounts of fuel sold and for suppliers with limited amount of fuel received.

The 1997 amendment, effective June 1, 1997, deleted "special fuel suppliers" from the end of the section heading and inserted "Rack operators and" at the beginning of the section.

7-16A-9.1. Returns by retailers; requirements.

Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.

History: Laws 2005, ch. 109, § 12.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 12 effective January 1, 2006.

7-16A-9.2. Returns by wholesalers.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold.

History: Laws 2005, ch. 109, § 13.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 13 effective January 1, 2006.

7-16A-9.3. Returns by rack operators; requirements.

Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is distributed in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.

History: Laws 2005, ch. 109, § 14.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 14 effective January 1, 2006.

7-16A-9.4. Reporting requirements; special fuel deduction; biodiesel.

A. A taxpayer that deducts an amount of special fuel that is biodiesel from the total amount of special fuel received in New Mexico pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 shall report the deducted amount separately with the taxpayer's return in a manner prescribed by the department.

B. The department shall calculate the aggregate amount, in dollars, of the difference between the amount of special fuel excise tax that would have been collected in a fiscal year if not for the deduction allowed pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and the amount of special fuel excise tax actually collected. The department shall compile an annual report that includes the aggregate amount, the number of taxpayers that deducted an amount of special fuel pursuant to Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and any other information necessary to evaluate the deduction. Beginning in 2017 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the costs and benefits of the deduction to the state.

History: Laws 2013, ch. 109, § 3.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 109, § 6 provided that Laws 2013, ch. 109 was effective May 1, 2013, provided that prior to May 1, 2013 the provisions of the act are enacted into law, or July 1, 2013.

Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

Applicability. — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

- A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or
- B. July 1, 2013.

7-16A-10. Deductions; special fuel excise tax; special fuel suppliers.

In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

- (1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;
- (2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or
- (3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any

agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel dyed in accordance with federal regulations;

F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point;

G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel; and

H. special fuel received in New Mexico that:

(1) prior to July 1, 2014, consists of at least ninety-nine percent vegetable oil or animal fat; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act; or

(2) is biodiesel received or manufactured and delivered to a rack operator that is within the state for blending or resale.

History: Laws 1992, ch. 51, § 10; 1993, ch. 272, § 6; 1997, ch. 192, § 9; 1998, ch. 44, § 4; 2001, ch. 43, § 1; 2005, ch. 232, § 1; 2006, ch. 74, § 1; 2007, ch. 110, § 3; 2009, ch. 99, § 2; 2009, ch. 99, § 3; 2013, ch. 109, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 109, § 4, effective April 2, 2013, repealed Laws 2009, ch. 99, § 3, which would have become effective July 1, 2014.

The 2013 amendment, effective May 1, 2013, provided a deduction for receipt of biodiesel fuel to rack operators for blending and resale; in Paragraph (1) of Subsection H, at the beginning of the sentence, added "prior to July 1, 2014"; and added Paragraph (2) of Subsection H.

Laws 2013, ch. 109, § 6 provided that Laws 2013, ch. 109 is effective on May 1, 2013, provided that prior to May 1, 2013 the provisions of the act are enacted into law, or July 1, 2013.

Laws 2013, ch. 109, § 7, contained an emergency clause and was approved April 2, 2013.

Applicability. — Laws 2013, ch. 109, § 5 provided that the provisions of Laws 2013, ch. 109 apply to special fuel received on or after:

- A. May 1, 2013, provided that prior to May 1, 2013, provisions of this act are enacted into law; or
- B. July 1, 2013.

The 2009 amendment, effective July 1, 2009, added Subsection H.

The 2007 amendment, effective June 15, 2007, added a new Subsection G to provide a deduction for special fuel received in New Mexico on which New Mexico special fuel tax was paid by the out-of-state terminal at which the special fuel was loaded.

