



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN Excise Tax Bulletin #1

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## SPECIAL FUEL TAX ACT

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as Maine Revenue Services interpretations and determinations regarding issues commonly faced by your business.

Special fuel is defined as distillates and low-energy fuel. An excise tax is levied and imposed on all suppliers of distillates sold, on all retailers of low-energy fuel sold and on all users of special fuel used in this State. The tax rate may be adjusted each July 1 for inflation. (See Attachment 2 for tax rates.) The tax is a levy on the ultimate consumer; however suppliers and retailers are primarily responsible for collecting and remitting the tax. If a supplier or retailer includes the tax on a bill to a customer, it must be shown as a separate line item and identified as “Maine special fuel tax.” All Special Fuel Suppliers and Low-Energy Fuel Retailers doing business in this State must apply for a certificate with the State Tax Assessor. A copy of the Special Fuel Supplier or Special Fuel Retailer certificate must be displayed in each place of business.

### 1. DEFINITIONS

Distillates. All combustible gases and liquids used in an internal combustion engine, including bio-diesel fuel, except the fuel subject to the tax imposed by chapter 451 (gasoline tax) and low-energy fuel. Examples are diesel fuel, #2 fuel oil, and kerosene.

Low-energy fuel. Any fuel used to propel vehicles powered by an internal combustion engine that has 90% or less of the energy potential of an equivalent volume of gasoline. Energy potential is determined by the number of BTUs in a standard volume. Examples are propane, natural gas, and alcohol fuels.

Dyed fuel. A distillate that is dyed pursuant to the requirements of the Federal Government. “Dyed fuel” includes (off-highway) diesel fuel and kerosene.

### 2. SUPPLIERS

A supplier is defined as any person:

- importing distillates into this State,
- exporting distillates from this State,
- producing, refining, manufacturing, or compounding distillates within this State, **or**

- purchasing distillates within this State principally for resale to others in bulk.

Licensed suppliers may purchase special fuel for resale free from excise tax. Monthly returns are required to be filed with Maine Revenue Services stating the gross gallons of clear distillates received, sold, and used in this State during the prior month. Excise tax is due on each gallon reported as taxable at the time the monthly return is filed. **Transactions must be reported in the month they occur, not when they are billed.**

Withdrawals of distillates from inventory for a person's own use must be reported as a taxable sale, unless the use is covered by one of the exemptions detailed in Section 6 below.

Registered suppliers may only make sales of special fuel that is either not subject to the special fuels excise tax or of fuel that has been purchased excise tax paid. A common example of a registered supplier is a home heating oil dealer. Registered suppliers do not have a reporting requirement with Maine Revenue Services, but are still required to maintain records accounting for purchases and sales for a period of at least six years.

### **3. RETAILERS**

A retailer is defined as any person purchasing low-energy fuel principally for resale directly into the fuel tank of a motor vehicle. Monthly returns are required to be filed with Maine Revenue Services stating the gross gallons of low-energy fuel received, sold, and used in this State during the prior month. Excise tax is due on each gallon reported as taxable at the time the monthly return is filed. **Transactions must be reported in the month they occur, not when they are billed.**

### **4. SPECIAL FUEL USER**

A special fuel user is defined as any person who is the registered owner or who causes the operation in this State of any motor vehicle that uses special fuel in an internal combustion engine that a) has a gross vehicle weight or combined gross vehicle weight of more than 26,000 pounds; or b) has 3 or more axles on the power unit regardless of gross weight; or c) is a bus designed to carry 20 or more passengers. Quarterly returns are required to be filed with Maine Revenue Services stating the total gallons of fuels used within the State during the reporting period. The excise tax due on each gallon reported as taxable is due at the time the return is filed. Any user of special fuel operating exclusively within the State and using only special fuel purchased within the State, upon which the State has received the special fuel tax, may be exempted, at the discretion of the State Tax Assessor, from filing returns.

A person who receives any special fuel under any circumstances in which the excise tax was not collected by the supplier or retailer is liable for reporting and paying the excise tax on any sale or use of that fuel.

### **5. DELIVERY BY SUPPLIER OR RETAILER**

When distillates are delivered by a supplier to a consumer or to a retail outlet, the fuel is considered to have been sold, even if the retail outlet is owned in whole or in part by the

supplier. The gallons should be reported on the monthly return as a taxable sale at the time the gallons are delivered into a retail tank.

**6. EXEMPTIONS.** The following exemptions are provided by statute:

**a. Heating and cooking.** Special fuel delivered directly into a tank used solely for heating or cooking purposes is exempt from excise tax. This applies to both commercial and residential customers. Delivery slips and invoices which clearly indicate that the fuel is being used for heating or cooking are required as documentation to exempt these sales.

**b. Political subdivisions.** Special fuel sold in bulk to this State or any political subdivision of this State is exempt from excise tax. This exemption does not apply to sales to other states or provinces. Delivery slips and invoices which clearly indicate the purchaser as the State of Maine, an agency of this State, or a political subdivision of this State are required as documentation to exempt these sales. If an entity is questionable, the seller should obtain additional documentation to support the exemption. Sales to political subdivisions should be listed on Schedule 9 of the monthly tax return.

