

1 HOUSE BILL 465

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Javier Martínez

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9  
10 AN ACT

11 RELATING TO TAXATION; IMPOSING A JET FUEL EXCISE TAX PURSUANT  
12 TO THE ALTERNATIVE FUEL TAX ACT; DISTRIBUTING THE REVENUE FROM  
13 THAT TAX TO THE STATE AVIATION FUND; EXEMPTING JET FUEL FROM  
14 THE GOVERNMENTAL GROSS RECEIPTS TAX, THE GROSS RECEIPTS TAX AND  
15 THE COMPENSATING TAX; REPEALING CERTAIN DEDUCTIONS PURSUANT TO  
16 THE GROSS RECEIPTS AND COMPENSATING TAX ACT FOR JET FUEL.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,  
20 Chapter 5, Section 2, as amended) is amended to read:

21 "7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

22 A. A distribution pursuant to Section 7-1-6.1 NMSA  
23 1978 shall be made to the state aviation fund in an amount  
24 equal to ~~[four and seventy nine hundredths percent of the~~  
25 ~~taxable gross]~~ the net receipts attributable to the ~~[sale of~~

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1 ~~fuel specially prepared and sold for use in turboprop or jet-~~  
2 ~~type engines as determined by the department]~~ jet fuel excise  
3 tax.

4 B. A distribution pursuant to Section 7-1-6.1 NMSA  
5 1978 shall be made to the state aviation fund in an amount  
6 equal to twenty-six hundredths percent of gasoline taxes,  
7 exclusive of penalties and interest, collected pursuant to the  
8 Gasoline Tax Act.

9 C. From July 1, 2013 through June 30, 2021, a  
10 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
11 made to the state aviation fund in an amount equal to forty-six  
12 thousandths percent of the net receipts attributable to the  
13 gross receipts tax distributable to the general fund.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA  
15 1978 shall be made to the state aviation fund from the net  
16 receipts attributable to the gross receipts tax distributable  
17 to the general fund in an amount equal to:

18 (1) eighty thousand dollars (\$80,000) monthly  
19 from July 1, 2007 through June 30, 2008;

20 (2) one hundred sixty-seven thousand dollars  
21 (\$167,000) monthly from July 1, 2008 through June 30, 2009; and

22 (3) two hundred fifty thousand dollars  
23 (\$250,000) monthly after July 1, 2009."

24 SECTION 2. Section 7-1-6.10 NMSA 1978 (being Laws 1983,  
25 Chapter 211, Section 15, as amended) is amended to read:

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1 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

2 A. A distribution pursuant to Section 7-1-6.1 NMSA  
3 1978 shall be made to the state road fund in an amount equal to  
4 the net receipts attributable to the taxes, surcharges,  
5 penalties and interest imposed pursuant to the Gasoline Tax Act  
6 and to the taxes, surtaxes, fees, penalties and interest  
7 imposed pursuant to the Special Fuels Supplier Tax Act and the  
8 Alternative Fuel Tax Act less:

9 (1) the amount distributed to the state  
10 aviation fund pursuant to ~~[Subsection]~~ Subsections A and B of  
11 Section 7-1-6.7 NMSA 1978;

12 (2) the amount distributed to the motorboat  
13 fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

14 (3) the amount distributed to municipalities  
15 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA  
16 1978;

17 (4) the amount distributed to the county  
18 government road fund pursuant to Section 7-1-6.19 NMSA 1978;

19 (5) the amount distributed to the local  
20 governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

21 (6) the amount distributed to the  
22 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

23 (7) the amount distributed to the municipal  
24 arterial program of the local governments road fund pursuant to  
25 Section 7-1-6.28 NMSA 1978;

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1 (8) the amount distributed to a qualified  
2 tribe pursuant to a gasoline tax sharing agreement entered into  
3 between the secretary of transportation and the qualified tribe  
4 pursuant to the provisions of Section 67-3-8.1 NMSA 1978; and

5 (9) the amount distributed to the general fund  
6 pursuant to Section 7-1-6.44 NMSA 1978.

7 B. A distribution pursuant to Section 7-1-6.1 NMSA  
8 1978 shall be made to the state road fund in an amount equal to  
9 the net receipts attributable to the taxes, interest and  
10 penalties from the Weight Distance Tax Act."

