

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1295

H.P. 919

House of Representatives, April 11, 1995

**An Act to Conform Maine Law with the Provisions of the Federal Clean Air Act and the Internal Revenue Code Pertaining to the Use of Dyed Fuel on Highways.**

(EMERGENCY)

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Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 24.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DORE of Auburn.  
Cosponsored by Representative: MURPHY of Berwick.

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

4  
6           **Whereas,** recent changes in federal law require that certain  
high-sulphur diesel fuel be color-dyed in order to help reduce  
air pollution by identifying fuel not suitable for highway use  
8 and to help increase tax compliance by identifying fuel on which  
taxes have not been paid; and

10  
12           **Whereas,** reducing the sulphur content of highway fuel is  
beneficial to the health and safety of the people of this State;  
and

14  
16           **Whereas,** fuel tax revenues are an important source of  
revenues for the Highway Fund; and

18           **Whereas,** the tax laws of this State do not currently contain  
any disincentives to the operation of vehicles using high-sulphur  
20 diesel fuel on the public ways, which are needed if truckers  
operating illegally are to be prevented from placing other Maine  
22 businesses at an extreme competitive disadvantage; and

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

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

32           **Sec. 1. 36 MRSA §3202, sub-§2-A** is enacted to read:

34           2-A. Dyed fuel. "Dyed fuel" means a distillate that is  
dyed pursuant to the requirements of the Federal Government.

36  
38           **Sec. 2. 36 MRSA §3202, sub-§4,** as enacted by PL 1983, c. 94,  
Pt. D, §6, is repealed and the following enacted in its place:

40           4. Motor vehicle. "Motor vehicle" means any vehicle,  
engine, machine or mechanical contrivance that is propelled by an  
42 internal combustion engine or motor.

44           **Sec. 3. 36 MRSA §3202, sub-§5,** as enacted by PL 1983, c. 94,  
Pt. D, §6, is repealed.

46           **Sec. 4. 36 MRSA §3202, sub-§5-A** is enacted to read:

48           5-A. Public way. "Public way" has the same meaning as  
50 provided in Title 29-A, section 101.

2           **Sec. 5. 36 MRSA §3203**, as amended by PL 1991, c. 592, Pt. D,  
§5, is repealed and the following enacted in its place:

4           **§3203. Tax levied; consignment sales; credited to Highway Fund**

6           Except as provided in section 3204-A, an excise tax is  
8 levied and imposed on all suppliers of special fuel sold and on  
10 all users of special fuel used in this State for each gallon of  
12 distillate at the rate of 20¢ per gallon and for each gallon of  
14 low-energy fuel at the rate of 18¢ per gallon. When special fuel  
16 is delivered by a supplier on a consignment basis to a consumer  
or to a retail outlet, whether or not the retail outlet is wholly  
owned by the supplier, it is considered to have been "sold"  
within the meaning of this Act. All taxes and fines collected  
under this chapter must be credited to the Highway Fund.

18           **Sec. 6. 36 MRSA §3203-A**, as amended by PL 1991, c. 592, Pt.  
D, §6, is repealed.

20           **Sec. 7. 36 MRSA §§3204-A and 3204-B** are enacted to read:

22           **§3204-A. Exemptions; affidavit of exempt use**

24           The following fuels are exempt from the tax imposed by  
26 section 3203:

28           **1. Single lot.** Special fuel purchased in a single lot of  
30 no more than 275 gallons and used solely for heating or cooking  
purposes;

32           **2. Delivered into tank.** Special fuel delivered into a tank  
34 used solely for heating or cooking purposes, sold for resale to a  
licensed or registered supplier;

36           **3. Political subdivision.** Special fuel sold to this State  
38 or any political subdivision of this State;

40           **4. Precludes collection of tax.** Special fuel sold or used  
42 in such form or under such circumstances as precludes the  
collection of tax by reasons of federal law;

44           **5. Exportation.** Special fuel sold only for exportation  
from this State;

46           **6. Generation.** Special fuel sold to a person for the  
48 generation of power for resale or manufacturing; and

50           **7. Retail sale.** Kerosene delivered into a separate tank  
for retail sale, in which case the excise tax must be remitted by

2 licensed users pursuant to section 3207, rather than by the  
supplier.

4 The purchaser of special fuel that qualifies for one of the  
6 above exemptions must sign and provide to the seller a sworn  
8 statement indicating that the fuel will be used for the exempt  
purpose. The State Tax Assessor shall make forms available to  
suppliers for this purpose. The signed form must be retained by  
the supplier for at least 3 years.