Retail sales of clear diesel to the State of Maine or any political subdivision of this State are subject to Maine excise tax. Entities making such purchases may file for a refund of the excise tax from Maine Revenue Services, subject to the provisions of the political subdivision refund application. The State or political subdivision may assign their right to a refund to a third party. The affidavit necessary to assign a refund is available on the MRS web site.

**c. Sales to the Federal Government.** Special fuel sold or used in such form or under such circumstances as precludes the collection of tax by reasons of federal law is exempt from excise tax. Delivery slips and invoices supporting sales to the U.S. Government are required as documentation to exempt such sales. Sales to the U.S. Government should be listed on Schedule 8 of the monthly tax return.

Retail sales of clear diesel to the U.S. Government are subject to Maine excise tax. Federal entities making such purchases may file for a refund of the excise tax from Maine Revenue Services, subject to the provisions of the political subdivision refund application.

**d. Sales for resale.** Sales of distillates sold to other licensed suppliers or sales of low-energy fuels to a licensed retailer for resale are exempt from excise tax. A copy of the purchasers "Licensed Special Fuel Supplier Certificate" or "Special Fuel Retailer Certificate" with the appropriate signed affidavit must be kept in the seller's file to document this exemption. Exempt sales of clear distillates to other licensed suppliers should be listed on Schedule 6 of the monthly tax return.

Registered suppliers may only purchase dyed fuel or clear distillates upon which the Maine excise tax is paid at the time of purchase.

Maine Revenue Services provides a list of licensed special fuel suppliers on its web site [www.maine.gov/revenue/fueltax](http://www.maine.gov/revenue/fueltax).

**e. Exports.** Special fuel sold only for exportation from this State is exempt from excise tax. Delivery slips and invoices which clearly indicate the purchaser, point of origin, and destination are required to document these sales. Exports should be listed on Schedule 7 of the monthly tax return.

**f. Generation of power.** Special fuel sold to a person for the generation of power for resale or manufacturing is exempt from excise tax. Documentation must be obtained and kept in the records of the seller to support these sales. Affidavits are valid until the purchaser ceases business or discontinues using the special fuel for which the exemption exists. It is recommended the seller periodically update its files. Sales for power generation should be listed on Schedule 10 of the monthly tax return.

Sales for the generation of power for manufacturing are subject to sales tax at the industrial energy rate. An Industrial Users Blanket Certificate of Exemption should be obtained from the purchaser in these situations.

**g. Kerosene for retail sale.** Kerosene prepackaged for home use or delivered into a separate tank for retail sale is exempt from excise tax. Excise tax must be remitted by licensed users rather than by the supplier.

**h. Dyed fuel.** Generally dyed fuel is not reported on the special fuel supplier tax return. When distillates are purchased as clear fuel and ultimately disbursed or sold as dyed fuel or blended with dyed fuel, the sale or disbursement should be reported as a dyed fuel sale. Line clearing or flushing of clear diesel fuel into a dyed fuel tank is an example of when gallons should be reported under dyed fuel. Dyed fuel sales must be documented by delivery slips or invoices which clearly indicate the type of fuel. If fuel is re-branded from a clear product to a dyed product, document the circumstances which caused the re-branding.

**i) Self-produced biodiesel fuel.** Effective October 1, 2009, Biodiesel fuel that is produced by an individual and used by the same individual or a member of that individual's immediate family is exempt from excise tax.

## **7. MONTHLY AND ANNUAL RETURNS**

All licensed suppliers and low-energy fuel retailers must file a monthly return listing receipts and disbursements from the prior month. The return is due on or before the last day of each month. Returns are supported by a variety of schedules and are considered incomplete if the applicable schedules are not attached. Tax returns are required to be filed even if a supplier or retailer has zero inventory or activity in a reporting period.

Licensed suppliers and retailers must also file an annual shrinkage return listing inventories, total receipts, and total sales. Annual returns are due by January 31st for the prior calendar year. (See Section 12 for additional information.)

Maine Revenue Services generates these returns and mails them in advance of the due date. Instructions and blank schedules are available from the Maine Revenue Services web site or by contacting Maine Revenue Services at the address listed below.

**Failure to receive a tax return does not excuse a supplier or retailer from the requirement to file returns as prescribed by law.** Penalties apply for failure to file returns timely.

## **8. REMITTANCE OF TAX**

Tax computed on the monthly return is due at the same time the return is due. Penalties apply for failure to pay tax timely.

Maine Revenue Services requires electronic funds transfer payments for many taxpayers. Effective January 1, 2009 and until January 1, 2010, taxpayers that have a combined liability from all Maine taxes in excess of \$50,000 during any 12-month period are required to make electronic payments. Effective January 1, 2010, taxpayers that have a combined liability from all Maine taxes in excess of \$25,000 during any 12-month period are required to make electronic payments.

For other taxpayers, Maine Revenue Services offers electronic funds transfer as a payment option. Information is available by clicking on electronic services from the Maine Revenue Services web page.

