

MAINE STATE LEGISLATURE

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EMERGENCY
(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 937

H. P. 811

House of Representatives, February 20, 1981

Referred to the Committee on Taxation. Sent up for concurrence ordered printed and sent forthwith.

EDWIN H. PERT, Clerk

Presented by Representative Kane of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Relating to Motor Fuel Taxes.

Be it enacted by the People of the State of Maine, as follows:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of departments and institutions will become due and payable before July 1, 1981; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 36 MRSA § 2908, as last amended by PL 1979, c. 549, is repealed.

Sec. 2. 36 MRSA § 2910, as last amended by PL 1971, c. 529, § 6, is repealed.

Sec. 3. 36 MRSA c. 455, as amended, is repealed.

Sec. 4. 36 MRSA c. 459 is enacted to read:

CHAPTER 459
SPECIAL FUEL TAX ACT

§ 3201. Short title

This chapter shall be known as the "Special Fuel Tax Act" and the tax herein imposed shall be known as the "Special Fuel Tax."

§ 3202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bulk user. "Bulk user" means a person who purchases for use special fuel for delivery into a receptacle other than an internal combustion engine supply tank or other than a supply tank connected to a heating device.

2. Duly licensed user. "Duly licensed user" means any user holding an unrevoked license issued by this State.

3. Exporter. "Exporter" means any person, other than a licensed supplier, who purchases special fuel in this State and exports or causes to be exported fuel other than in fuel tanks attached to and forming a part of a motor vehicle and used in the engine of a motor vehicle.

4. Importer. "Importer" means any person other than a licensed supplier, wherever resident or located, importing or causing to be imported, any special fuel for sale or for use in this State, with the exception set forth.

5. Motor vehicles. "Motor vehicles" means all vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors.

6. Person. "Person" means every natural person, singular or plural, including partnerships, firms, associations, corporations, joint stock companies, receivers or trustees, wherever resident or located, and this State or any subdivision thereof.

7. Public highways. "Public highways" means every way or place of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel and notwithstanding that the way may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

8. Special fuel. "Special fuel" means all gases and liquids commonly known as distillates, natural gas, liquid or liquid petroleum gas, except those fuels subject to the tax imposed by chapter 451.

9. Supplier. "Supplier" means any person importing into the State, or

producing, refining, manufacturing or compounding within the State or purchasing within the State, special fuel principally for resale to others in bulk.

10. Use. "Use" means, in addition to its original meaning, the receipt of fuel by any person into a motor vehicle or into a receptacle from which fuel is supplied by the person to his own or other motor vehicles.

11. User. "User" means any person who uses and consumes fuel within this State in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways of this State, except in vehicles which are prohibited by law from operating on the public highways, and except in noncommercial vehicles having a fuel tank capacity of 30 gallons or less which are owned by nonresidents of this State and are not required to be registered in this State, and except in noncommercial vehicles having a fuel tank capacity of 30 gallons or less, owned by residents of this State who purchase only fuel upon which the tax imposed by section 3203 has been paid by the user.

§ 3203. Tax levied

An excise tax is levied and imposed at the rate of 9¢ a gallon upon all special fuel sold or used in this State, including sales of special fuel made to this State or any political subdivision thereof, except such fuel sold or used, in such form and under such circumstances as precludes the collection of this tax by reasons of the laws of the United States; sold only for exportation from this State; brought into this State in a noncommercial vehicle having a standard fuel tank capacity of 30 gallons or less, owned by a nonresident; delivered into a tank connected to a heating device, sold to a licensed bulk user or sold for resale to a licensed supplier. All taxes collected under this section shall be credited to the Highway Fund.

§ 3204. Licenses; supplier

Every supplier of special fuel in the State shall file an application for a certificate with the State Tax Assessor on forms prescribed and furnished by him, which shall contain the name under which the supplier is transacting business within the State, the place or places of business, and location of distributing stations and agencies of the supplier, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, its corporate name and the names and addresses of its principal officers and agents within the State. No supplier may sell or distribute any such internal combustion engine fuel until the certificate is furnished by the State Tax Assessor and displayed as required by this section. One copy of each certificate, certified by the State Tax Assessor, shall be displayed in each place of business of the supplier. The State Tax Assessor, having reasonable cause to believe that the supplier has ceased to do business or that he has violated any of the provisions of this chapter or the rules and regulations made thereunder, may, on reasonable notice to the supplier, suspend the supplier's certificate until satisfied to the contrary. In such case, the supplier shall not act as a supplier until his certificate is restored by the State Tax Assessor, either of his own initiative or at the request of the supplier, and upon the State Tax Assessor being satisfied that cause for suspension no longer exists or

upon order of the court. In case of suspension, all certificates shall at once be surrendered to the State Tax Assessor upon his request. This revocation shall be reviewable in accordance with section 151.

