

## CHAPTER 231

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**TAXATION**

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## SENATE BILL 05-222

BY SENATOR(S) Entz, Isgar, Spence, Takis, Wiens, Williams, Hillman, Taylor, and Teck;  
also REPRESENTATIVE(S) Larson, Berens, and Hoppe.

**AN ACT**

**CONCERNING GASOLINE AND SPECIAL FUEL TAX, AND, IN CONNECTION THEREWITH, RECONCILING DIFFERENT MEASUREMENTS USED FOR CALCULATING TAX ON GASOLINE AND SPECIAL FUEL, REQUIRING ELECTRONIC FUND TRANSFERS FOR GASOLINE AND SPECIAL FUEL TAX REMITTANCES, AND CHANGING THE DUE DATE FOR THE FILING OF REPORTS AND REMITTANCES OF TAX.**

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

**SECTION 1.** 39-27-102 (1) (a) (I), (1) (a) (II), (1) (a) (III), (1) (b), (2) (a), (2) (b), and (2.5) and the introductory portion to 39-27-102 (9) (a), Colorado Revised Statutes, are amended, and the said 39-27-102 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**39-27-102. Tax imposed on gasoline and special fuel - deposits - penalties.**  
(1) (a) (I) ~~Other than as provided in subparagraph (II) of this paragraph (a);~~ An excise tax is imposed and shall be collected on all gasoline OR SPECIAL FUEL ACQUIRED, sold, offered for sale, or used in this state for any purpose whatsoever, but only one tax shall be paid upon the same gasoline OR SPECIAL FUEL in this state. Except as otherwise provided in this subparagraph (I), no more than three tax-deferred transactions shall take place after the gasoline OR SPECIAL FUEL has left the terminal of its origin, either within or outside of this state; except that, for purposes of counting the applicable transactions in order to collect the tax imposed by this subparagraph (I), counting shall begin when the gasoline OR SPECIAL FUEL first enters this state, whether by truck or by rail. If more than three distributors acquire the gasoline OR SPECIAL FUEL, the third distributor shall be liable for payment of the tax imposed. Nothing in this paragraph (a) shall preclude previous distributors from paying the tax. A distributor shall not be required to pay tax on gasoline OR SPECIAL FUEL that is exempt pursuant to section 39-27-103 (2). The tax imposed shall be computed upon the total amount of gasoline OR SPECIAL FUEL, measured in gallons, acquired by each distributor in this state and shall be paid in the manner

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

provided in this section.

(II) (A) The excise tax imposed ON GASOLINE by subparagraph (I) of this paragraph (a) shall be twenty cents per gallon or fraction thereof from August 1, 1989, through December 31, 1990, and twenty-two cents per gallon or fraction thereof for calendar years beginning on and after January 1, 1991.

(B) THE EXCISE TAX IMPOSED ON SPECIAL FUEL BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL BE TWENTY AND ONE-HALF CENTS PER GALLON OR A FRACTION THEREOF FOR CALENDAR YEARS BEGINNING ON AND AFTER JANUARY 1, 1992.