## **9. SALES TAX ISSUES**

Special fuel sold exempt from excise tax is subject to Maine sales and use tax. Exemptions from sales and use tax are contained within the Sales Tax portion of Title 36. Sales and Use Tax Instructional Bulletin #13 provides guidance on taxable and exempt fuel transactions. The Bulletin is available from the Sales and Use tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.

## **10. TAX RATES AND INDEXING**

Beginning in 2003, the excise tax imposed on distillates and low-energy fuels is subject to an annual adjustment based on the consumer price index. The excise tax rate change is effective July 1st of each year. A schedule of tax rates can be found in Attachment #1 to this Bulletin.

Effective July 1, 2009 a biodiesel blend containing less than 90% biodiesel fuel is taxed at the diesel fuel rate.

**Current excise tax rates are also available on the Fuel Tax section of the Maine Revenue Services web page or by contacting Maine Revenue Services.**

## **11. INVENTORY TAX**

If the tax rate is increased on July 1st due to indexing, an inventory tax is imposed on the value of all excise tax paid distillates that are held in retail inventory by a supplier or retail dealer at the end of the day on June 30th. The inventory tax is the difference between the rate on June 30th and the new rate effective July 1st.

## **12. ALLOWANCE FOR LOSSES (SHRINKAGE)**

An allowance may be made by the State Tax Assessor to cover the loss through shrinkage, evaporation or handling sustained by a supplier on the transportation of undyed diesel. The allowance cannot be more than  $\frac{1}{4}$  of 1% of the amount of undyed diesel received by a supplier, plus  $\frac{1}{4}$  of 1% on all transfers in vessels, tank cars or full tank truck loads by the supplier in the regular course of business from one of the supplier's places of business to another of the supplier's places of business within this State. The total allowance must be supported by documentation satisfactory to the Assessor. It is calculated on an annual (calendar year) basis. Suppliers should not include gains or losses in reported sales figures on monthly special fuel supplier returns.

An allowance may be made by the Assessor to cover the loss through shrinkage, evaporation or handling sustained by a retailer on the transportation of propane received by the retailer. The total allowance cannot exceed 1% of the amount of propane received by the retailer.

Further allowances may be requested from the State Tax Assessor by submitting proof of a loss sustained through fire, accident or unavoidable calamity.

## **13. CANCELLATION OF REGISTRATION CERTIFICATES**

A licensed or registered special fuel supplier's and low-energy fuel retailer's certificate may be cancelled for:

- filing a false tax return;
- failing, refusing, or neglecting to file a required return;
- failure to pay the full amount of tax due on a return; or
- making sales of undyed fuels exempt from the excise tax as a registered special fuel supplier.

## **14. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common issues regarding the Excise Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**Maine Revenue Services  
Sales, Fuel & Special Tax Division  
24 State House Station  
Augusta, Maine 04333-0024  
Tel: (207) 624-9609  
NexTalk: (888) 577-6690  
Fax: (207) 287-6628  
E-Mail: [fuel.tax@maine.gov](mailto:fuel.tax@maine.gov)  
[www.maine.gov/revenue/fueltax](http://www.maine.gov/revenue/fueltax)**

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## ATTACHMENT 1

### Excerpts from Maine Revised Statutes Title 36, Part 5: MOTOR FUEL TAXES

#### Chapter 459: SPECIAL FUEL TAX ACT

##### §3202. Definitions

**1. Distillates.** "Distillates" means all combustible gases and liquids used in an internal combustion engine, including biodiesel fuel, except the fuel subject to the tax imposed by chapter 451 and low-energy fuel.

**1-A. Biodiesel fuel.** "Biodiesel fuel" means renewable fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats that is registered with the United States Environmental Protection Agency as a fuel and a fuel additive under the federal Clean Air Act, Section 211(b), 42 United States Code, Section 7545 and as otherwise specified in the American Society for Testing Materials Standard D6751-02a or its subsequent Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

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

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

**2-D. Gross gallons.** "Gross gallons" means actual measured gallons of special fuel received, sold or used, without adjustment for temperature or barometric pressure.

**2-E. Licensed supplier.** "Licensed supplier" means a supplier that is not a registered supplier.

**3. Low-energy fuel.** "Low-energy fuel" means, for the purpose of this section, any fuel used to propel vehicles powered by internal combustion engines that has 90% or less of the energy potential of an equivalent volume of gasoline. Energy potential will be determined by the number of British Thermal Units in a standard volume. Low-energy fuels include, but are not limited to, liquefied natural gas, liquefied petroleum gas, propane, methane, butane, other light petroleum gasses, alcohol fuels and other fuels that meet the criteria in this subsection.

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

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

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

**5-C. Retail dealer.** "Retail dealer" means a person that operates in this State a place of business from which special fuel is sold at retail and delivered directly into the fuel tanks of motor vehicles or watercraft. A retailer or supplier is a retail dealer only with respect to special fuel delivered into a retail storage tank operated by that retailer or supplier or into a retail storage tank of a consignee or commission agent.

**5-D. Registered supplier.** "Registered supplier" means a supplier that purchases or imports only distillates on which the tax imposed by this chapter has been paid to a licensed supplier and that makes sales of distillates only to retail dealers or directly into the fuel tanks of motor vehicles. A registered supplier may also purchase and sell dyed fuel.