The 2006 amendment, effective May 17, 2006, deleted former Subsection E, which provided a deduction for special fuel sold to the holder of a special bulk storage user permit and delivered in to special bulk storage pursuant to Section 7-16A-8 NMSA 1978.

The 2005 amendment, effective July 1, 2005, added Subsection G to provide a deduction for number 2 diesel fuel sold for the generation of power to propel a school bus.

The 2001 amendment, effective June 15, 2000, deleted "and used in any manner other than for propulsion of motor vehicles on the highways of this state or activities ancillary to that propulsion" from Subsection F.

The 1998 amendment, effective July 1, 1998, in the introductory language deleted "special fuel excise" preceding "tax" and in Subsection F, inserted "dyed in accordance with federal regulations and".

The 1997 amendment, effective June 1, 1997, rewrote Subsections A and F, and made a minor stylistic change in Subsection E.

The 1993 amendment, added current Subsection C and Subsections E and F; redesignated former Subsection C as Subsection D; and made a minor stylistic change.

7-16A-11. Tax returns; payment of tax; special fuel users; exception.

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international fuel tax agreement to which the state is a party.

D. To the extent that a special fuel user whose use of New Mexico highways is limited to that for which the special fuel user holds a valid border crossing special fuel user permit, as provided for in Section 1 of this 2018 act [7-16A-19.1 NMSA 1978], the special fuel user is exempt from the requirements of this section.

History: Laws 1992, ch. 51, § 11; 2005, ch. 109, § 11; 2018, ch. 77, § 3.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, provided an exemption from filing a special fuel excise tax return and the payment of the special fuel excise tax for special fuel users who hold a valid border crossing special fuel user permit, and made technical changes; in the catchline, added "exception"; and added Subsection D.

The 2005 amendment, effective January 1, 2006, modified former Subsections A through D to require a special fuel user to file a special fuel excise tax return in form and content prescribed by the secretary of taxation and revenue to conform to the due date for the return required by an interstate agreement; added Subsection B to provide that a special fuel user may elect to file and pay the special fuel excise tax annually by conforming to an international fuel tax agreement; and added Subsection C to provide that a special fuel user shall file a return in accordance with the conditions and terms of an international fuel tax agreement.

7-16A-12. Credit; special fuel excise tax; special fuel users.

In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department.

History: Laws 1992, ch. 51, § 12; 1997, ch. 192, § 10.

ANNOTATIONS

The 1997 amendment, effective June 1, 1997, deleted "or weight distance tax due" preceding "for that reporting period, provided".

7-16A-13. Claim for refund or credit of special fuel excise tax paid; on special fuel destroyed by fire, accident or acts of God before

retail sale; on special fuel previously received from a source other than a refiner or pipeline terminal.

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit of any special fuel excise tax or special fuel inventory tax paid on special fuel destroyed by fire, accident or acts of God while in the possession of a supplier, bulk storage user or dealer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

History: Laws 1992, ch. 51, § 13; 2015 (1st S.S.), ch. 2, § 21.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, provided for a refund or credit of a New Mexico tax paid on special fuel previously received in New Mexico from a source other than a refiner or pipeline terminal in this state; in the catchline added "on special fuel previously received from a source other than a refiner or pipeline terminal"; added the subsection designation "A" preceding the previously undesignated language; and added Subsections B, C and D.

7-16A-13.1. Claim for refund of special fuel excise tax paid on special fuel.

A. Upon the submission of proof satisfactory to the department, a user of special fuel may submit and the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department or with a public school district as a school bus, to propel a vehicle off-road, to operate auxiliary equipment by a power take-off from the main engine or transmission of a vehicle or to operate a non-automotive apparatus mounted on a vehicle when the special fuel used for such purposes and the special fuel used to propel the vehicle on the highways are drawn from a common supply tank. The vehicle must be registered with the department. The user must be registered with the department for purposes of reporting and paying gross receipts tax.

B. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

C. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section. The department may prescribe the use of types of monitoring or measuring equipment.

