

MAINE STATE LEGISLATURE

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L.D. 1337

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TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 940, L.D. 1337, Bill, "An Act Regarding Taxation of Clean Vehicle Fuels"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Taxation of Low-energy Fuels'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 36 MRSA §3202, sub-§5-B is enacted to read:

5-B. Retailer. "Retailer" means any person purchasing low-energy fuel principally for resale directly into the fuel tank of a motor vehicle.

Sec. 2. 36 MRSA §3202, sub-§7, as enacted by PL 1983, c. 94, Pt. D, §6, is amended to read:

7. Supplier. "Supplier" means any person importing distillates into the State, exporting distillates from the State or producing, refining, manufacturing or compounding distillates within the State or purchasing distillates within the State, principally for resale to others in bulk, ~~special-fuel~~.

Sec. 3. 36 MRSA §3202, sub-§§7-A and 10, as enacted by PL 1997, c. 738, §9, are amended to read:

7-A. Terminal. "Terminal" means a storage and distribution facility for ~~special-fuel~~ distillates supplied by a pipeline or marine vessel, or both, that has been registered as a qualified terminal by the Internal Revenue Service.

COMMITTEE AMENDMENT

2 **10. Wholesaler.** "Wholesaler" means a person that owns,
operates or otherwise controls a terminal or a person that holds
4 ~~the special fuel~~ a distillate inventory position in a terminal
when that person has a contract with the terminal operator for
6 the use of storage facilities and terminal services for fuel at
the terminal.

8
9 **Sec. 4. 36 MRSA §3203, sub-§§1, 2, 3 and 6,** as enacted by PL
10 1997, c. 738, §10, are amended to read:

12 **1. Generally.** Except as provided in section 3204-A, an
excise tax is levied and imposed on all suppliers ~~of special fuel~~
14 ~~sold, retailers~~ and ~~on all users of special fuel used~~ in this
State for each gallon of distillate at the rate of 20¢ per gallon
16 and for each gallon of low-energy fuel at the rate of ~~18¢~~ 14.25¢
per gallon.

18 **2. Legal incidence of tax.** Special fuel may be taxed only
20 once under this section. The tax imposed by this section is
declared to be a levy and assessment on the ultimate consumer and
22 other persons levied and assessed pursuant to this chapter are
agents of the State for the collection of the tax. The supplier
24 ~~is and retailer~~ are primarily responsible for paying the tax
~~except when the fuel is sold and delivered to a licensed exporter~~
26 ~~wholly for exportation from the State or to another supplier in~~
~~the State, in which case the purchasing supplier is primarily~~
28 ~~responsible for paying the tax.~~ When a supplier sells and
30 delivers to a licensed exporter wholly for exportation from the
State or to another supplier in the State, the purchasing
32 supplier is primarily responsible for paying the tax.

34 **3. Consignment sales.** When ~~special fuel is~~ distillates are
delivered by a supplier on a consignment basis to a consumer or
36 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 chapter.

38 **6. Allowance for certain losses of propane.** An allowance
40 of not more than 1% from the amount of propane received by the
~~distributor, plus 1% on all transfers in vessels, tank cars or~~
42 ~~full tank truck loads by a distributor in the regular course of~~
~~business from one of the distributor's places of business to~~
44 ~~another of the distributor's places of business within the State,~~
retailer may be allowed by the assessor to cover the loss through
46 shrinkage, evaporation or handling sustained by the ~~distributor~~
retailer. The total allowance for these losses must be supported
48 by documentation satisfactory to the assessor ~~and may not exceed~~
~~2% of the receipts by the distributor.~~ A further deduction may
50 not be allowed unless the assessor is satisfied

upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

Sec. 5. 36 MRSA §3204, as amended by PL 1985, c. 127, §1, is further amended to read:

§3204. Licenses

Every ~~supplier--of--special--fuel~~ person operating as a supplier or retailer in the State, other than those who qualify under section 3205, shall file an application for certificate with the State Tax Assessor on forms prescribed and furnished by ~~him~~ the assessor, which shall contain the name under which the ~~supplier person~~ is transacting business within the State, the place or places of business, location of distributing stations, agencies of the ~~supplier person~~, 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. ~~Ne--such supplier~~ A person may not sell or distribute any special fuel until the certificate is furnished by the State Tax Assessor and displayed as required by this section. One copy of each such certificate, certified by the State Tax Assessor, shall must be displayed in each place of business of the ~~supplier person~~. The State Tax Assessor, having reasonable cause to believe that the ~~supplier person~~ has ceased to do business or that ~~he~~ the person has violated this chapter or the rules ~~made--thereunder~~ adopted under this chapter or failed to appear in court for any violation of this chapter, may on reasonable notice to the ~~supplier person~~ suspend the ~~supplier's person's~~ certificate until satisfied to the contrary. In such case, the ~~supplier--shall~~ person may not act as a supplier or retailer until ~~his~~ the certificate is restored by the State Tax Assessor, either of ~~his~~ the assessor's own initiative or at the ~~person's~~ request ~~of--the--supplier~~, and upon the State Tax Assessor being satisfied that cause for suspension no longer exists, or upon order of court. In case of that suspension, all certificates shall must at once be surrendered to the State Tax Assessor upon ~~his~~ request. This revocation ~~shall--be~~ is reviewable in accordance with section 151.