**6. Special fuel.** "Special fuel" means distillates and low-energy fuel.

**7. Supplier.** "Supplier" means a person that imports distillates into the State, exports distillates from the State, produces, refines, manufactures or compounds distillates in the State or purchases distillates in the State, principally for resale to others in bulk. "Supplier" includes licensed suppliers and registered suppliers.

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

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

**9. User.** "User" means any person who is the registered owner or who causes the operation in the State of any motor vehicle that uses special fuel in an internal combustion engine and that:

- A. Has a gross vehicle weight or combined gross vehicle weight of more than 26,000 pounds;
- B. Has 3 or more axles on the power unit regardless of gross weight; or
- C. Is a bus designed to carry 20 or more passengers.

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

**§3203. Tax levied; consignment sales; credited to Highway Fund; allowance for losses**

**1. Generally.** Except as provided in section 3204-A, before July 1, 2008 an excise tax is levied and imposed on all suppliers of distillates sold, on all retailers of low-energy fuel sold and

on all users of special fuel used in this State for each gallon of distillate at the rate of 23¢ per gallon and for each gallon of low-energy fuel based on the British Thermal Unit, referred to in this subsection as "BTU," energy content for each fuel as compared to gasoline. In the case of distillates, the tax rate provided by this section is subject to annual inflation adjustment pursuant to section 3321. Applicable BTU values are as follows.

Fuel type	BTU content per gallon	Formula (BTU value fuel/BTU value gasoline) x tax rate gasoline	Tax rate
Gasoline	115,000	100% x 22¢	22¢ per gallon as authorized in section 2903
Methanol (M85)	65,530	57% x 22¢	12.5¢ per gallon
Ethanol (E85)	81,850	71% x 22¢	15.6¢ per gallon
Propane	84,500	73% x 22¢	16¢ per gallon
Compressed Natural Gas	100,000 (BTU per 100 standard cubic feet)	87% x 22¢	19.1¢ per 100 standard cubic feet

**1-B. Generally; rates.** Except as provided in section 3204-A, beginning July 1, 2008 and ending June 30, 2009, an excise tax is levied and imposed on all suppliers of distillates sold, on all retailers of low-energy fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 29.6¢ per gallon. Beginning July 1, 2009, an excise tax is levied and imposed on all suppliers of distillates sold, on all retailers of low-energy fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 30.7¢ per gallon. Tax rates for each gallon of low-energy fuel are based on the British Thermal Unit, referred to in this subsection as "BTU," energy content for each fuel as based on gasoline gallon equivalents or the comparable measure for distillates. The gasoline gallon equivalent is the amount of alternative fuel that equals the BTU energy content of one gallon of gasoline. In the case of distillates, the tax rate provided by this section is subject to annual inflation adjustment pursuant to section 3321. For purposes of this subsection, "base rate" means the rate in effect for gasoline or diesel on July 1st of each year as indexed under section 3321. A biodiesel blend containing less than 90% biodiesel fuel is subject to the rate of tax imposed on diesel.

A. This paragraph establishes the applicable BTU values and tax rates based on gasoline gallon equivalents.

Fuel type based on gasoline	BTU content per gallon or gasoline gallon equivalent	Tax rate formula (BTU value fuel/BTU value gasoline) x base rate gasoline
Gasoline	115,000	100% x base rate

Propane	84,500	73% x base rate
Compressed Natural Gas (CNG)	115,000	100% x base rate
Methanol	56,800	49% x base rate
Ethanol	76,000	66% x base rate
Hydrogen	115,000	100% x base rate
Hydrogen Compressed Natural Gas	115,000	100% x base rate

B. This paragraph establishes the applicable BTU values and tax rates based on distillate gallon equivalents.

Fuel type based on diesel	BTU content per gallon or gallon equivalent	Tax rate formula (BTU value fuel/BTU value diesel) x base rate diesel
Diesel	128,400	100% x base rate
Liquified Natural Gas (LNG)	73,500	57% x base rate
Biodiesel	118,300	92% x base rate

C. The conversion factors established in this paragraph must be used in converting to gasoline gallon equivalents.

(1) For compressed natural gas, BTUs per 100 standard cubic feet is 93,000, and there are 123.66 standard cubic feet per gasoline gallon equivalent.

(2) For hydrogen, BTUs per 100 standard cubic feet is 27,000, and there are 425.93 standard cubic feet per gasoline gallon equivalent.

(3) For hydrogen compressed natural gas, BTUs per 100 standard cubic feet is 79,800, and there are 144.11 standard cubic feet per gasoline gallon equivalent.

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

If a supplier or retailer includes the tax on a bill to a customer, it must be shown as a separate line item and identified as "Maine special fuel tax."

**3. Delivery by supplier or retailer.** When distillates are delivered by a supplier to a consumer or to a retail outlet, those distillates are deemed to have been sold within the meaning of this chapter, even if the retail outlet is owned in whole or in part by the supplier.

**4. Highway Fund.** All taxes and fines collected under this chapter must be credited to the Highway Fund, except that beginning July 1, 2009 the Treasurer of State shall deposit monthly into the TransCap Trust Fund established in Title 30-A, section 6006-G 7.5% of the excise tax imposed under subsection 1.