D. This section applies to special fuel purchased on or after July 1, 2001, except for the refund for special fuel used to propel a school bus, which applies to special fuel purchased on or after July 1, 2005.

History: 1978 Comp., § 7-16A-13.1, enacted by Laws 2001, ch. 43, § 2; 2005, ch. 232, § 2; 2006, ch. 73, § 1; 2006, ch. 74, § 2.

ANNOTATIONS

2006 Multiple Amendments. — Laws 2006, ch. 73, § 1 and Laws 2006, ch. 74, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2006, ch. 74, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2006, ch. 73, § 1 and Laws 2006, ch. 74, § 2 are described below. To view the session laws in their entirety, see the 2006 session laws on *NMOneSource.com*.

Laws 2006, ch. 74, § 2, effective May 17, 2006, deleted the exception relating to a holder of a bulk storage user permit.

Laws 2006, ch. 73, § 1, effective July 1, 2006, added "or with a public school district" in Subsection A.

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that the department may allow a claim for refund of tax paid on special fuel used to propel a vehicle authorized by contract with the public education department as a school bus; and in Subsection D, provided that the section applies to special fuel to propel a school bus that is purchased on or after July 1, 2005.

7-16A-14. Registration necessary to engage in business as rack operator, special fuel supplier or dealer.

Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

History: Laws 1992, ch. 51, § 14; 1997, ch. 192, § 11.

ANNOTATIONS

The 1997 amendment, effective June 1, 1997, inserted "rack operator" in the section heading, and near the middle of the section.

7-16A-15. Bond required of supplier.

A. Except as provided in Subsection H of this section, every supplier shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission [public regulation commission] to transact business in this state as a surety and upon which bond the supplier is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the supplier may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any supplier shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any supplier required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the supplier's monthly special fuel excise tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a supplier shall never be less than one thousand dollars (\$1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the special fuel excise tax and any penalties and interest for which the supplier is or may at any time become liable, then the supplier shall forthwith, upon written demand of the department mailed to the last known address of the supplier as shown on the records of the department, file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the supplier of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. Any surety on any bond furnished by any supplier as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, the request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department

shall notify promptly the supplier who furnished the bond that the supplier shall, on or before the expiration of the ninety-day period, file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The supplier required to file bond with or provide cash or securities to the department in accordance with this section and who is required by any other state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. On July 1, 1994, every supplier who, for the twenty-four month period immediately preceding that date, has not been a delinquent taxpayer under the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] is exempt from the requirement pursuant to this section to file a bond. A supplier required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to either the Special Fuels Supplier Tax Act or the Special Fuels Tax Act [repealed] may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination.

History: Laws 1992, ch. 51, § 15; 1994, ch. 7, § 1; 1997, ch. 192, § 12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

The Special Fuels Tax Act was formerly compiled as Chapter 7, Article 16 NMSA 1978 prior to its repeal in 1993.

The 1997 amendment, effective June 1, 1997, deleted "or dealer" following "supplier" in the section heading and throughout the section, substituted "supplier's monthly special fuel excise tax" for "supplier's or dealer's quarterly special fuel excise tax" in Subsection D and rewrote the first three sentences in Subsection H.

The 1994 amendment, effective July 1, 1994, added the exception clause at the beginning of the first sentence in Subsection A; in Subsection D, inserted "required to

post bond", and substituted "two times" for "one and one-half times" and "quarterly" for "monthly"; deleted "any any" preceding "and all" near the beginning of the first sentence in Subsection F; and added Subsection H.

7-16A-15.1. Special fuel users; surety bond required; exceptions.

A. Except as required in Subsection H of this section, every special fuel user with a commercial domicile not located in an International Fuel Tax Agreement jurisdiction shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the public regulation commission to transact business in New Mexico as a surety and upon which bond the special fuel user is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the special fuel user to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest on the taxes.