Sec. 6. 36 MRSA §3204-A, sub-§2, as enacted by PL 1995, c. 271, §7, is amended to read:

2. Heating and cooking. Special fuel delivered into a tank used solely for heating or cooking purposes, ~~sold-for-resale-to-a licensed-or-registered-supplier;~~

Sec. 7. 36 MRSA §3204-A, sub-§2-A is enacted to read:

2 2-A. Sales for resale. Special fuel sold for resale to a
3 licensed supplier or low-energy fuel sold for resale to a
4 licensed retailer;

6 **Sec. 8. 36 MRSA §3205**, as amended by PL 1985, c. 127, §1, is
7 further amended to read:

8 **§3205. Registered supplier**

10 Every supplier ~~of special fuel solely~~ making sales only of
11 special dyed fuel, not subject to the special fuel tax in
12 accordance to section 3203, shall file an affidavit to that
13 effect or taxable distillates pursuant to section 3203 shall
14 register with the State Tax Assessor on forms prescribed and
15 supplied ~~to him~~ by the assessor. A copy of the ~~affidavit shall~~
16 registration certificate must be displayed in each place of
17 business of that supplier.

20 **Sec. 9. 36 MRSA §3207**, as amended by PL 1993, c. 670, §7, is
21 further amended to read:

22 **§3207. Collection of tax**

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

28 Every licensed user shall remit tax on all special fuels
29 purchased and not used for heating, industrial use or for
30 off-highway use, when the special fuel has not been subjected to
31 the special fuel tax.

34 ~~Notwithstanding any other provision of law, the~~ The interest
35 and penalty provisions adopted under chapter 463-A also apply to
36 this chapter effective January 1, 1995.

38 **Sec. 10. 36 MRSA §3208, first ¶**, as amended by PL 1995, c. 271,
39 §8, is further amended to read:

40 **§3208. Credit; users**

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

2 allowed. When the amount of the credit to which any user is
4 entitled for any quarter exceeds the amount of the tax for which
6 that user is liable for the same quarter, the excess may, under
8 rules of the State Tax Assessor, be allowed as a credit on the
10 tax for which that user would be otherwise liable for another
12 quarter or quarters, or upon application within 3 months from the
14 end of any quarter, duly verified and presented in accordance
16 with rules adopted by the State Tax Assessor and supported by
18 such evidence as may be satisfactory to the State Tax Assessor,
20 such excess may be refunded if it appears that the applicant has
22 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 outside
the State, at the same rate per gallon that such tax was paid in
this State on that number of gallons used in and a tax paid on in
such 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 must be paid out of the Highway Fund.
This credit lapses at the end of the last quarter of the year
following that in which the credit arose.

24 **Sec. 11. 36 MRSA §3209, sub-§1-A is enacted to read:**

26 1-A. Retailers. Every licensed retailer shall file on or
28 before the last day of each month a report with the assessor
30 stating the gross gallons of special fuel received, sold and used
32 in this State by that retailer during the preceding calendar
34 month on a form prescribed and furnished by the assessor. The
36 report must contain any further information reasonably required
by the assessor. At the time of filing the report required by
this subsection, each retailer shall pay to the assessor a tax as
prescribed in section 3203 upon each gallon reported as a taxable
sale or as taxable gallons used.

38 **Sec. 12. 36 MRSA §3209, sub-§5, as enacted by PL 1997, c. 738,**
§12, is amended to read:

40 **5. Monthly reports from wholesalers.** Each wholesaler shall
42 submit on or before the last day of each month on a form
44 prescribed and furnished by the assessor a report stating the
46 number of gross gallons sold by that wholesaler to each
48 ~~distributor~~ **supplier**, importer, exporter or any other person that
purchased special fuel from that wholesaler during the preceding
month. The report must clearly identify each purchaser and
indicate the number of gallons that each purchaser received from
the wholesaler. The report must also contain any other
information reasonably required by the assessor.

2 **Sec. 13. 36 MRSA §3210**, as amended by PL 1985, c. 127, §1, is
further amended to read:

4 **§3210. Application of tax in special cases**

6 ~~Whoever shall receive~~ A person who receives any special fuel
8 in such form and under such circumstances as ~~shall preclude~~
precludes the collection of this tax by the supplier or retailer
10 by reason of the laws of the United States, and ~~shall thereafter~~
sell who sells or use uses any special fuel in a manner and under
12 circumstances as may subject the sale or use to the taxing power
of this State, ~~shall be~~ is considered as a supplier or retailer
14 and shall make the same reports, pay the same taxes and be
subject to all other provisions of this chapter relating to
16 suppliers ~~of special fuel and retailers~~. ~~No~~ A person may not be
considered as a supplier or retailer with respect to special fuel
18 brought into the State in the ordinary standardized equipment
fuel tank attached to and forming a part of a motor vehicle and
20 used in the operation of a vehicle within the State.