11 SECTION 3. Section 7-9-13.2 NMSA 1978 (being Laws 1992,  
12 Chapter 100, Section 3, as amended) is amended to read:

13 "7-9-13.2. EXEMPTION--GOVERNMENTAL GROSS RECEIPTS TAX--  
14 RECEIPTS SUBJECT TO CERTAIN OTHER TAXES.--Exempted from the  
15 governmental gross receipts tax are receipts from transactions  
16 involving tangible personal property or services on which  
17 receipts or transactions the gross receipts tax, compensating  
18 tax, motor vehicle excise tax, gasoline tax, [~~special fuel tax~~]  
19 special fuel excise tax, jet fuel excise tax, oil and gas  
20 emergency school tax, resources tax, processors tax, service  
21 tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978  
22 is imposed."

23 SECTION 4. Section 7-9-26 NMSA 1978 (being Laws 1969,  
24 Chapter 144, Section 19, as amended) is amended to read:

25 "7-9-26. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--  
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1 FUEL.--Exempted from the gross receipts and compensating tax  
2 are the receipts from selling and the use of gasoline, special  
3 fuel, ~~[or]~~ alternative fuel or jet fuel on which the tax  
4 imposed by Section 7-13-3, ~~[7-16-3 or]~~ 7-16A-3 or 7-16B-4 NMSA  
5 1978 ~~[or the Alternative Fuel Tax Act]~~ has been paid and not  
6 refunded."

7 SECTION 5. Section 7-16B-3 NMSA 1978 (being Laws 1995,  
8 Chapter 16, Section 3, as amended) is amended to read:

9 "7-16B-3. DEFINITIONS.--As used in the Alternative Fuel  
10 Tax Act:

11 A. "alternative fuel" means liquefied petroleum  
12 gas, compressed natural gas, liquefied natural gas or a water-  
13 phased hydrocarbon fuel emulsion consisting of a hydrocarbon  
14 base and water in an amount not less than twenty percent by  
15 volume of the total water-phased fuel emulsion, all of which  
16 may be used for the generation of power to propel a motor  
17 vehicle on the highways;

18 B. "alternative fuel distributor" means any person  
19 who delivers or dispenses alternative fuel into the supply tank  
20 of a motor vehicle;

21 ~~[B-]~~ C. "alternative fuel user" means any user who  
22 is a registrant, owner or operator of a motor vehicle propelled  
23 by alternative fuel;

24 ~~[G-]~~ D. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3 ~~[D. "distributor" means any person who delivers or~~  
4 ~~dispenses alternative fuel into the supply tank of a motor~~  
5 ~~vehicle;]~~

6 E. "gallon" means:

7 (1) for liquid alternative fuel or jet fuel,  
8 the quantity of liquid necessary to fill a standard United  
9 States gallon liquid measure, which is approximately 3.785  
10 liters; provided that:

11 (a) in the case of a water-phased  
12 hydrocarbon fuel emulsion, a gallon shall be measured only with  
13 respect to the hydrocarbon base portion of the emulsion and not  
14 to the water base portion; and

15 (b) in the case of liquefied natural  
16 gas, a gallon shall be 6.06 pounds of liquefied natural gas; or

17 (2) for nonliquid alternative fuel, one  
18 hundred fourteen cubic feet; provided that in the case of  
19 compressed natural gas, a gallon shall be 5.66 pounds or 126.67  
20 standard cubic feet of compressed natural gas;

21 F. "gross vehicle weight" means the weight of a  
22 motor vehicle or a combination motor vehicle without load, plus  
23 the weight of any load on the motor vehicle;

24 G. "highway" means every road, highway,  
25 thoroughfare, street or way, including toll roads, generally

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1 open to the use of the public as a matter of right for the  
2 purpose of motor vehicle travel and notwithstanding that the  
3 same may be temporarily closed for the purpose of construction,  
4 reconstruction, maintenance or repair;

5 H. "jet fuel" means fuel specially prepared and  
6 sold for use in aircraft propelled by turbo-prop or jet-type  
7 engines;

8 I. "jet fuel distributor" means any person who  
9 delivers or dispenses jet fuel into the supply tank of aircraft  
10 propelled by turbo-prop or jet-type engines;