§ 3205. Licenses; bulk users

Every bulk user, claiming exempt use of special fuels in this State, shall file an application for a certificate with the State Tax Assessor on forms prescribed and furnished by him.

No bulk user may purchase special fuels without payment of the special fuel tax until a certificate is furnished by the State Tax Assessor.

§ 3206. Licenses; users

It is unlawful for any user to use or consume any fuel within this State unless the user is the holder of an uncanceled license issued by the State Tax Assessor. To produce the license, every user shall file with the State Tax Assessor an application in such form as the State Tax Assessor may prescribe, setting forth the name and address of the user.

In the event that any application for a license to use fuel as a user in this State is filed by any person whose license, at any time theretofore, had been canceled for cause by the State Tax Assessor, or if the State Tax Assessor is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest, whose license or registration theretofore had been canceled for cause by the State Tax Assessor, then, in any of these events, the State Tax Assessor, after a hearing of which the applicant was given 5 days' notice in writing and at which the applicant had the right to appear in person or by counsel and present testimony, may refuse to issue to that person a license certificate in this State.

If the application in proper form has been accepted for filing and the other conditions and requirements of this section have been complied with, the State Tax Assessor shall issue a license certificate to the user and the license shall remain in full force and effect until canceled, as provided in this chapter.

The license certificate issued by the State Tax Assessor is not assignable and is valid only for the user in whose name it is issued. The license shall be carried or displayed in the vehicle so licensed. A reflectorized type decal issued with the license shall be displayed, as required by the State Tax Assessor. A license fee of \$10 shall be charged.

The State Tax Assessor shall provide by rule a trip permit system which provides an alternative to licensing for users who operate in this State on an isolated trip. Fees shall be determined to reasonably approximate estimated tax due plus administrative cost.

§ 3207. Collection of tax

Every supplier or importer paying or becoming liable to pay the tax imposed by this chapter shall charge and collect tax at the applicable rate.

Every licensed bulk user shall remit tax on all special fuels purchased and not used for heating or industrial use.

§ 3208. Credit; users

Every user subject to the tax imposed by section 3203 shall be entitled to a credit on the tax equivalent to the existing rate of taxation per gallon on all fuel purchased by the user, upon which fuel the tax imposed by section 3203 has been paid by the user. Evidence of the payment of the tax, in such form as may be required by or is satisfactory to the State Tax Assessor, shall be furnished by each user claiming the credit allowed. When the amount of the credit to which any user is entitled for any quarter exceeds the amount of the tax for which the user is liable for the same quarter, the excess may, under rules of the State Tax Assessor, be allowed as a credit on the tax for which the user would be otherwise liable for another quarter or quarters; or upon application within 3 months from the end of any quarter, duly verified and presented in accordance with regulations promulgated by the State Tax Assessor and supported by such evidence as may be satisfactory to the State Tax Assessor, the excess may be refunded if it appears that the applicant has paid, to another state or province under a lawful requirement of such jurisdiction, a tax similar in effect to the tax levied in section 3203, on the use or consumption of the same fuel without the State, to the extent of the payment in the other jurisdiction, but in no case to exceed the rate per gallon of the then current Maine state fuel tax. Upon receipt of the application, the State Tax Assessor, if satisfied after investigation that a refund is justified, shall so certify to the State Controller and it shall be paid out of the Highway Fund. The credit shall lapse at the end of the last quarter of the year following that in which the credit arose.

§ 3209. Rules, reports; assessment of taxes

Every licensed supplier, importer, exporter or bulk user shall file by the last day of each month a report with the State Tax Assessor stating the gallons of special fuel received, taxable gallons sold, exempt gallons sold, taxable gallons used and exempt gallons used in this State by him during the preceding calendar month, on forms furnished by the State Tax Assessor. The report shall contain any further information pertinent thereto as the State Tax Assessor prescribes. The State Tax Assessor may make such other rules regarding the enforcement of the special fuel tax as he deems necessary. At the time of filing his report, each supplier or importer shall pay to the State Tax Assessor a tax of 9¢ upon each gallon reported as a taxable sale or as taxable gallons used.

For the purpose of determining the amount of tax imposed, each user shall, not later than the last day of each April, July, October and January, file with the State Tax Assessor, on forms prescribed by the State Tax Assessor, a report which shall include the total gallonage of fuels used within this State during the quarter ending the last day of the preceding month, together with the gallonage of the fuels purchased from suppliers licensed in accordance with section 3204. Each person to whom a license has been issued in accordance with section 3205 is required to file

for quarters during which his license is uncanceled whether or not he uses or consumes fuel, unless otherwise exempted by this section.