**5. Allowance for certain losses of undyed distillates.** An allowance of not more than 1/4 of 1% from the amount of undyed distillates received by a licensed supplier, plus 1/4 of 1% on all transfers in vessels, tank cars or full tank truck loads by the licensed supplier in the regular course of business from one of the licensed supplier's places of business to another of the licensed supplier's places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the licensed supplier. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 1/2 of 1% of the receipts by the licensed supplier. The allowance must be calculated on an annual basis. A further deduction may 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.

**6. Allowance for certain losses of propane.** An allowance of not more than 1% from the amount of propane received by the retailer may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the retailer. The total allowance for these losses must be supported by documentation satisfactory to the assessor. The allowance must be calculated on an annual basis. A further deduction may 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.

### **§3203-C. Inventory tax**

On the date that any increase in the rate of tax imposed under this chapter takes effect, an inventory tax is imposed upon all distillates that are held in inventory by a supplier, wholesaler or retail dealer as of the end of the day prior to that date on which the tax imposed by section 3203 Subsections 1 and 1-B has been paid. The inventory tax is computed by multiplying the number of gallons of tax-paid fuel held in inventory by the difference between the tax rate already paid and the new tax rate. Suppliers, wholesalers and retail dealers that hold such tax-paid inventory shall make payment of the inventory tax on or before the 15th day of the next calendar month, accompanied by a form prescribed and furnished by the State Tax Assessor. In the event of a decrease in the tax rate, the supplier, wholesaler or retail dealer is entitled to a refund or credit, which must be claimed on a form designed and furnished by the assessor.

## §3204. Licenses

Every person operating as a supplier, wholesaler or retailer in the State shall file an application for a certificate with the State Tax Assessor on forms prescribed and furnished by the assessor. A person may not sell or distribute special fuel until the certificate is furnished by the assessor and displayed as required by this section. One copy of the certificate, certified by the assessor, must be displayed in each place of business of the person. If the assessor has reasonable cause to believe that the person has ceased to do business or that the person has violated this chapter or rules adopted under this chapter or has failed to appear in court for any violation of this chapter, the assessor may on reasonable notice to the person suspend the person's certificate until satisfied to the contrary. A person whose certificate has been suspended may not act as a supplier, wholesaler or retailer until the certificate is restored by the assessor. Suspended certificates must be surrendered to the assessor upon request. The suspension is reviewable in accordance with section 151.

### §3204-A. Exemptions

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

**2. Heating and cooking.** Special fuel delivered into a tank used solely for heating or cooking purposes;

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

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

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

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

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

**7. Kerosene for retail sale.** Kerosene prepackaged for home use or delivered into a separate tank for retail sale, in which case the excise tax must be remitted by licensed users pursuant to section 3207, rather than by the supplier;

**8. Dyed fuel.** Dyed fuel; and

**9. Self-produced biodiesel fuel.** Biodiesel fuel that is produced by an individual and used by that same individual or a member of that individual's immediate family. (Effective October 1, 2009).

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

**1. Generally.** Except as provided in subsection 2, a person may not operate a motor vehicle on the public ways of this State or allow a motor vehicle to be operated on the public ways of this State 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. For purposes of this subsection, there is a rebuttable presumption that the owner of a motor vehicle has operated the motor vehicle or allowed the motor vehicle to be operated on the public ways of this State with dyed fuel or other fuel when the tax imposed by section 3203 has not been paid by the owner of the motor vehicle.

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

- A. Motor vehicles owned and operated by this State or any political subdivision of this State; and
- B. Motor vehicles authorized to use dyed fuel on the public ways of this State under the provisions of the Code, section 4082 or rules adopted under the Code.

**3. Penalty.** A person who violates the prohibition provided in subsection 1 commits a Class D crime and is subject to a fine of not less than \$1,000, which may not be reduced. Refusal to 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.

**4. Venue.** A violation of this section is deemed to have been committed in part at the principal office of the assessor. Prosecution under this section may be in the county where the act to which the proceeding relates occurred or in Kennebec County.

## **§3206. Licenses; users**

It is unlawful for any user to use or consume any special fuel within this State, unless that user is the holder of an uncanceled license issued by the State Tax Assessor. To produce that 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. Any unlicensed user who purchases a fuel use identification decal, as required by Title 29-A, section 525, must be registered by the State Tax Assessor and subject to this chapter and chapter 461.

In the event that any application for a license to use special fuel as a user in this State shall be filed by any person whose license shall at any time theretofore have been canceled for cause by the State Tax Assessor, or in the case the State Tax Assessor shall be 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 shall theretofore have been canceled for cause by the State Tax Assessor or in the case where the taxpayer failed to appear in court for any violation of this chapter, then and in any of those events the State Tax Assessor, after a hearing of which the applicant shall have been given 5 days' notice in writing and in which the applicant shall have the right to appear in person or by counsel and present testimony,

shall have the right and authority to refuse to issue to the person a license certificate in this State.

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

The license certificate so issued by the State Tax Assessor shall not be assignable and shall be valid only for the user in whose name issued.