11 ~~[H.]~~ J. "motor vehicle" means any self-propelled  
12 vehicle or device subject to registration under Section 66-3-1  
13 NMSA 1978 that is used or may be used on the public highways in  
14 whole or in part for the purpose of transporting persons or  
15 property and includes any connected trailer or semitrailer;

16 ~~[I.]~~ K. "person" means an individual or any other  
17 legal entity; "person" also means, to the extent permitted by  
18 law, any federal, state or other government or any department,  
19 agency or instrumentality of the state, county, municipality or  
20 any political subdivision thereof;

21 ~~[J.]~~ L. "registrant" means any person who has  
22 registered a motor vehicle pursuant to the laws of this state  
23 or of another state;

24 ~~[K.]~~ M. "sale" means any delivery, exchange, gift  
25 or other disposition;

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1           ~~[E-]~~ N. "secretary" means the secretary of taxation  
2 and revenue or the secretary's delegate;

3           ~~[M-]~~ O. "supply tank" means any tank or other  
4 receptacle in which or by which fuel may be carried and  
5 supplied to the fuel-furnishing device or apparatus of the  
6 propulsion mechanism of a motor vehicle or an aircraft  
7 propelled by turbo-prop or jet-type engines when the tank or  
8 receptacle either contains alternative fuel or alternative fuel  
9 is delivered into it;

10           ~~[N-]~~ P. "use" means:

11                   (1) the receipt or placing of alternative fuel  
12 by an alternative fuel user into the fuel supply tank of any  
13 motor vehicle registered, owned or operated by the alternative  
14 fuel user;

15                   (2) the receipt or placing of jet fuel into  
16 the fuel supply tank of aircraft propelled by turbo-prop or  
17 jet-type engines;

18                   ~~[+2]~~ (3) the consumption by an alternative  
19 fuel user of alternative fuel in the propulsion of a motor  
20 vehicle on the highways of this state and any activity  
21 ancillary to that propulsion; or

22                   ~~[+3]~~ (4) the importation of alternative fuel  
23 in the fuel supply tank of any motor vehicle as fuel for the  
24 propulsion of the motor vehicle on the highways;

25           ~~[O-]~~ Q. "user" means any person other than the

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1 United States government or any of its agencies or  
2 instrumentalities; the state of New Mexico or any of its  
3 political subdivisions, agencies or instrumentalities; or an  
4 Indian nation, tribe or pueblo or any agency or instrumentality  
5 of an Indian nation, tribe or pueblo who uses alternative fuel  
6 to propel a motor vehicle on the highways; and

7 [P.] R. the definitions of "alternative fuel user"  
8 and "alternative fuel distributor" shall be construed so that a  
9 person may at the same time be an alternative fuel user and [a]  
10 alternative fuel distributor."

11 SECTION 6. Section 7-16B-4 NMSA 1978 (being Laws 1995,  
12 Chapter 16, Section 4, as amended) is amended to read:

13 "7-16B-4. IMPOSITION AND RATE OF TAX--~~[DENOMINATION AS]~~  
14 ALTERNATIVE FUEL EXCISE TAX--JET FUEL EXCISE TAX.--

15 A. For the privilege of distributing alternative  
16 fuel in this state, there is imposed an excise tax at [~~a rate~~  
17 ~~provided in Subsection C of this section~~] the following rates  
18 on each gallon of alternative fuel distributed in New Mexico.

19 [B.] The tax imposed by this section may be called the  
20 "alternative fuel excise tax". [C.] For each gallon of  
21 alternative fuel distributed in New Mexico, the tax [~~imposed by~~  
22 ~~Subsection A of this section~~] shall be:

23 [~~(1) for the period beginning January 1, 1996~~  
24 ~~and ending December 31, 1997, three cents (\$0.03) per gallon;~~

25 [~~(2) for the period beginning January 1, 1998~~

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1 and ending December 31, 1999, six cents (\$0.06) per gallon;

2 ~~(3) for the period beginning January 1, 2000~~  
3 and ending December 31, 2001, nine cents (\$0.09) per gallon;

4 ~~(4) for the period beginning January 1, 2002~~  
5 and ending June 30, 2014, twelve cents (\$0.12) per gallon; and

6 ~~(5) for the period beginning July 1, 2014 and~~  
7 thereafter;

8 ~~(a)]~~ (1) for alternative fuel that is  
9 compressed natural gas, thirteen and three-tenths cents (\$.133)  
10 per gallon;

11 ~~[(b)]~~ (2) for alternative fuel that is  
12 liquefied natural gas, twenty and six-tenths cents (\$.206) per  
13 gallon; and

14 ~~[(c)]~~ (3) for alternative fuel not described  
15 in ~~[Subparagraph (a) or (b)]~~ Paragraph (1) or (2) of this  
16 ~~[paragraph]~~ subsection, twelve cents (\$.12) per gallon.