At the time of filing of each quarterly report, each user shall pay to the State Tax Assessor the full amount of the fuel tax at the same rate as provided for in section 3203.

§ 3210. Application of tax in special cases

Whoever receives any special fuel in such form and under such circumstances as precludes the collection of the fuel tax by the supplier by reason of the laws of the United States, and thereafter sells or uses any special fuel in a manner and under circumstances as may subject to the sale or use to the taxing power of this State, shall be considered as a supplier and shall make the same reports, pay the same taxes and be subject to all other provisions of this chapter relating to suppliers of special fuel. No person may be considered as a supplier with respect to special fuel brought into the State in the ordinary standardized equipment fuel tank attached to, and forming a part of, a motor vehicle and used in the operation of a vehicle within the State.

§ 3211. Cancellation of licenses; bond surrendered

If a user at any time files a false quarterly report of the data information required by this chapter, or fails, refuses or neglects to file the quarterly report required by this chapter, or to pay the full amount of the tax as required by this chapter, the State Tax Assessor may forthwith cancel the license of the user and notify the user in writing of the cancellation by registered mail to the last known address of the user appearing on the file of the State Tax Assessor.

Upon receipt of a written request from any user licensed under this chapter, to cancel the license issued to the user, the State Tax Assessor may cancel the license effective 60 days from the date of such written request, but no license may be canceled upon the request of any user until and unless the user has, prior to the date of cancellation, paid to this State all excise taxes payable under the laws of this State, together with any and all penalties, interest and fines accruing under any of the provisions of this chapter, and until and unless the user has surrendered to the State Tax Assessor the license certificate theretofore issued to the user. If, upon investigation, the State Tax Assessor ascertains and finds that any person to whom a license has been issued under this chapter is no longer engaged in the use of fuel and has not been so engaged for a period of 6 months, the State Tax Assessor may cancel the license by giving the person 60 days' notice of the cancellation mailed to the last known address of that person, in which event the license certificate theretofore issued to that person shall be surrendered to the State Tax Assessor.

§ 3212. Inspection of records; civil action for tax; forms and regulations

The State Tax Assessor, or any deputy, employee or agent authorized, may examine the records, books, papers and any other equipment of the user

pertaining to fuel used, verify the truth and accuracy of any statement, report or return, or ascertain whether or not the tax imposed by this chapter has been paid, and examine the records, books, papers and any other equipment of the user to determine the financial responsibility of the user for the payment of the taxes imposed by this chapter.

The State Tax Assessor may institute legal proceedings by the Attorney General in a court of appropriate jurisdiction for the purpose of ascertaining the amount due under this chapter and enforcing the collection thereof, with penalties and interest thereon, and for the purpose of enjoining the business of the delinquent. The claims of the State for sums due under this chapter shall be preferred and priority claims in the event of the assignment, receivership or bankruptcy of any user.

The State Tax Assessor may prescribe all forms upon which reports shall be made to him and any other forms required for the proper administration of this chapter, and shall prescribe and publish all rules for the enforcement of this chapter.

§ 3213. Discontinuance as a licensed user

Whenever a user ceases to engage in business as a user of fuel within this State, it shall be the duty of the user to notify the State Tax Assessor in writing within 15 days after discontinuance. All taxes, penalties and interest under this chapter, not yet due and payable under this chapter, shall, together with any and all interest accruing or penalties imposed under this chapter, notwithstanding any provision thereof, become due and payable concurrently with the discontinuance. It shall be the duty of the user to make a report and pay all the taxes, interest and penalties and to surrender to the State Tax Assessor the license certificate theretofore issued to the user by the State Tax Assessor.

Any person violating any of the provisions of this section commits a civil violation for which a forfeiture of not less than \$50 nor more than \$300 may be adjudged.

§ 3214. Refunds of taxes erroneously or illegally collected

In the event it appears to the State Tax Assessor that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any user, the State Tax Assessor shall certify the amount thereof to the State Controller, who shall thereupon draw his warrant for the certified amount on the Treasurer of State to the user. The refund shall be paid by the Treasurer of State to the user forthwith from the Highway Fund.

No refunds may be made under this section unless a written claim therefor setting forth the circumstances by reason of which the refund shall be allowed. The claim shall be in such form as the State Tax Assessor prescribes and shall be filed with the State Tax Assessor within 9 months from the date of the payment of the taxes erroneously or illegally collected.