(III) (A) ~~Notwithstanding other provisions of this part 1, gasoline which is blended with at least ten percent by volume of qualifying fuel grade denatured alcohol complying with conditions set forth in the federal "Clean Air Act", 42 U.S.C. sec. 7545 (f) (4), and derived at least sixty percent from cereal grains, cereal grain by-products, potatoes or other tubers, sugar beets, sugar beet by-products, or forest products, and having a purity of at least ninety-nine percent as required by section 8-20-204.5, C.R.S., shall be taxed five cents per gallon less than gasoline which does not contain such a blend. The volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved under federal law to the extent that such denaturants do not exceed five percent of the volume of such alcohol (including denaturants). Such tax reduction shall be limited to such blended gasoline which is produced from no more than two and one-half million gallons of alcohol annually from each facility holding a valid United States alcohol fuel producers permit or a valid United States distilled spirits permit issued under 26 U.S.C. sec. 5181 and having a design production capacity of five million gallons or less per year of alcohol as reported in each calendar year on the United States department of the treasury bureau of alcohol, tobacco and firearms form ATF 5110.75 or DSP 5110.40 or their revisions as wine gallons distributed or sold for fuel purposes. Any applicant claiming credit for alcohol produced in a plant not holding a valid United States alcohol fuel producers permit or a valid United States distilled spirits permit shall provide proof that said alcohol meets the conditions set forth in the federal "Clean Air Act", 42 U.S.C. sec. 7545 (f) (4), and is produced in a facility which qualifies under this section. At least annually, agents of the department of revenue shall inspect said facilities and audit their production records. The department of revenue may, in the discretion of the executive director, seek professional assistance from engineers, accountants, or others qualified to perform such inspections and audits. All expenses of said inspection and audit, including salaries of said agents and fees of professional consultants, shall be paid by the applicant claiming the credit. The applicant for credit shall provide proof satisfactory to the department of revenue of the following: That all taxes, duties, tariffs, or other fees and assessments pertaining to said alcohol have been paid; that a clear chain of evidence, including bills of lading, exists to trace the alcohol to its source and to verify the qualifications of the production facility; and that the alcohol has not been commingled with alcohol of lesser quality or industrial grade or with alcohol from a production facility having a capacity in excess of five million gallons. This tax reduction shall remain in effect until July 1, 1986. Said tax shall continue to be a gasoline tax in all respects under the provisions of this part 1 and the rules and regulations adopted by the executive director of the department of revenue thereunder; and the authority of said executive director to promulgate rules and regulations shall apply with like force and effect to the tax imposed under this subparagraph (II).~~

~~(B) If any provision of this subparagraph (III) or the application thereof to any person or circumstance is held invalid, the entire subparagraph (III) is invalid.~~

(V) IN THE CASE OF A USER, THE TAX IMPOSED BY THIS SECTION SHALL BE MEASURED BY THE GALLONS OF SPECIAL FUEL IMPORTED INTO THIS STATE OR ACQUIRED WITHOUT PAYMENT OF THE TAX IMPOSED BY THIS SECTION AND USED IN THE PROPULSION OF A MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE.

(b) In the case of gasoline OR SPECIAL FUEL shipped to a distributor from a terminal, the amount of gasoline OR SPECIAL FUEL acquired shall be deemed to be the amount shipped from the terminal, as shown by the terminal manifest; except that an allowance of two percent of the total amount of gasoline OR SPECIAL FUEL acquired during any calendar month, as shown by terminal manifests, shall be deducted by the licensed distributor to cover losses in transit and in unloading the gasoline OR SPECIAL FUEL and costs of collection and payment to the state of the tax imposed by this section, out of which allowance the distributor shall make to each retailer an allowance of one percent of the amount of gasoline OR SPECIAL FUEL delivered during each calendar month by the distributor to the retailer, as shown by delivery invoices signed by the retailer. The tax imposed by this section shall be exempted on each recorded and reported sale by a distributor to the United States, or any of its agencies, and to any town, city, county, city and county, special district, or school district when the sale involves a single delivery and the gasoline OR SPECIAL FUEL is used exclusively by the governmental entity in performing its governmental functions and activities. The exemption shall apply solely to machines owned or operated by the United States or any of its agencies, by the state, or by any town, city, county, city and county, school district, or other political division of the state. Exemptions for persons conducting business for such governmental entities on a contract basis using an aircraft shall be based solely on the applicable operating certificate of the aircraft operator pursuant to sub-subparagraph (B) of subparagraph (IV) of paragraph (a) of this subsection (1). Any governmental entity referred to in this paragraph (b) ~~may~~ SHALL obtain an exemption certificate from the executive director of the department of revenue. Upon receipt of an exemption certificate, such governmental entity may purchase gasoline OR SPECIAL FUEL from a distributor without payment of the excise tax imposed pursuant to this part 1 if the gasoline OR SPECIAL FUEL is used exclusively by the governmental entity in performing its governmental functions and activities.

(2) (a) Every person who uses any gasoline OR SPECIAL FUEL for propelling a motor vehicle on the public highways of this state or who is licensed to import any gasoline OR SPECIAL FUEL into this state for use or sale in this state, upon which gasoline OR SPECIAL FUEL a licensed distributor has not paid or is not liable to pay the tax imposed in this section, is deemed to be a distributor and is liable for and shall pay an excise tax at a rate established by paragraph (a) of subsection (1) of this section on all such gasoline OR SPECIAL FUEL so used, or imported for use or sale, in this state. Such person shall pay such tax to the department of revenue, PURSUANT TO SECTION 39-27-105.3, on or before the ~~twenty-fifth~~ TWENTY-SIXTH day of the calendar month following the month in which such gasoline OR SPECIAL FUEL was used or imported and shall, at the time of payment, render to the department, on forms provided by it, an itemized statement, signed under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S., of all such gasoline OR SPECIAL FUEL so used or imported during such preceding calendar month. When such

gasoline OR SPECIAL FUEL is delivered from a terminal in a carload lot, the quantity thereof and the amount of tax thereon shall be computed in the same manner as in the case of a distributor.