17 B. For the privilege of distributing jet fuel in  
18 this state, there is imposed an excise tax at a rate of five  
19 cents (\$.05) on each gallon of jet fuel distributed in New  
20 Mexico. The tax imposed by this section may be called the "jet  
21 fuel excise tax".

22 ~~[D-]~~ C. Alternative fuel or jet fuel purchased for  
23 distribution shall not be subject to the alternative fuel  
24 excise tax or jet fuel excise tax at the time of purchase or  
25 acquisition, but the alternative fuel excise tax shall be due

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1 on any alternative fuel at the time it is dispensed or  
2 delivered into the supply tank of a motor vehicle that is  
3 operated on the highways of this state and the jet fuel excise  
4 tax shall be due on any jet fuel at the time it is dispensed or  
5 delivered into the supply tank of an aircraft propelled by  
6 turbo-prop or jet-type engines."

7 SECTION 7. Section 7-16B-5 NMSA 1978 (being Laws 1995,  
8 Chapter 16, Section 5) is amended to read:

9 "7-16B-5. EXEMPTIONS--ALTERNATIVE FUEL EXCISE TAX.--

10 A. Alternative fuel and jet fuel distributed to or  
11 used by the United States or any agency or instrumentality  
12 thereof for the exclusive use of the United States or any  
13 agency or instrumentality thereof is exempt from the  
14 [~~imposition of the alternative fuel excise tax~~] taxes imposed  
15 by the Alternative Fuel Tax Act.

16 B. Alternative fuel and jet fuel distributed to or  
17 used by the state of New Mexico or any political subdivision,  
18 agency or instrumentality thereof for the exclusive use of the  
19 state of New Mexico or any political subdivision, agency or  
20 instrumentality thereof is exempt from the [~~imposition of the~~  
21 ~~alternative fuel excise tax~~] taxes imposed pursuant to the  
22 Alternative Fuel Tax Act.

23 C. Alternative fuel or jet fuel distributed to or  
24 used by an Indian nation, tribe or pueblo or any agency or  
25 instrumentality thereof for the exclusive use of the Indian

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1 nation, tribe or pueblo or any agency or instrumentality  
2 thereof is exempt from the [~~imposition of the alternative fuel~~  
3 ~~excise tax~~] taxes imposed pursuant to the Alternative Fuel Tax  
4 Act."

5 SECTION 8. Section 7-16B-6 NMSA 1978 (being Laws 1995,  
6 Chapter 16, Section 6) is amended to read:

7 "7-16B-6. TAX RETURNS--PAYMENT OF TAX--~~[ALTERNATIVE FUEL]~~  
8 DISTRIBUTORS.--

9 A. Alternative fuel distributors and jet fuel  
10 distributors shall file [~~alternative fuel excise~~] tax returns  
11 in form and content as prescribed by the secretary on or before  
12 the twenty-fifth day of the month following the month in which  
13 alternative fuel or jet fuel is distributed in New Mexico.  
14 Payment of the [~~alternative fuel excise~~] tax shall be made with  
15 or prior to filing of the return.

16 B. In computing the [~~alternative fuel excise~~] tax  
17 due, amounts of alternative fuel distributed to an alternative  
18 fuel user may be deducted from the total amount of alternative  
19 fuel distributed in New Mexico during the tax period, provided  
20 the alternative fuel user can establish proof of compliance  
21 with the provisions of Section [~~7 of the Alternative Fuel Tax~~  
22 ~~Act~~] 7-16B-7 NMSA 1978."