22 **Sec. 14. 36 MRSA §3211**, as amended by PL 1985, c. 127, §1, is
further amended to read:

24 **§3211. Cancellation of licenses, registrations**

26 ~~If a supplier or user shall at any time file~~ any person
28 licensed or registered under this chapter files a false report of
the data or information required by this chapter, or ~~shall fail,~~
30 ~~refuse or neglect~~ fails, refuses or neglects to file the report
required by this chapter, or to pay the full amount of the tax as
32 required by this chapter or is in violation of the affidavit
registration certificate as prescribed in section 3205, the State
34 Tax Assessor may ~~forthwith~~ cancel the license or registration ~~of~~
~~the supplier or user~~ and notify that ~~supplier or user~~ person in
36 writing of the cancellation by registered mail to the last known
address of that ~~supplier or user~~ person appearing on the file of
38 the State Tax Assessor.

40 Upon receipt of a written request from any ~~supplier or user~~
person licensed or registered under this chapter to cancel the
42 license of registration to that ~~supplier or user~~ person, the
State Tax Assessor ~~shall have the power to~~ may cancel that
44 license or registration effective 30 days from the date of the
written request, but no such license or registration may be
46 canceled upon the request of any ~~supplier or user~~ person until
and unless the ~~supplier or user shall~~ person, prior to the date
48 of that cancellation, have has paid to this State all excise
taxes payable under the laws of this State, together with any and
50 all penalties, interest and fines accruing under any of the

provisions of this chapter, and until and unless the ~~supplier-or~~
2 ~~user-shall-have~~ person has surrendered to the State Tax Assessor
the license or registration certificate ~~theretefere~~ issued to
4 that ~~supplier-or-user~~ person. If, upon investigation, the State
Tax Assessor ~~shall-ascertain-and-find~~ finds that any person to
6 whom a license has been issued under this chapter is no longer
engaged in the sale or use of special fuel and has not been so
8 engaged for a period of 6 months, the State Tax Assessor ~~shall~~
~~have-power-to~~ may cancel that license by giving that person 30
10 days' notice of the cancellation mailed to the last known address
of that person, in which event the license certificate
12 ~~theretefere~~ issued to that person shall must be surrendered to
the State Tax Assessor.

14
16 **Sec. 15. 36 MRSA §3212, first ¶**, as enacted by PL 1983, c. 94,
Pt. D, §6, is amended to read:

18 Whenever a supplier, retailer or user ceases to engage in
business as a supplier, retailer or user of fuel within this
20 State, ~~it-shall-be-the-duty-of~~ that supplier, retailer or user ~~to~~
shall notify the State Tax Assessor in writing within 15 days
22 after discontinuance. All taxes, penalties and interest under
this chapter, not yet due and payable under this chapter, ~~shall,~~
24 together with any and all interest accruing or penalties imposed
under this chapter, notwithstanding any provisions thereof,
26 become due and payable concurrently with that discontinuance. ~~It~~
~~shall-be-the-duty-of-the~~ The supplier, retailer or user ~~to~~ shall
28 make a report and pay all such taxes, interest and penalties and
~~to~~ surrender to the State Tax Assessor the license certificate
30 ~~theretefere~~ issued to that user by the State Tax Assessor.

32 **Sec. 16. 36 MRSA §3214**, as amended by PL 1985, c. 127, §1, is
further amended to read:

34 **§3214. Credit for tax paid on worthless accounts**

36 The tax paid on sales made on credit and reported by a
38 supplier or retailer pursuant to section 3209 found to be
worthless and actually charged off may be credited upon the tax
40 due ~~to~~ on a subsequent report, but if any such accounts are
thereafter collected by the supplier or retailer, a tax ~~shall~~
42 must be paid upon the amounts so collected. The credit ~~shall-be~~
~~considered-as-being-required-to-be~~ must be reported on the return
44 for the month in which the charge-off occurred.'

46 Further amend the bill by inserting at the end before the
summary the following:

2

FISCAL NOTE

4

1999-00

2000-01

6

REVENUES

8

Highway Fund

(\$23,931)

(\$37,531)

10

The reduction of the rate of the special fuel tax on low-energy fuels will decrease Highway Fund revenue by \$23,931 and \$37,531 in fiscal years 1999-00 and 2000-01, respectively.

12

14

The Bureau of Revenue Services will incur some minor additional costs to implement the tax changes in this bill. These costs can be absorbed within the bureau's existing budgeted resources.

16

18

20

The Governor's proposed supplemental Highway Fund budget, LD 957, includes a proposal increasing the tax on low-energy fuels. This bill conflicts with that proposal.'

22

24

SUMMARY

26

This amendment replaces the original bill. The amendment lowers the special fuel tax on low-energy fuels to 14.25¢ per gallon and moves the place of payment of the tax to the sale at the pump.

28