(b) A person operating a passenger car into this state may bring into the state, for the operation of such passenger car, not more than the capacity for gasoline OR SPECIAL FUEL in the ordinary fuel tank attached to such passenger car without being liable for payment of the tax on such gasoline OR SPECIAL FUEL. Any person operating a motor truck or motor bus into this state, except those persons operating a qualified motor vehicle pursuant to motor fuel tax cooperative agreement entered into under part 3 of this article, may bring into this state, for the operation of such motor truck or motor bus, not more than the capacity for gasoline OR SPECIAL FUEL in the ordinary fuel tank attached to such motor truck or motor bus without being liable for payment of the tax on such gasoline OR SPECIAL FUEL. Any person operating an aircraft into this state, other than an aircraft operated by scheduled air carriers or commuter airline operators, may bring into this state, for the operation of such aircraft, not more than the capacity for gasoline OR SPECIAL FUEL in the ordinary fuel tank attached to such aircraft without being liable for payment of the tax on such gasoline OR SPECIAL FUEL. In the event of a disagreement between the operator, driver, or owner of any vehicle, truck, or bus and any officer or inspector of this state regarding the capacity of the ordinary fuel tank of any vehicle traveling upon the highways, the operator, driver, or owner shall be required, at his OR HER own expense, to prove to the satisfaction of the officer or inspector the capacity of the ordinary fuel tank attached to such vehicle, and, in the event it exceeds that exempted by law, he OR SHE shall be required to pay the tax on any additional gallonage then and there, securing a receipt from the officer or inspector with whom such disagreement occurred.

(2.5) Except as otherwise provided in paragraph (b) of subsection (2) of this section, every person who imports gasoline OR SPECIAL FUEL into this state for use or sale in this state without a valid importer, supplier, blender, or distributor license is liable for and shall pay an excise tax pursuant to paragraph (a) of subsection (1) of this section on all gasoline OR SPECIAL FUEL such person imports for use or sale in this state. In addition to the excise tax, such person shall be subject to the civil penalties set forth in subsection (9) of this section. Immediately upon discovery of a violation of this subsection (2.5), the department of revenue and agents thereof may demand payment of such excise tax and all applicable fines associated with the unlicensed importation of gasoline OR SPECIAL FUEL and may detain the shipment of gasoline OR SPECIAL FUEL until such excise tax and fines are collected.

(9) (a) Any person who ~~violates the reporting provisions of subsection (1.5) of this section or~~ imports OR DISTRIBUTES gasoline OR SPECIAL FUEL into this state without a license shall be subject to the following civil penalties:

**SECTION 2.** 39-27-102.5 (1), (1.5), and (2) (b) (I), the introductory portion to 39-27-102.5 (5) (a), and 39-27-102.5 (5) (b), (5) (e), (5) (f), (6) (a), and (7), Colorado Revised Statutes, are amended to read:

**39-27-102.5. Exemptions on tax imposed - ex-tax purchases.** (1) ~~(a) (f) An excise tax is imposed and shall be collected on all special fuel acquired in this state; but only one such tax shall be paid upon the same special fuel in this state. Except~~

~~as otherwise provided in this subparagraph (I), no more than three tax deferred transactions shall take place after the special fuel has left the terminal of its origin, either within or outside the state; except that, for purposes of counting the applicable transactions in order to collect the tax imposed by this subparagraph (I), counting shall begin when the special fuel first enters the state, whether by truck or by rail. If more than three distributors acquire the special fuel, the third distributor shall be liable for payment of the tax imposed. Nothing in this paragraph (a) shall preclude distributors from paying the tax. The tax imposed shall be computed upon the total amount of special fuel measured by the volume of special fuel acquired by each distributor in this state and shall be paid in the manner provided in this section.~~