23 SECTION 9. Section 7-16B-8 NMSA 1978 (being Laws 1995,  
24 Chapter 16, Section 8) is amended to read:

25 "7-16B-8. ~~[ALTERNATIVE FUEL]~~ DISTRIBUTOR LICENSE

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1 REQUIRED.--

2 A. The department shall issue a license valid for  
3 up to three years to each alternative fuel distributor or jet  
4 fuel distributor upon the filing of an application by the  
5 [~~alternative fuel~~] distributor acceptable to the department.

6 B. To secure [~~an alternative fuel~~] a distributor  
7 license, an applicant shall:

8 (1) register as an alternative fuel  
9 distributor [~~under~~] or jet fuel distributor pursuant to the  
10 provisions of Section 7-1-12 NMSA 1978;

11 (2) file with the department on a form  
12 furnished by the department an application for [~~an alternative~~  
13 ~~fuel~~] a distributor license; and

14 (3) accompany the application with payment of  
15 [~~an alternative fuel~~] a distributor fee in the amount of  
16 twenty-five dollars (\$25.00).

17 C. The department may revoke, after due notice and  
18 hearing, the [~~alternative fuel~~] distributor license of any  
19 [~~alternative fuel~~] distributor found to be in violation of any  
20 provision of the Alternative Fuel Tax Act."

21 SECTION 10. Section 7-16B-9 NMSA 1978 (being Laws 1995,  
22 Chapter 16, Section 9) is amended to read:

23 "7-16B-9. DELIVERY AND USE OF ALTERNATIVE FUEL OR JET  
24 FUEL--PROHIBITED ACTS.--It is a violation of the Alternative  
25 Fuel Tax Act to:

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1           A. operate a motor vehicle upon the highways of  
2 this state with a connection between a cargo or other tank or  
3 container, not considered in the Alternative Fuel Tax Act as  
4 being the motor vehicle's fuel supply tank, and a carburetor or  
5 other fuel supply device. Fuel supply tanks, including  
6 auxiliary fuel supply tanks, shall be separate and apart from  
7 cargo tanks or other containers, with no connection by pipe,  
8 tube, valve or otherwise;

9           B. sell or deliver to any person alternative fuel  
10 or jet fuel from any [~~alternative fuel~~] supply tank or  
11 auxiliary [~~alternative fuel~~] supply tank;

12           C. deliver alternative fuel from a cargo tank into  
13 the [~~alternative fuel~~] supply tank of a motor vehicle;  
14 provided, however, delivery of liquefied alternative [~~fuels~~  
15 fuel] may be made into the [~~alternative fuel~~] supply tank of a  
16 motor vehicle by a registered and licensed alternative fuel  
17 distributor when made by that distributor from the cargo tank  
18 of a vehicle operated by that distributor, which tank is  
19 specially designed to make this type of alternative fuel  
20 delivery; [~~or~~]

21           D. deliver jet fuel from a cargo tank into the  
22 supply tank of an aircraft propelled by turbo-prop or jet-type  
23 engines; provided, however, delivery of jet fuel may be made  
24 into the supply tank of such aircraft by a registered jet fuel  
25 distributor when made by that distributor from the cargo tank

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1 of an aircraft operated by that distributor, which tank is  
2 specially designed to make this type of jet fuel delivery; or

3 ~~[D-]~~ E. engage in the business of distributing  
4 alternative fuel or jet fuel in New Mexico without obtaining  
5 ~~[an alternative fuel distributor]~~ a license [under] pursuant to  
6 the provisions of Section [8 of the Alternative Fuel Tax Act]  
7 7-16B-8 NMSA 1978."

8 SECTION 11. Section 7-16B-10 NMSA 1978 (being Laws 1995,  
9 Chapter 16, Section 10) is amended to read:

10 "7-16B-10. ADMINISTRATION AND ENFORCEMENT OF ACT.--The  
11 department shall interpret the provisions of the Alternative  
12 Fuel Tax Act. The department shall administer and enforce the  
13 collection of the ~~[alternative fuel excise tax]~~ taxes imposed  
14 pursuant to the Alternative Fuel Tax Act, and the Tax  
15 Administration Act applies to the administration and  
16 enforcement of the Alternative Fuel Tax Act."

17 SECTION 12. REPEAL.--Sections 7-9-83 and 7-9-84 NMSA 1978  
18 (being Laws 1993, Chapter 364, Sections 1 and 2, as amended)  
19 are repealed.

20 SECTION 13. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2019.