### **§3207. Collection of tax**

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

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

### **§3208. Credit; users**

Every user subject to the tax imposed by section 3203 is entitled to a credit on the tax, equivalent to the then current rate of taxation per gallon imposed by section 3203 as adjusted pursuant to section 3321, on all special fuel purchased by that user from a supplier or retailer licensed in accordance with section 3204 upon which the tax imposed by section 3203 has been paid. Evidence of the payment of that tax, in a form required by or satisfactory to the State Tax Assessor, must be furnished by each user claiming the credit. When the amount of the credit to which any user is entitled for any quarter exceeds the amount of the tax for which that user is liable for the same quarter, the excess may be allowed as a credit on the tax for which that user would be otherwise liable for another quarter or quarters. Upon application to the assessor, the excess may be refunded if the applicant has paid to another state or province under a lawful requirement of that jurisdiction a tax similar in effect to the tax imposed by section 3203 on the use or consumption of that fuel outside the State, at the same rate per gallon that tax was paid in this State, but in no case to exceed the then current rate per gallon of the tax imposed by section 3203 as adjusted pursuant to section 3321. Upon receipt of the application the assessor, if satisfied after investigation that a refund is justified, shall so certify to the State Controller. The refund 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.

Interest is paid at the rate established pursuant to section 186, calculated from the date of receipt of the claim for all valid refund claims that are not paid within 30 days of receipt of the claim.

### **§3208-A. Refund to political subdivisions**

Any political subdivision of the State that buys and uses special fuel and that has paid a tax as provided by this chapter on that fuel is eligible for reimbursement in the amount of the tax paid. By contractual agreement, any agency of this State or political subdivision of this State may assign to another person its right to receive funds under this section. A refund application on a form prescribed by the State Tax Assessor must be filed to claim a refund pursuant to this section. Applications for refunds must be filed with the State Tax Assessor within 12 months from the date of purchase.

### **§3209. Reports; International Fuel Tax Agreement; payment of tax; allowance for losses**

**1. Suppliers.** Every licensed supplier and wholesaler shall file on or before the last day of each month a return with the State Tax Assessor stating the gross gallons of distillates received, sold and used in this State by that licensed supplier or wholesaler during the preceding calendar month, on a form prescribed and furnished by the assessor. The return must include any further information reasonably required by the assessor. At the time of filing the return required by this subsection, each licensed supplier or wholesaler must pay to the assessor a tax as prescribed in section 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

**1-A. Retailers.** Every licensed retailer shall file on or before the last day of each month a return with the assessor stating the gross gallons of low-energy fuel received, sold and used in this State by that retailer during the preceding calendar month on a form prescribed and furnished by the assessor. The return must include any further information reasonably required by the assessor. At the time of filing the return 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.

**1-B. International Fuel Tax Agreement.** The State Tax Assessor shall take all steps necessary to maintain the State's membership in the IFTA, in order to:

- A. Facilitate the administration of this chapter;
- B. Promote the fullest and most efficient possible use of the highway system; and
- C. Make uniform the administration, collection and enforcement of special fuel use taxation laws with respect to motor vehicles operated in multiple jurisdictions, by ensuring this State's full participation in the single-base jurisdiction system embodied in the IFTA governing documents, agreed to by other IFTA member jurisdictions and approved by the United States Congress in the Intermodal Surface Transportation Efficiency Act of 1991.

The assessor is authorized to ratify amendments to the IFTA governing documents on behalf of this State, except that the assessor may not ratify any provision that infringes on the substantive taxation authority of the Legislature, including the power to impose taxes, set tax rates and determine exemptions. Subject to the provisions of this Title, the assessor may

delegate to the Secretary of State the responsibility for the processing of special fuel tax returns, special fuel tax collection and compliance with IFTA administrative requirements. The assessor shall consult with the Secretary of State and the Commissioner of Public Safety with respect to rules adopted by the Secretary of State pertaining to IFTA.

**2. Users generally.** Except as provided by subsection 4, each user, not later than the last day of April, July, October and January of each year, shall file with the assessor a return that must include the total gallonage of fuels used within this State during the quarter ending the last day of the preceding month. The return must include any further information reasonably required by the assessor. At the time of filing the return required by this subsection, each user shall pay to the assessor the tax imposed by section 3203 upon each gallon reported as a taxable use or as taxable gallons used, which has not been subjected to the special fuel tax.

**3. Exempt users.** Any user of special fuel operating exclusively within this State and using only special fuel purchased within this State upon which the State has received the special fuel tax, may be exempted, at the discretion of the assessor, from filing returns under this chapter. Any user of special fuel requesting exemption from filing returns shall submit an affidavit as prescribed by the assessor.

**4. Annual returns in certain circumstances.** Notwithstanding any other provisions of this section, a user may file an annual return with payment on or before January 31st of each year covering the prior year when the annual tax liability is expected to be \$100 or less or when allowed by the IFTA governing documents.

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

A person that receives special fuel under circumstances that preclude the collection of this tax by the supplier or retailer and that sells or uses that special fuel in this State is considered a supplier or retailer and shall file a quarterly return on a form prescribed by the State Tax Assessor and is subject to the same taxes and all other provisions of this chapter relating to suppliers and retailers. A person may not be considered a supplier or retailer with respect to special fuel brought into the State in the ordinary standard equipment fuel tank attached to and forming a part of a motor vehicle and used in the operation of that vehicle within the State.