B. In lieu of the bond, the special fuel user may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of a special fuel user shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of a special fuel user required to post a bond, the department shall require an amount equivalent to the total estimated tax due for two quarters; provided, however, that the total amount of bond, cash or securities required of a special fuel user shall never be less than five hundred dollars (\$500).

E. In the event the department determines that the amount of the existing bond, cash or securities is insufficient to ensure payment to New Mexico of the amount of the special fuel excise tax and penalties and interest for which a special fuel user is or may at any time become liable, the special fuel user, upon written demand from the department mailed to the last known address of the special fuel user as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the special fuel user of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. A surety on a bond furnished by a special fuel user as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that the request shall not operate to release or discharge the surety from liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during

the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of the request to cancel the bond due to filing of a new bond, the department shall promptly notify the special fuel user who furnished the bond that the special fuel user, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. A special fuel user who is required to file a bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provision of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. A special fuel user who is required to file a bond pursuant to the provisions of this section and who for the eight consecutive quarters preceding the date of request has not been delinquent filing reports or paying special fuel excise taxes pursuant to the Special Fuels Supplier Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first quarter following the end of the eight-quarter period. If a special fuel user exempted pursuant to this subsection subsequently becomes delinquent, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the special fuel user in writing of the termination.

History: Laws 2007, ch. 110, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 110, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

7-16A-16. Delivery and use of special fuel prohibited in certain cases.

It is a violation of the Special Fuels Supplier Tax Act to do any of the following acts:

A. operate any motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Special Fuels Supplier Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supplying device; fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person or motor vehicle special fuel from any special fuel supply tank or auxiliary special fuel supply tank; or

C. deliver special fuel from a cargo tank into the special fuel supply tank of a motor vehicle; provided, however, delivery of liquefied petroleum gases may be made into the special fuel supply tank of a motor vehicle carrying a valid permit under the Special Fuels Supplier Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by that dealer from the cargo tank of a vehicle operated by that dealer, which tank is specially designed to make this type of special fuel delivery.

History: Laws 1992, ch. 51, § 16.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 51, § 24 made Laws 1992, ch. 51, § 16 effective January 1, 1993.

7-16A-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 272, § 8 repealed 7-16A-17, as enacted by Laws 1992, ch. 51, § 17, relating to bulk storage users, prohibited act, effective April 7, 1993. For provisions of former sections, see the 1992 NMSA 1978 on *NMOneSource.com*.

7-16A-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 272, § 8 repealed 7-16A-18 NMSA 1978, as enacted by Laws 1992, ch. 51, § 18, relating to permits, special fuel users, penalty, effective April 7, 1993. For provisions of former sections, see the 1992 NMSA 1978 on *NMOneSource.com*.

7-16A-19. Special fuel user permits; violation.

A. A special fuel user whose vehicle is not registered with the department shall acquire from the department of transportation, before operating the vehicle on New Mexico highways:

(1) a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico; or

(2) a border crossing special fuel user permit, as provided for in Section 7-16A-19.1 NMSA 1978.

B. A special fuel user applying for a temporary special fuel user permit shall apply for the permit on a form approved by the department.

C. The fee for a temporary special fuel user permit is five dollars (\$5.00) for each motor vehicle.

D. It is a violation of the Special Fuels Supplier Tax Act for a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department of transportation.

E. It is a violation of the Special Fuels Supplier Tax Act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways outside the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel. In addition to any other penalty that may apply, a person who violates this provision is subject to a fine of three hundred dollars (\$300).

History: Laws 1992, ch. 51, § 19; 1993, ch. 272, § 7; 1997, ch. 192, § 13; 2018, ch. 77, § 4; 2021, ch. 59, § 4.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, made conforming changes due to the transfer of certain authority to the department of transportation, and added a statutory citation; in Subsection A, after the second occurrence of "department", added "of transportation", and in Paragraph A(2), after "Section", deleted "1 of this 2018 act" and added "7-16A-19.1 NMSA 1978"; and in Subsection D, after "department", added "of transportation".