~~(H) In the case of a user, the tax imposed by this section shall be measured by the volume of special fuel imported into this state or acquired without payment of the tax imposed by this section and used in the propulsion of a motor vehicle on the highways of this state.~~

~~(b) The tax, with respect to special fuel acquired by a user in a manner for which the tax is paid to the distributor, shall attach at the time of the consumption of such special fuel in the propulsion of a motor vehicle upon the highways of this state and shall be paid over to the executive director of the department of revenue by the user with the report required by, and in accordance with, other applicable provisions of this part 1.~~

~~(c) The excise tax imposed by paragraph (a) of this subsection (1) shall be twenty and one-half cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 1992.~~

(1.5) Except as otherwise provided in paragraph (b) of subsection (2) of this section, ~~and 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 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) (b) (I) All purchases of special fuel for the propulsion of a motor vehicle on the highways of this state by the United States or any of its agencies shall be exempt from the provisions of this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. A person who purchases special fuel for the purposes set forth in this subparagraph (I) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.~~

(5) (a) The tax imposed by paragraph (c) of subsection (1) of this section ~~SECTION 39-27-102 (1) (a) (II) (B)~~ shall not apply to any motor vehicle that has been

registered in this state, that is powered by liquefied petroleum gas or natural gas, and for which a valid decal has been acquired as provided in this subsection (5). The owners or operators of such motor vehicles shall, in lieu of the tax imposed under ~~paragraph (c) of subsection (1) of this section~~ SECTION 39-27-102 (1) (a) (II) (B), pay an annual license tax fee on each such vehicle in accordance with the following schedule of motor vehicle gross weights:

(b) The executive director of the department of revenue shall annually, starting January 1 of each year commencing in 1984, collect or cause to be collected from owners or operators of the motor vehicles specified in paragraph (a) of this subsection (5) the annual license tax fee. Applications for such licenses shall be supplied by the department of revenue. In the case of a motor vehicle that is purchased or converted to ~~liquefied~~ LIQUEFIED petroleum gas or natural gas by January 1 of any year, a license shall be purchased for a fractional period of such year, and the amount of the license tax shall be reduced by one-twelfth for each complete month that shall have elapsed since the beginning of such year.

(e) It is unlawful for any person to operate a motor vehicle required to have a liquefied petroleum gas or natural gas decal upon the highways of this state without such decal unless such motor vehicle is titled outside Colorado and all Colorado purchases are taxed pursuant to ~~paragraph (c) of subsection (1) of this section~~ SECTION 39-27-102 (1) (a) (II) (B) or such vehicle is otherwise exempt from the provisions of this part 1.

(f) No person shall put, or cause to be put, liquefied petroleum gas or natural gas into the fuel tank of a motor vehicle required to have a liquefied petroleum gas or natural gas decal unless the motor vehicle has such decal attached to it or written or electronic evidence that a valid decal has been acquired for the motor vehicle and such evidence has been provided to such person or such person's employer. Sales of fuel placed in the fuel tank of a motor vehicle not displaying such decal or otherwise evidencing acquisition of a valid decal and for which the distributor is obligated to collect the tax specified by ~~paragraph (c) of subsection (1) of this section~~ SECTION 39-27-102 (1) (a) (II) (B) shall be recorded upon an invoice, which invoice shall include the date, the motor vehicle license number, the number of gallons or, in the case of natural gas, the energy equivalent in gallons placed in such fuel tank, and the tax due thereon.

(6) (a) The department of revenue shall promulgate rules allowing for payment of the annual license tax fee, if applicable, and acquisition of the decal as set forth in subsection (5) of this section by a user directly from a vendor or distributor of ~~liquefied~~ LIQUEFIED petroleum gas or natural gas.

(7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt from the provisions of subsection (5) of this section and from the special fuel tax imposed by ~~paragraph (c) of subsection (1) of this section~~ SECTION 39-27-102 (1) (a) (II) (B) upon ~~liquefied~~ LIQUEFIED petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in this subsection (7) 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.** 39-27-103 (2), Colorado Revised Statutes, is amended to read:

**39-27-103. Refunds - penalties - checkoff.** (2) Refund shall be made or credit allowed for the tax paid on all gasoline or special fuel that is purchased and used exclusively, pursuant to ~~sections 39-27-102 (1) (b) and 39-27-102.5 (2) (b)~~ SECTION 39-27-102 (1) (b) by the United States or any of its agencies or by the state or by any town, city, county, or other political subdivision of the state, including specifically any school district therein, solely in any machines owned or operated by the United States or any of its agencies or by the state or by such town, city, county, school district, or other political subdivision of the state. Any other use or any resale for any other use shall be a violation of paragraph (c) of subsection (3) of this section.