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

If a person licensed or registered under this chapter files a false report of the information required by this chapter, or fails, refuses or neglects to file a return required by this chapter or to pay the full amount of the tax as required by this chapter the State Tax Assessor may cancel the license or registration and give notice to that person of the cancellation.

Upon receipt of a written request from a person licensed or registered under this chapter to cancel the license or registration issued to that person, the assessor may cancel that license or registration effective 30 days from the date of the written request, in which event the license or registration certificate issued to that person must be surrendered to the assessor. If the assessor determines that a person to whom a license or registration has been issued under this chapter is

no longer engaged in the sale or use of special fuel and has not been so engaged for a period of 6 months, the assessor may cancel that license or registration by giving that person 30 days' notice of the cancellation in which event the license or registration certificate issued to that person must be surrendered to the assessor.

### **§3212. Discontinuance as licensed user, retailer and supplier**

When a person ceases to engage in business as a wholesaler, supplier, retailer or user of special fuel within this State, that person shall notify the State Tax Assessor in writing within 15 days after discontinuance. All taxes, penalties and interest under this chapter become due and payable concurrently with that discontinuance. The person shall file a return and pay all the taxes, interest and penalties and surrender to the assessor the license or registration certificate issued to that person by the assessor.

A person that violates any of the provisions of this section commits a Class E crime.

### **§3213. Refunds of taxes erroneously or illegally collected**

In the event it shall appear 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 that certified amount on the Treasurer of State to that user. The refund shall be paid by the Treasurer of State to that 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, which claim shall be in such form as the State Tax Assessor shall prescribe and shall be filed with the State Tax Assessor within 3 years from the date of the payment of the taxes erroneously or illegally collected.

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

The tax paid on sales made on credit and reported by a licensed supplier, wholesaler or retailer pursuant to section 3209 that are found to be worthless and actually charged off may be credited upon the tax due on a subsequent return. If those accounts are collected by the supplier, wholesaler or retailer, a tax must be paid upon the amounts so collected. The credit must be reported on the return for the month in which the charge-off occurred.

### **36 §3215. Refund of taxes for certain common carriers**

A person engaged in furnishing common carrier passenger service under an operating authority license issued pursuant to Title 29-A, section 552 is entitled to reimbursement of the tax paid on special fuel used by that person in locally encouraged vehicles. For purposes of calculating reimbursement due pursuant to this section, special fuel used in a person's locally encouraged vehicles is presumed to bear the same proportional relationship to special fuel used in all of the person's passenger vehicles that the person's commutation fare revenue derived from service provided by locally encouraged vehicles bears to the person's total passenger fare

revenue. "Commutation fare revenue" means revenue attributable to fares of 60¢ or less and fares paid for commutation or season tickets for single trips of less than 30 miles or for commutation tickets for one month or less. "Total passenger fare revenue" means all revenue attributable to the claimant's passenger operations. "Locally encouraged vehicles" means buses upon which no excise tax is collected under section 1483, subsection 13.

Applications for refunds must be filed with the State Tax Assessor, on a form prescribed by the assessor, within 12 months from the date of purchase. A refund may not be issued under this section unless the claimant's commutation fare revenue derived during the period for which the refund is claimed is at least 60% of the claimant's total passenger fare revenue derived during that period.

### **§3218. Refund of tax in certain cases, time limit**

A person who purchases and uses special fuel for any use other than operation of a registered motor vehicle on the highways of this State, and who has paid the tax imposed by this chapter on that fuel, is entitled to reimbursement in the amount of the tax paid, less 1¢ per gallon, upon presenting to the State Tax Assessor a sworn statement accompanied by evidence as the assessor may require. The statement must show the total amount of special fuel so purchased and used by that person other than in the operation of registered motor vehicles on the highways of this State.

A refund application on a form prescribed by the assessor must be filed to claim a refund pursuant to this section. Interest must be paid at the rate determined pursuant to section 186, calculated from the date of receipt of the claim, for all valid claims not paid within 30 days of receipt. Applications for refunds must be filed with the assessor within 12 months from the date of purchase.

All fuel qualifying for a refund under this section is subject to the use tax imposed by chapter 215.

### **§3218-A. Refunds of tax for fuel used by railroads**

Beginning July 1, 2004, the assessor shall monitor the amount of refunds paid under section 3218 for fuel consumed by vehicles operating on rails and monitor the amount of use tax paid on fuel consumed by vehicles operating on rails under chapter 215.

### **§3219. Purpose**

The tax imposed by this chapter is levied for the purpose of providing revenue to be used by this State to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing and repairing the public highways of this State and the cost and expense incurred in the administration and enforcement of this chapter, and for no other purpose whatsoever.