The 2018 amendment, effective July 1, 2018, required special fuel users whose vehicles are not registered with the department to either obtain a temporary permit or a border crossing special fuel user permit before operating a vehicle on New Mexico highways, and provided a penalty for the violation of the provisions of this section; in the catchline, deleted "Temporary", and after "permits;", added "violation"; in Subsection A, deleted "To prevent evasion of the special fuel excise tax" and added "A", after "shall acquire", deleted "a temporary special fuel user permit", and added Paragraphs A(1) and A(2); added new subsection designation "B." and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection B, added "A special fuel user applying for a", after "permit shall", deleted "be valid for one entrance and one exit of the state within a period that shall not exceed forty-eight hours from the time of issuance" and added "apply for the permit on a form approved by the department"; in Subsection D, after "user without", deleted "obtaining" and added "possessing"; and added Subsection E.

The 1997 amendment, effective June 1, 1997, rewrote the first sentence in Subsection A, deleted Subsection B, and redesignated former Subsections C and D as Subsections B and C.

The 1993 amendment, deleted "temporary highway user permits" at the end of the catchline and deleted former Subsections E to G, pertaining to issuance, use and requirements for temporary highway user permits.

Laws 1993, ch. 272 contained both an emergency clause making the act effective immediately and an effective date provision providing that the act was effective January 1, 1993. See N.M. Const., Art. IV, § 23.

7-16A-19.1. Border crossing special fuel user permit.

A. A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border may apply for, on a form approved by the department of transportation, a quarterly, semi-annual or annual border crossing special fuel user permit. The department of transportation shall issue the permit if it approves the application and upon payment of the fee for the permit.

B. The department of transportation shall establish by rule the amount, which shall not exceed the following, of fees for border crossing special fuel user permits:

- (1) for a quarterly permit, one hundred twenty-five dollars (\$125);
- (2) for a semi-annual permit, two hundred dollars (\$200); and
- (3) for an annual permit, three hundred fifty dollars (\$350).

C. As used in this section, "international border commercial zone" means that part of a commercial zone established by a law of the United States that extends into New Mexico.

History: Laws 2018, ch. 77, § 1; 2021, ch. 59, § 5.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, made conforming changes due to the transfer of certain authority to the department of transportation, and removed a provision authorizing the taxation and revenue department to revoke the border crossing special fuel user permit of a special fuel user found to have violated the Special Fuels Supplier Tax Act; after each occurrence of "department", added "of

transportation" throughout; and deleted former Subsection C and redesignated former Subsection D as Subsection C.

7-16A-20. Administration and enforcement of act.

The department shall interpret the provisions of the Special Fuels Supplier Tax Act. The department shall administer and enforce the collection of the special fuel excise tax, the special fuel inventory taxes and the tax on liquefied petroleum gas, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of those taxes.

History: Laws 1992, ch. 51, § 20.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 51, § 24 made Laws 1968, ch. 51, § 20 effective January 1, 1993.

7-16A-20.1. Special fuels; authority of secretary to terminate interstate agreements.

The secretary may terminate:

A. a cooperative agreement involving the taxation of special fuels into which the secretary enters with another state, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States; or

B. a multistate agreement involving the taxation of special fuels into which the secretary enters.

History: Laws 2005, ch. 109, § 15.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 109, § 16 made Laws 2005, ch. 109, § 15 effective January 1, 2006.

7-16A-21. Temporary provision; continuity of actions.

A. All taxes due but not paid on liquefied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978] remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

History: Laws 1995, ch. 16, § 15.

ANNOTATIONS

Cross references. — For provisions regarding the alternative fuel excise tax, *see* 7-16B-6 NMSA 1978.

For provisions regarding alternative fuel user permits, *see* 7-16B-7 NMSA 1978.

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 15 effective January 1, 1996.

ARTICLE 16B

Alternative Fuel Tax

7-16B-1. Short title.

Chapter 7, Article 16B NMSA 1978 may be cited as the "Alternative Fuel Tax Act".