**SECTION 4.** 39-27-104 (1) (g) (V) (A), Colorado Revised Statutes, is amended to read:

**39-27-104. License and deposit - exception.** (1) (g) (V) Immediately upon discovery of a violation of this paragraph (g), the department of revenue and agents thereof:

(A) May require payment of the excise tax imposed pursuant to ~~sections 39-27-102 (1) (a) and 39-27-102.5 (1) (a)~~ SECTION 39-27-102 (1) (a) and all applicable civil penalties imposed pursuant to this paragraph (g) from any person who violates the provisions of this paragraph (g); and

**SECTION 5.** 39-27-105 (1), (1.3) (a), (1.3) (c), (1.3) (d), (1.5), (2), (3), (4) (a), (6) (a), (7) (a), (7) (b), (8), (9), and (10), Colorado Revised Statutes, are amended to read:

**39-27-105. Collection of tax on gasoline and special fuel.** (1) In addition to the reporting requirements set forth in subsection (1.5) of this section, every distributor, SUPPLIER, CARRIER, EXPORTER, IMPORTER, blender, refiner, or terminal operator of gasoline OR SPECIAL FUEL on or before the ~~twenty-fifth~~ TWENTY-SIXTH day of each calendar month shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, an itemized statement made under penalty of perjury in the second degree, showing the following:

(a) The number of gallons of gasoline OR SPECIAL FUEL acquired by the distributor in this state from any source whatsoever during the preceding calendar month;

(b) The quantity of the different kinds of gasoline OR SPECIAL FUEL so acquired;

(c) The amount of gasoline OR SPECIAL FUEL exported from this state, with the date of shipment, the car number and initials, and the number of invoiced gallons of gasoline OR SPECIAL FUEL contained in each tank car if exported by rail, and the name of the owner and the make and license number of the tank truck or tank wagon if such transportation is used, and the name of the person to whom such exported gasoline OR SPECIAL FUEL was sold, the point of shipment, and the point of delivery;

(d) The date of acquisition of each shipment of gasoline OR SPECIAL FUEL acquired by the distributor, the name of the person from whom purchased or acquired, the point of origin and point of destination of each shipment, the quantity in gallons of each of

said purchases or shipments, the name of the carrier, the number of each tank car, its initial, and the number of invoiced gallons contained in each tank car if shipped by rail, and the name of the owner and the make, license number, and capacity in gallons of the tank truck or tank wagon if such transportation was used;

(e) Further information pertaining to the acquisition of gasoline OR SPECIAL FUEL and its disposition as the executive director of the department of revenue may reasonably require. In the case of a distributor duly licensed as a blender of gasoline OR SPECIAL FUEL, the report shall show the amount and character of the unblended products and the blended products on hand on the last day of the preceding calendar month, the amount of unblended products acquired and the amount of products blended during said calendar month, and any other information relative to the disposition of the blended products as the executive director may deem necessary or advisable for the correct determination of the amount of excise tax applicable to gasoline OR SPECIAL FUEL acquired, used, or offered for sale by the distributor.

(f) The information required for reporting acquisition or disposition of gasoline OR SPECIAL FUEL pursuant to this article shall be submitted electronically in the manner prescribed by the department OF REVENUE by rule. The department, in consultation with distributors, shall promulgate rules regarding filing of information that includes, but is not limited to, the data elements, the format of the data elements, and the method and medium of transmission to the department. ~~The department shall not require the electronic filing of information prior to January 1, 1998.~~

~~(1.3) (a) Every distributor, blender, refiner, or terminal operator of special fuel shall, on or before the twenty-fifth day of each month, file with the executive director of the department of revenue a report stating the total amount of special fuel acquired by such distributor during the prior calendar month and such other information relating to the sale of special fuel as the executive director may require. Failure to receive the authorized report form does not relieve a distributor from the obligation of submitting a report to the executive director setting forth all information required on the prescribed report form. The report shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S.~~

(c) Distributors may aggregate figures stated in the reports required by this ~~subsection (1.3) PART 1~~ for ~~liquified~~ LIQUEFIED petroleum gas and natural gas for all service stations or other facilities that dispense ~~liquified~~ LIQUEFIED petroleum gas or natural gas for sale to users and that are owned or operated by the same distributor.