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

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

- A. Inspect any fuel tank or container that can or may be used for the production, storage or transportation of special fuel;
- B. Inspect any equipment that can or may be used for, or in connection with, the production, storage or transportation of special fuel;
- C. Inspect the books and records of any supplier, user, retailer or importer;
- D. Detain any motor vehicle for the purpose of inspecting its fuel tanks. Detainment may continue for a reasonable period of time as necessary to determine the amount and composition of the fuel. Designated agents and officers may take and remove samples of fuel in reasonable quantities in order to determine compliance with the provisions of this chapter;
- E. Suspend vehicle registrations in the name of any carrier that has violated the provisions of this chapter and the right to operate as provided in Title 29-A, section 2458;
- F. Refuse to issue or reissue authority required by Title 29-A, section 552.

**2. Penalties.** A person who commits one of the following acts is guilty of a Class E crime and is subject to a fine of not less than \$250, which may not be reduced:

- A. If the person is a supplier, selling special fuel without collecting tax on the fuel when the supplier knows or has reason to believe that the fuel will not be used for an exempt purpose;
- B. Refusing or failing to make any statement, report, payment or return required by this chapter;
- C. Refusing or failing to pay interest or penalties arising from the nonpayment of taxes required by this chapter;
- D. Knowingly collecting or attempting to collect, directly or indirectly, a refund of tax without being entitled to that refund;
- E. Knowingly making, or aiding or assisting any other person in making, a materially false statement in any return or report submitted to the State Tax Assessor, in any application for refund of tax, in any other application or affidavit submitted to the State Tax Assessor pursuant to this chapter or in any affidavit of exempt use submitted to a supplier pursuant to section 3204-A;

F. Refusing or failing to permit an inspection pursuant to subsection 1; or [PL 1995, c. 271, § 11 (NEW).]

G. If the person is a user or an agent or employee of a user, consuming special fuel in a motor vehicle when the user does not have a valid license issued pursuant to section 3206. Each day or part of a day during which this paragraph is violated constitutes a separate violation within the meaning of this section.

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

### **§3321. Annual adjustment of tax rates**

**1. Generally.** Beginning in 2003, and each calendar year thereafter, the excise tax imposed upon internal combustion engine fuel pursuant to section 2903, subsection 1 and the excise tax imposed upon distillates pursuant to section 3203, are subject to an annual rate of adjustment pursuant to this section. On or about February 15th of each year, the State Tax Assessor shall calculate the adjusted rates by multiplying the rates in effect on the calculation date by an inflation index computed as provided in subsection 2. The adjusted rates must then be rounded to the nearest 1/10 of a cent and become effective on the first day of July immediately following the calculation. The assessor shall publish the annually adjusted fuel tax rates and shall provide all necessary forms and reports.

**2. Method of calculation; inflation index defined.** The inflation index for 2003 is 1.118, representing annual inflation adjustments for the years 1999 to 2002, inclusive. Starting in 2004 and every year thereafter, the inflation index is the Consumer Price Index as defined in section 5402, subsection 1 for the calendar year ending on the December 31st immediately preceding the calculation date, divided by the Consumer Price Index for the prior calendar year. The inflation index may not be less than one.

**3. Exclusion.** This section does not apply to internal combustion engine fuel purchased or used for the purpose of propelling jet engine aircraft.

**4. Legislative review.** Starting in 2008 and each even-numbered year thereafter, the Department of Transportation shall submit an emergency bill by the cloture date established for departments and agencies for the first regular session of the Legislature that suspends the adjustment in fuel tax rates in the upcoming biennium resulting from the operation of this section.

## ATTACHMENT 2

### FUEL TAX RATES

Tax Type	Through 06/30/03	Effective 07/01/03	Effective 07/01/04	Effective 07/01/05	Effective 07/01/06	Effective 07/01/07	Effective 07/01/08	Effective 07/01/09
Inflation Index	n/a	1.118	1.023	1.027	1.034	1.032	1.028	1.038
Diesel	0.230	0.257	0.263	0.270	0.279**	0.288**	0.296	0.307
Propane	0.160	0.179	0.183	0.188	0.194	0.201	0.206	0.215
Methanol	0.125	0.140	0.143	0.147	0.152	0.157	0.139	0.145
Ethanol	0.156	.0174	0.178	0.183	0.189	0.196	0.187	0.195
CNG*	0.191	0.214	0.218	0.224	0.232	0.239	0.230	0.239
Hydrogen	n/a	n/a	n/a	n/a	n/a	n/a	0.067	0.069
Hydrogen CNG	n/a	n/a	n/a	n/a	n/a	n/a	0.197	0.205
LNG	n/a	n/a	n/a	n/a	n/a	n/a	0.169	0.175
Biodiesel (B100)	n/a	n/a	n/a	n/a	n/a	n/a	0.272	0.282
B20	n/a	n/a	n/a	n/a	n/a	n/a	0.291	0.307
E10	n/a	n/a	n/a	n/a	n/a	n/a	0.274	0.295
E85	n/a	n/a	n/a	n/a	n/a	n/a	0.202	0.295

\* CNG, Hydrogen and Hydrogen CNG tax rate is applied to every 100 cubic feet. The tax rate on all other fuels is based on each gallon.

\*\*For reporting periods beginning on September 1, 2006 thru September 19, 2007, the tax rate for diesel fuel containing at least 2% biological component is 0.200.