History: Laws 1995, ch. 16, § 1; 2014, ch. 34, § 1.

ANNOTATIONS

Cross references. — For the Petroleum Products Loading Fee Act, *see* 7-13A-1 NMSA 1978 et seq.

For the Special Fuel Suppliers Tax Act, *see* 7-16A-1 NMSA 1978 et seq.

The 2014 amendment, effective July 1, 2014, added the NMSA 1978 chapter and article for the Alternative Fuel Tax Act; and at the beginning of the sentence, deleted "Sections 1 through 10 of this act" and added "Chapter 7, Article 16B NMSA 1978".

7-16B-2. Purpose.

To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes.

History: Laws 1995, ch. 16, § 2.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 2 effective January 1, 1996.

7-16B-3. Definitions.

As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion, all of which may be used for the generation of power to propel a motor vehicle on the highways;

B. "alternative fuel user" means any user who is a registrant, owner or operator of a motor vehicle propelled by alternative fuel;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "distributor" means any person who delivers or dispenses alternative fuel into the supply tank of a motor vehicle;

E. "gallon" means:

(1) for liquid alternative fuel, the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters; provided that:

(a) in the case of a water-phased hydrocarbon fuel emulsion, a gallon shall be measured only with respect to the hydrocarbon base portion of the emulsion and not to the water base portion; and

(b) in the case of liquefied natural gas, a gallon shall be 6.06 pounds of liquefied natural gas; or

(2) for nonliquid alternative fuel, one hundred fourteen cubic feet; provided that in the case of compressed natural gas, a gallon shall be 5.66 pounds or 126.67 standard cubic feet of compressed natural gas;

F. "gross vehicle weight" means the weight of a motor vehicle or a combination motor vehicle without load, plus the weight of any load on the motor vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device subject to registration under Section 66-3-1 NMSA 1978 that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

K. "sale" means any delivery, exchange, gift or other disposition;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains alternative fuel or alternative fuel is delivered into it;

N. "use" means:

(1) the receipt or placing of alternative fuel by an alternative fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the alternative fuel user;

(2) the consumption by an alternative fuel user of alternative fuel in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of alternative fuel in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways;

O. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses alternative fuel to propel a motor vehicle on the highways; and

P. the definitions of "alternative fuel user" and "distributor" shall be construed so that a person may at the same time be an alternative fuel user and a distributor.

History: Laws 1995, ch. 16, § 3; 1997, ch. 24, § 1; 2014, ch. 34, § 2.

ANNOTATIONS

The 2014 amendment, effective July 1, 2014, changed the definition of "gallon" with respect to liquid and nonliquid alternative fuel; in Subsection E, Paragraph (1), added "for liquid alternative fuel", and after "3.785 liters", deleted "for liquid alternative fuel" and added Subparagraph (b); and in Subsection E, Paragraph (2), at the beginning of the sentence, added "for nonliquid alternative fuel", and after "cubic feet", deleted "for nonliquid alternative fuel", and added the remainder of the sentence.

The 1997 amendment, effective June 20, 1997, in Subsection A, added the language beginning "or a water-phased hydrocarbon" and ending "which may be", and in Subsection B added the language beginning "provided, however," and ending "water base portion" and made minor stylistic changes.

7-16B-4. Imposition and rate of tax; denomination as alternative fuel excise tax.

A. For the privilege of distributing alternative fuel in this state, there is imposed an excise tax at a rate provided in Subsection C of this section on each gallon of alternative fuel distributed in New Mexico.

B. The tax imposed by this section may be called the "alternative fuel excise tax".

C. For each gallon of alternative fuel distributed in New Mexico, the tax imposed by Subsection A of this section shall be:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, three cents (\$0.03) per gallon;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, six cents (\$0.06) per gallon;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, nine cents (\$0.09) per gallon;

(4) for the period beginning January 1, 2002 and ending June 30, 2014, twelve cents (\$0.12) per gallon; and

(5) for the period beginning July 1, 2014 and thereafter:

(a) for alternative fuel that is compressed natural gas, thirteen and three-tenths cents (\$.133) per gallon;

(b) for alternative fuel that is liquefied natural gas, twenty and six-tenths cents (\$.206) per gallon; and

(c) for alternative fuel not described in Subparagraph (a) or (b) of this paragraph, twelve cents (\$.12) per gallon.

