

## CHAPTER 195

---

**TAXATION**

---

**SENATE BILL 09-098**

BY SENATOR(S) Schwartz, Isgar, Brophy, Gibbs, Boyd, Heath, Morse, Newell, Penry, Sandoval;  
also REPRESENTATIVE(S) Vigil, Priola, Stephens.

**AN ACT**

**CONCERNING BLENDING DIESEL FUELS AFTER WITHDRAWAL AT THE RACK, AND MAKING AN  
APPROPRIATION IN CONNECTION THEREWITH.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 39-27-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**39-27-101. Definitions - construction.** As used in this part 1, unless the context otherwise requires:

(1.5) "BIODIESEL FUEL" MEANS A MOTOR VEHICLE FUEL THAT IS PRODUCED FROM PLANT OR ANIMAL PRODUCTS OR WASTES, AS OPPOSED TO FOSSIL FUEL SOURCES.

**SECTION 2.** 39-27-102.5 (1.5) and (2) (a), Colorado Revised Statutes, are amended to read:

**39-27-102.5. Exemptions on tax imposed - ex-tax purchases.** (1.5) Except as otherwise provided in ~~paragraph (b)~~ PARAGRAPHS (a) AND (b) of subsection (2) of this section, paragraph (b) of subsection (3) of this section, and section 39-27-102 (1) (b), indelible dye meeting federal regulations must be added to special fuel before or upon withdrawal at a terminal or refinery rack for that special fuel to be exempt from the excise tax imposed pursuant to this part 1. Such tax-exempt special fuel shall not be used for taxable purposes; except that dyed special fuel may be used for a taxable purpose to the extent that such use is allowed under federal law or regulations with such fuel being subject to the excise tax imposed pursuant to this part 1. For purposes of this subsection (1.5), "taxable purpose" means any use on which an excise tax on special fuel is imposed pursuant to this part 1. The terminal operator shall ensure that tax-exempt special fuel is dyed before it leaves

---

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

the terminal. The seller shall give notice to the purchaser in accordance with federal regulations that the dyed special fuel is not legal for taxable use.

(2) (a) Dyed diesel fuel purchased to propel farm vehicles, when the same are being used on farms and ranches, farm tractors, and implements of husbandry only incidentally operated or moved on a highway, when operated off the public highways, and vehicles or construction equipment operated within the confines of highway construction projects when the same are actually being used in the construction of such highways shall be exempt from the excise tax imposed pursuant to this part 1. IN ACCORDANCE WITH SECTION 39-27-104 (1) (d.5), DYED DIESEL FUEL MAY BE BLENDED BY A LICENSED DISTRIBUTOR WITH BIODIESEL FUEL AFTER WITHDRAWAL AT A TERMINAL OR REFINERY RACK UP TO THE MAXIMUM FEDERALLY ALLOWABLE BLEND. SUCH BLENDED SPECIAL FUEL SHALL BE EXEMPT FROM THE EXCISE TAX IMPOSED PURSUANT TO THIS PART 1, SO LONG AS IT IS PURCHASED FOR THE PURPOSES SET FORTH IN THIS PARAGRAPH (a). A person who purchases undyed special fuel for the purposes set forth in this paragraph (a) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

**SECTION 3.** 39-27-104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-27-104. License and deposit - exception.** (1) (d.5) NO PERSON SHALL BLEND EXEMPT DYED DIESEL FUEL WITH BIODIESEL FUEL AFTER WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK UNLESS SUCH PERSON IS A LICENSED BLENDER IN ACCORDANCE WITH PARAGRAPH (d) OF THIS SUBSECTION (1) WHO HAS A VALID FEDERAL BLENDING PERMIT. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS PARAGRAPH (d.5) OR THE REPORTING OR OTHER REQUIREMENTS OF THIS SECTION RELATING TO SUCH BLENDING OR WHO MISREPRESENTS THE AMOUNT OF BIODIESEL FUEL THAT IS BLENDED WITH DYED DIESEL FUEL SHALL BE SUBJECT TO THE FOLLOWING CIVIL PENALTIES:

(I) A FIVE-THOUSAND-DOLLAR FINE FOR THE FIRST VIOLATION;

(II) A TEN-THOUSAND-DOLLAR FINE FOR THE SECOND OR SUBSEQUENT VIOLATION; AND

(III) IN ACCORDANCE WITH RULES PROMULGATED PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., REVOCATION OF ANY LICENSE ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION FOR THE THIRD VIOLATION.

**SECTION 4.** 39-27-109.7, Colorado Revised Statutes, is amended to read:

**39-27-109.7. Data collection services.** In order to track the movement of gasoline or special fuel within this state and thereby facilitate and expedite the collection of excise taxes imposed pursuant to this part 1, the executive director of the department of revenue may enter into a contract with one or more private entities for the provision of a computer-based program to monitor and track the data that licensees are required to report to the department pursuant to this part 1. Such computer-based program shall be funded solely with moneys from the highway

users tax fund; EXCEPT THAT, FOR THE STATE FISCAL YEAR 2009-10, UP TO THIRTY-SEVEN THOUSAND SIX HUNDRED THIRTY DOLLARS FOR THE COMPUTER-BASED PROGRAM TO MONITOR AND TRACK EXEMPT DYED DIESEL FUEL THAT IS BLENDED WITH BIODIESEL FUEL AFTER WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK PURSUANT TO SECTION 39-27-102.5 (2) (a) MAY BE FUNDED BY MONEYS RECEIVED BY THE GOVERNOR'S ENERGY OFFICE CREATED IN SECTION 24-38.5-101, C.R.S., FROM THE UNITED STATES DEPARTMENT OF ENERGY.

**SECTION 5. Appropriation.** The general assembly anticipates that, for the fiscal year beginning July 1, 2009, the information technology division of the department of revenue will receive the sum of thirty-seven thousand six hundred thirty dollars (\$37,630) in federal funds, or so much thereof as may be necessary, from the governor's energy office for the implementation of this act. Although these funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

**SECTION 6. Act subject to petition - effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 30, 2009