(d) Distributors may aggregate figures stated in the reports required by this ~~subsection (1.3) PART 1~~ for ~~liquified~~ LIQUEFIED petroleum gas and natural gas for sales of such fuels to a particular class or type of individual user or holder of the decals authorized by section 39-27-102.5 (5). Distributors of ~~liquified~~ LIQUEFIED petroleum gas and natural gas shall not be required to separately report the amount of sales to individual users.

(1.5) On or before the ~~twenty-fifth~~ TWENTY-SIXTH day of each calendar month, every licensee shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, a report made under penalty of perjury in the second degree specifying any information that the executive director of

the department of revenue shall require. The executive director shall consult with persons in the gasoline or special fuel industry to determine such reporting requirements and promulgate said requirements by rule in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) It is the duty of every distributor of gasoline OR SPECIAL FUEL to compute the amount of tax payable on all gasoline OR SPECIAL FUEL acquired during the preceding calendar month at the rate of tax per gallon imposed thereon in section 39-27-102 (1), and, in computing the amount of tax, the allowance of two percent provided for in section 39-27-102 (1) shall be taken into account. From the amount of tax so computed, the distributor of gasoline OR SPECIAL FUEL shall deduct one-half of one percent to cover expenses of collection of the tax and bad debt losses and shall pay the remaining balance to the department of revenue at the time of filing the statement required to be filed by the provisions of this section. A penalty of thirty dollars or ten percent of the tax due, plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, whichever is greater, shall be imposed for failure to file any statement when due or pay the tax as provided in this section, in addition to any other penalties provided by this part 1.

(3) If any distributor of gasoline OR SPECIAL FUEL fails or refuses to make and file the sworn statement and pay the tax due for any calendar month or if any distributor of gasoline OR SPECIAL FUEL makes and files any incorrect or fraudulent statement or return for any calendar month as required by this part 1, the executive director of the department of revenue, upon such information as is available in his or her office or elsewhere, shall determine the amount of gasoline OR SPECIAL FUEL taxes due from said distributor and shall add to said amount a penalty of thirty percent thereof for failure to file such report or for filing such false or fraudulent report and collect the amount of said tax and penalty plus interest on the whole amount due from said distributor at the rate imposed under section 39-21-110.5 from the date due until paid. The executive director may waive, for good cause shown, any penalty assessed as provided in this article and article 21 of this title.

(4) (a) (I) Every person who has obtained a passenger-mile tax permit pursuant to section 42-3-137, C.R.S., where such permit relates to a motor vehicle that is powered by special fuel, shall, on or before the last day of the month following the end of the quarter, file with the executive director of the department of revenue a report stating the amount of special fuel subject to the tax imposed by this part 1 consumed by such person during the prior quarter and such other information relating to the use of special fuel for the propulsion of a motor vehicle on the highways of this state as the executive director may require. The executive director, under rules and procedures established by said executive director, may exempt from the reporting requirement of this subsection (4) any motor vehicle used exclusively within this state. Failure to receive the authorized report form does not relieve such person from the obligation of submitting a report to the executive director setting forth all information required on the prescribed report form. The report shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S.

(II) THE TAX DUE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL BE COMPUTED BY MULTIPLYING THE RATE PER GALLON AS SET FORTH IN SECTION 39-27-102 (1) (a) (II) (B) BY THE NUMBER OF GALLONS OF SPECIAL FUEL USED IN THIS

STATE.

(6) (a) Every person who imports special fuel into this state for use or sale in this state without a single trip permit or a valid importer's, supplier's, or distributor's license is liable for and shall pay an excise tax pursuant to ~~section 39-27-102.5 (1)~~ SECTION 39-27-102 (1) on all undyed special fuel such person imports for use or sale in this state.