10 **§3204-B. Dyed fuel; prohibition on highway use**

12 1. Generally. Except as provided in subsection 2, a person  
14 may not operate a motor vehicle on the public ways of this State  
16 if the fuel supply tanks of the vehicle contain dyed fuel or  
other fuel on which the tax imposed by section 3203 has not been  
paid.

18 2. Exceptions. The following motor vehicles are not  
20 subject to the prohibition provided in subsection 1:

22 A. Motor vehicles owned and operated by this State or any  
political subdivision of this State; and

24 B. Motor vehicles authorized to use dyed fuel on the public  
26 ways of this State under the provisions of the Code, section  
4082 or rules adopted under the Code.

28 3. Penalty. A person who violates the prohibition provided  
30 in subsection 1 commits a Class D crime and is subject to a fine  
32 of not less than \$1,000, which may not be reduced. Refusal to  
34 permit inspection pursuant to section 3219-A in order to enforce  
the provisions of this section constitutes prima facie evidence  
that the tank or container in question contains dyed fuel.

36 **Sec. 8. 36 MRSA §3208**, as amended by PL 1985, c. 127, §1, is  
38 further amended to read:

40 **§3208. Credit; users**

42 Every user subject to the tax imposed by section 3203 shall  
44 be is entitled to a credit on the tax equivalent to the existing  
46 rate of taxation per gallon on all fuels purchased by that user  
48 from a supplier licensed in accordance with section 3204 upon  
which fuel the tax is imposed by section 3203 has been paid by  
that user. Evidence of the payment of that tax, in such form as  
may be required by or is satisfactory to the State Tax Assessor,  
shall must be furnished by each user claiming the credit allowed.  
When the amount of the credit to which any user is entitled for

2 any quarter exceeds the amount of the tax for which that user is  
3 liable for the same quarter, the excess may, under rules of the  
4 State Tax Assessor, be allowed as a credit on the tax for which  
5 that user would be otherwise liable for another quarter or  
6 quarters, or upon application within 3 months from the end of any  
7 quarter, duly verified and presented in accordance with  
8 ~~regulations-premulgated~~ rules adopted by the State Tax Assessor  
9 and supported by such evidence as may be satisfactory to the  
10 State Tax Assessor, such excess may be refunded if it ~~shall~~  
11 appear appears that the applicant has paid to another state or  
12 province under a lawful requirement of such jurisdiction a tax  
13 similar in effect to the tax levied in section 3203, on the use  
14 or consumption of the same fuel ~~without~~ outside the State, at the  
15 same rate per gallon that such tax was paid in this State on that  
16 number of gallons used in and a tax paid on in such other  
17 jurisdiction, but in no case to exceed the rate per gallon of the  
18 then current Maine state fuel tax. Upon receipt of the  
19 application, the State Tax Assessor, if satisfied after  
20 investigation that a refund is justified, shall so certify to the  
21 State Controller and it ~~shall~~ must be paid out of the Highway  
22 Fund. This credit ~~shall-lapse~~ lapses at the end of the last  
quarter of the year following that in which the credit arose.

24 For those accounts in good standing, a monthly refund  
25 application, on a form prescribed by the State Tax Assessor, may  
26 be filed at the close of any month to claim credits described in  
27 this section. That application ~~shall~~ must be processed and  
28 approved for payment promptly. Interest ~~shall-be~~ is paid at the  
29 same rate as is computed under section 186, calculated from the  
30 date of receipt of the monthly claim for all proper claims not  
31 paid within 30 days of receipt of the claim. ~~Nothing-in-this~~  
32 This paragraph may not be construed to relieve the applicant from  
33 filing quarterly substantiating information as prescribed by this  
34 section.

36 **Sec. 9. 36 MRSA §3216**, as amended by PL 1991, c. 592, Pt. D,  
37 §7, is repealed.

38 **Sec. 10. 36 MRSA §3217**, as amended by PL 1991, c. 592, Pt. D,  
39 §8, is repealed.