§ 3215. Refund of taxes for certain common carriers

Any person, firm or corporation engaged in furnishing common carrier passenger service under a certificate issued by the Public Utilities Commission shall be reimbursed and repaid to the extent of the entire amount of the tax paid by him upon that proportion of the combustible gases and liquids used in an internal combustion engine, used in locally encouraged vehicles operated by him, which his tax-exempt passenger fare revenue derived from the service bears to his total passenger fare revenue. Tax-exempt passenger fare revenue means revenue attributable to fares which were exempt from the federal tax upon transportation of persons imposed by the United States Internal Revenue Code, Section 4261, by reasons of the United States Internal Revenue Code, Section 4262 or 4263. Total passenger fare revenue means all revenue attributable to the claimant's passenger operations, whether or not pursuant to the certificate issued by the Public Utilities Commission. The refund provided for in this section shall be made only if the claimant's tax-exempt passenger fare revenue is at least 60% of the claimant's total passenger fare revenue derived during the calendar quarter for which the refund is claimed. Locally encouraged vehicles means buses upon which no excise tax is collected, under section 1483, subsection 13.

The claimant shall present his claim to the State Tax Assessor in such form and with such information as the State Tax Assessor may prescribe, accompanied by original invoices showing the purchases. Applications for refunds must be filed with the State Tax Assessor within 9 months from the date of purchase.

§ 3216. Failure to file statement; false statement

Any person who refuses or neglects to make any statement, report, payment or return required by this chapter, or who knowingly makes, aids or assists any other person in making a false statement in a return or report to the State Tax Assessor, or in connection with an application for refund of any tax, or who knowingly collects or attempt to collect, or causes to be paid to him or to any other person, either directly or indirectly, any refund of that tax without being entitled to the tax, shall be subject to a civil penalty of not more than \$2,000 payable to the State to be recovered in a civil action.

§ 3217. Additional violations

Any user, or any agent or employee of any user, who consumes any fuel in a motor vehicle on a public highway or on a turnpike operated and maintained by the Maine Turnpike Authority, when that user is not the holder of an uncanceled license as required by this chapter, or when that user has failed to file any report or pay tax, penalty or interest as required by this chapter and chapter 7, commits a civil violation for which a forfeiture of not less than \$10 nor more than \$300 may be adjudged. Each day or part thereof during which any person consumes any fuel in a motor vehicle on a public highway or on a turnpike owned and maintained by the Maine Turnpike Authority, when that user is not the holder of an uncanceled license as required by this chapter, or when that user has failed to file any report

or pay tax, interest or penalty as required by this chapter and chapter 7, shall constitute a separate violation within the meaning of this section.

Sec. 5. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
FINANCE AND ADMINISTRATION,		
DEPARTMENT OF		
Bureau of Taxation		
Positions	(2)	(2)
Personal Services	\$36,000	\$36,000
All Other	20,000	20,000
Capital Expenditures	1,000	1,000
	<hr/>	<hr/>
Totals	\$57,000	\$57,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect June 1, 1981.

FISCAL NOTE

Section 1. For fiscal year 1982 it is estimated that General Fund revenue will be reduced by \$317,000 and the Highway Fund revenue will be increased by \$423,000. For fiscal year 1983 it is estimated that General Fund revenue will be reduced by \$370,000 and the Highway Fund revenue will be increased by \$423,000.

Section 2. No fiscal effect.

Section 3. No fiscal effect.

Section 4. Inasmuch as the fuel which will be subjected to the excise tax is now subjected to a sales tax, there will be a shift in revenue. The sales tax revenue being General Fund revenue, whereas the excise tax revenue is Highway Fund revenue.

Fiscal year 1982	Highway Fund	\$6,750,000
	General Fund	(4,250,000)
		<hr/>
	Net	\$2,500,000
Fiscal year 1983	Highway Fund	\$6,750,000
	General Fund	(4,650,000)
		<hr/>
	Net	\$2,100,000

STATEMENT OF FACT

The purpose of this bill is as follows:

Section 1. Removes the provision which provides an 8¢ per gallon refund for gasoline used in propelling commercial motorboats, tractors used for agricultural purposes and various other nonhighway uses. It should be noted that before refund, a use tax is assessed.

When the price of gasoline reaches approximately \$1.69 per gallon, the refund program will effectively terminate since the use tax will equal the refund.

Section 2. Removes the provision which provides a 5¢ per gallon refund for gasoline used in aircraft. This is no longer generally utilized since the compensating use tax exceeds the refund.

Section 3. Title 36, chapter 455 is replaced by provisions of the Special Fuel Tax Act.

Section 4. This legislation is intended to extend the application of the motor fuel excise tax to diesel-like fuels used in all internal combustion engines.

Section 5. Provides a General Fund appropriation to carry out the purposes of the bill.

The bill also provides an effective date of June 1, 1981.