(7) (a) If any person other than a licensed distributor or supplier physically diverts to one or more destinations within the boundaries of this state all or any portion of a shipment of GASOLINE OR special fuel that is claimed as an export on the bill of lading or other affidavit, such person shall report to the department of revenue the destinations within this state to which the diverted GASOLINE OR special fuel shipment was delivered within one working day after such diversion. Such person shall be liable for payment of the excise tax established in this part 1 on the amount of GASOLINE OR special fuel diverted to a destination within this state.

(b) Any licensed distributor or supplier who diverts GASOLINE OR special fuel for use or sale within this state after claiming such shipment as an export shall report such diversion to the department OF REVENUE within one working day after the diversion.

~~(8) (a) Each report required by this section shall be accompanied by a remittance payable to the department of revenue for the amount of tax due, which shall be computed in the following manner:~~

~~(I) As to a distributor, the gallons of taxable special fuel acquired by such distributor, multiplied by the rate per gallon as set forth within section 39-27-102.5, less an amount equal to one percent of the tax due and payable to be retained by the distributor for expenses incurred on behalf of the state in maintaining records and collecting the tax and as an offset against losses due to circumstances beyond the distributor's control;~~

~~(II) As to persons required to report under subsection (4) of this section, the number of gallons of special fuel used in this state, multiplied by the rate per gallon as set forth in section 39-27-102.5.~~

~~(b) Any person who imports special fuel in bulk for use in motor vehicles owned or operated by such person shall file a report and pay the tax due thereon as if that person were authorized by the executive director of the department of revenue to purchase special fuel ex-tax from a distributor.~~

~~(c) If a report or a remittance of tax due as shown on a report is sent through the United States mail, it shall be deemed to have been received on the date of the postmark stamped on the envelope containing such report or remittance.~~

~~(9) (a) Any person who fails to file a report or to pay the tax due thereon shall pay a penalty of ten percent of the tax due, plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, or thirty dollars, whichever is greater, and the interest due under the provisions of section 39-21-109.~~

~~(b) Tax assessed pursuant to an error contained on a previously filed return that was due to negligence or disregard of the law shall have added thereto:~~

~~(f) A penalty of twenty-five percent of the tax assessed; and~~

~~(H) Penalty interest of one-half of one percent per month, not to exceed eighteen percent in the aggregate, in addition to the interest due under section 39-21-109, on the tax assessed:~~

~~(10) If any person fails, neglects, or refuses to file a report required by this section, the executive director of the department of revenue may, upon such information as may be available to said executive director, estimate the amount of tax due for the period for which no report was filed, with applicable penalties and interest and mail such estimate to the last-known address of such person. The amount so estimated, together with the penalties and interest, shall become fixed, due, and payable, as if such person had filed a report showing such amounts, unless, within ten days after receiving the estimate, such person files a true and correct report for the period and pays the tax, penalty, and interest due thereon.~~

**SECTION 6.** Part 1 of article 27 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-27-105.3. Remittance of tax on gasoline and special fuel - mandatory electronic funds transfers.** FOR ANY CALENDAR MONTH COMMENCING ON OR AFTER JULY 1, 2005, ANY DISTRIBUTOR, SUPPLIER, CARRIER, EXPORTER, IMPORTER, BLENDER, REFINER, LICENSEE, OR TERMINAL OPERATOR SHALL USE ELECTRONIC FUNDS TRANSFERS TO REMIT ALL TAXES REQUIRED TO BE REMITTED TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. SUCH DISTRIBUTOR, SUPPLIER, CARRIER, EXPORTER, IMPORTER, BLENDER, REFINER, LICENSEE, OR TERMINAL OPERATOR SHALL PAY SUCH TAXES BY ELECTRONIC FUNDS TRANSFERS TO THE DEPARTMENT ON OR BEFORE THE TWENTY-SIXTH DAY OF EACH CALENDAR MONTH. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO EFFECTIVELY IMPLEMENT THIS SECTION, BUT SHALL FIRST CONSULT WITH THE STATE TREASURER TO ENSURE THAT ANY RULES PROMULGATED DO NOT ADVERSELY AFFECT THE ABILITY OF THE STATE TREASURER TO OPTIMIZE GASOLINE AND SPECIAL FUEL TAX INVESTMENT EARNINGS. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

**SECTION 7. Effective date - applicability.** This act shall take effect July 1, 2005, and shall apply to gasoline and special fuel taxes collected on or after said date.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2005