42 **Sec. 11. 36 MRSA §3219-A** is enacted to read:

44 **§3219-A. Enforcement; penalties**

46 **1. Enforcement.** The State Tax Assessor shall notify the  
47 Secretary of State and the Bureau of State Police of any carrier  
48 who has failed to comply with the provisions of this chapter. In  
49 order to enforce the provisions of this chapter, any duly  
50 authorized and designated agent or officer of the assessor, the  
51 Secretary of State or the Commissioner of Public Safety may:

52

- 2           A. Inspect any fuel tank or container that can or may be  
3           used for the production, storage or transportation of  
4           special fuel;
- 6           B. Inspect any equipment that can or may be used for, or in  
7           connection with, the production, storage or transportation  
8           of special fuel;
- 10          C. Inspect the books and records of any supplier, user,  
11          distributor or importer;
- 12          D. Detain any motor vehicle for the purpose of inspecting  
13          its fuel tanks. Detainment may continue for a reasonable  
14          period of time as necessary to determine the amount and  
15          composition of the fuel. Designated agents and officers may  
16          take and remove samples of fuel in reasonable quantities in  
17          order to determine compliance with the provisions of this  
18          chapter;
- 20          E. Suspend vehicle registrations in the name of any carrier  
21          that has violated the provisions of this chapter and the  
22          right to operate as provided in Title 29-A, section 2458; and
- 24          F. Refuse to issue or reissue authority required by Title  
25          29-A, section 552.
- 26          **2. Penalties.** A person who commits one of the following  
27          acts is guilty of a Class E crime and is subject to a fine of not  
28          less than \$250, which may not be reduced:
- 30                A. If the person is a supplier, selling special fuel  
31                without collecting tax on the fuel when the supplier knows  
32                or has reason to believe that the fuel will not be used for  
33                an exempt purpose;
- 36                B. Refusing or failing to make any statement, report,  
37                payment or return required by this chapter;
- 38                C. Refusing or failing to pay interest or penalties arising  
39                from the nonpayment of taxes required by this chapter;
- 42                D. Knowingly collecting or attempting to collect, directly  
43                or indirectly, a refund of tax without being entitled to  
44                that refund;
- 46                E. Knowingly making, or aiding or assisting any other  
47                person in making, a materially false statement in any return  
48                or report submitted to the State Tax Assessor, in any  
49                application for refund of tax, in any other application or  
50                affidavit submitted to the State Tax Assessor pursuant to

2 this chapter or in any affidavit of exempt use submitted to  
3 a supplier pursuant to section 3204-A;

4 F. Refusing or failing to permit an inspection pursuant to  
5 subsection 1; or

6  
7 G. If the person is a user or an agent or employee of a  
8 user, consuming special fuel in a registered motor vehicle  
9 when the user does not have a valid license issued pursuant  
10 to section 3207. Each day or part of a day during which  
11 this paragraph is violated constitutes a separate violation  
12 within the meaning of this section.

13 The fine provided by this subsection is in addition to any other  
14 applicable penalty or tax.

15  
16 **Sec. 12. 36 MRSA §3234, sub-§2**, as enacted by PL 1983, c. 94,  
17 Pt. D, §7, is amended to read:

18  
19 **2. Supplier, distributor or importer; definition.** For the  
20 purposes of this section, the term supplier, distributor or  
21 importer includes, ~~in addition to the persons described in~~  
22 ~~section 3202, subsection 5,~~ any officer, director, member, agent  
23 or employee of any supplier, distributor or importer who, in that  
24 capacity, is responsible for the control or management of the  
25 funds or finances of that supplier, distributor or importer or  
26 responsible for either the collection or payment of that  
27 supplier, distributor or importer's taxes.

28  
29 **Emergency clause.** In view of the emergency cited in the  
30 preamble, this Act takes effect when approved.

31

32

## 33 STATEMENT OF FACT

34

35 This bill is intended to conform Maine tax laws with changes  
36 made to federal law in 1993 relating to the use, taxation and  
37 regulation of diesel fuel. Basically, the Federal Government now  
38 requires that high-sulphur diesel fuel be color-dyed and  
39 prohibits the fuel from being used in a highway vehicle. One  
40 federal program is required by the United States Clean Air Act  
41 and administered by the United States Environmental Protection  
42 Agency. The goal is to reduce the sulphur content of highway  
43 diesel fuel. The other federal program is required by the  
44 Internal Revenue Code and is administered by the Internal Revenue  
45 Service. The goal of this program is to reduce the theft of  
46 federal and state fuel taxes by making it easier for enforcement  
47 officers to identify fuel on which taxes have not been paid.  
48



2 This bill amends the Maine Revised Statutes, Title 36,  
chapter 459, the Special Fuel Tax Act, to provide that no person  
4 may operate a motor vehicle on the public ways of this State  
using dyed fuel or other fuel on which tax is due but has not  
6 been paid. Exceptions are made for vehicles owned by the State  
and vehicles exempted by federal law. Persons violating the  
8 prohibition are subject to a fine. The Special Fuel Tax Act is  
also amended to provide that officers of the State may conduct  
10 inspections in order to ensure compliance with the law.