D. Alternative fuel purchased for distribution shall not be subject to the alternative fuel excise tax at the time of purchase or acquisition, but the tax shall be due on any alternative fuel at the time it is dispensed or delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

History: Laws 1995, ch. 16, § 4; 2014, ch. 34, § 3.

ANNOTATIONS

The 2014 amendment, effective July 1, 2014, added tax rates for the period beginning July 1, 2014; eliminated the option to pay the alternative fuel excise tax on an annual basis; in Subsection C, in Paragraph (4), after "January 1, 2002 and", deleted "thereafter" and added "ending June 30, 2014", in Subsection C, added Paragraph (5); deleted former Subsection D, which gave taxpayers the option of paying the excise tax on an annual basis; and deleted former Subsection E, which provided that the annual excise tax could be prorated for periods of less than one year if approved by the secretary of taxation and revenue.

7-16B-5. Exemptions; alternative fuel excise tax.

A. Alternative fuel distributed to or used by the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

B. Alternative fuel distributed to or used by the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

C. Alternative fuel distributed to or used by an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

History: Laws 1995, ch. 16, § 5.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 5 effective January 1, 1996.

7-16B-6. Tax returns; payment of tax; alternative fuel distributors.

A. Alternative fuel distributors shall file alternative fuel excise tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which alternative fuel is distributed in New Mexico. Payment of the alternative fuel excise tax shall be made with or prior to filing of the return.

B. In computing the alternative fuel excise tax due, amounts of alternative fuel distributed to an alternative fuel user may be deducted from the total amount of alternative fuel distributed in New Mexico during the tax period provided the alternative fuel user can establish proof of compliance with the provisions of Section 7 [7-16B-7 NMSA 1978] of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 6.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 6 effective January 1, 1996.

Cross references. — For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, see 7-16A-21 NMSA 1978.

7-16B-7. Tax returns; payment of tax; alternative fuel user permit.

A. Alternative fuel users who elect to be subject to the provisions of Subsection D of Section 4 [7-16B-4 NMSA 1978] of the Alternative Fuel Tax Act shall pay the annual tax concurrent with vehicle registration.

B. The department shall issue an alternative fuel user permit in a form designed by the department valid for one year from the month of issuance to each alternative fuel user upon the filing of an application by the alternative fuel user acceptable to the department.

C. The department may revoke, after due notice and hearing, the alternative fuel user permit of any alternative fuel user found to be in violation of any provision of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 7.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 7 effective January 1, 1996.

Cross references. — For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, see 7-16A-21 NMSA 1978.

7-16B-8. Alternative fuel distributor license required.

A. The department shall issue a license valid for up to three years to each alternative fuel distributor upon the filing of an application by the alternative fuel distributor acceptable to the department.

B. To secure an alternative fuel distributor license, an applicant shall:

(1) register as an alternative fuel distributor under the provisions of Section 7-1-12 NMSA 1978;

(2) file with the department on a form furnished by the department an application for an alternative fuel distributor license; and

(3) accompany the application with payment of an alternative fuel distributor fee in the amount of twenty-five dollars (\$25.00).

C. The department may revoke, after due notice and hearing, the alternative fuel distributor license of any alternative fuel distributor found to be in violation of any provision of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 8.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 16, § 17 made Laws 1995, ch. 16, § 8 effective January 1, 1996.

7-16B-9. Delivery and use of alternative fuel; prohibited acts.

It is a violation of the Alternative Fuel Tax Act to:

A. operate a motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Alternative Fuel Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supply device. Fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;