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**HOUSE BILL 448**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Leo C. Watchman Jr.**

**AN ACT**

**RELATING TO TAXATION; PROVIDING EQUITABLE APPLICABILITY OF  
GASOLINE TAX CREDITS AND DEDUCTIONS TO INDIAN DISTRIBUTORS THAT  
WERE OPERATING BEFORE SEPTEMBER 1998; AMENDING THE GASOLINE TAX  
ACT.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971,  
Chapter 207, Section 2, as amended) is amended to read:**

**"7-13-2. DEFINITIONS. -- As used in the Gasoline Tax Act:**

**A. "aviation gasoline" means gasoline sold for use  
in aircraft propelled by engines other than turbo-prop or jet-  
type engines;**

**B. "department" means the taxation and revenue  
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 C. "distributor" means [~~any~~] a person, not  
4 including the United States of America or any of its agencies  
5 except to the extent now or hereafter permitted by the  
6 constitution and laws thereof, who receives gasoline in this  
7 state. "Distributor" shall be construed so that a person  
8 simultaneously may be both a distributor and a retailer or  
9 importer;

10 D. "drip gasoline" means a combustible hydrocarbon  
11 liquid formed as a product of condensation from either  
12 associated or nonassociated natural or casing head gas and that  
13 remains a liquid at room temperature and pressure;

14 E. "ethanol blended fuel" means gasoline containing  
15 a minimum of ten percent by volume of denatured ethanol, of at  
16 least one hundred ninety-nine proof, exclusive of denaturants;

17 F. "fuel supply tank" means [~~any~~] a tank or other  
18 receptacle in which or by which fuel may be carried and  
19 supplied to the fuel-furnishing device or apparatus of the  
20 propulsion mechanism of a motor vehicle when the tank or  
21 receptacle either contains gasoline or gasoline is delivered  
22 into it;

23 G. "gallon" means the quantity of liquid necessary  
24 to fill a standard United States gallon liquid measure or that  
25 same quantity adjusted to a temperature of sixty degrees

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1 fahrenheit at the election of [~~any~~] a distributor, but [~~a~~] the  
2 distributor shall report on the same basis for a period of at  
3 least one year;

4 H. "gasoline" means [~~any~~] a flammable liquid  
5 hydrocarbon used primarily as fuel for the propulsion of motor  
6 vehicles, motorboats or aircraft except for diesel engine fuel,  
7 kerosene, liquefied petroleum gas, compressed or liquefied  
8 natural gas and products specially prepared and sold for use in  
9 aircraft propelled by turbo-prop or jet-type engines;

10 I. "government-licensed vehicle" means a motor  
11 vehicle lawfully displaying a registration plate, as defined in  
12 the Motor Vehicle Code, issued by the United States or any  
13 state, identifying the motor vehicle as belonging to the United  
14 States or any of its agencies or instrumentalities or an Indian  
15 nation, tribe or pueblo or any of its political subdivisions,  
16 agencies or instrumentalities;

17 J. "highway" means every road, highway,  
18 thoroughfare, street or way, including toll roads, generally  
19 open to the use of the public as a matter of right for the  
20 purpose of motor vehicle travel regardless of whether it is  
21 temporarily closed for the purpose of construction,  
22 reconstruction, maintenance or repair;

23 K. "motor vehicle" means [~~any~~] a self-propelled  
24 vehicle or device that is either subject to registration under  
25 Section 66-3-1 NMSA 1978 or used or that may be used on the

1 public highways in whole or in part for the purpose of  
2 transporting persons or property and includes [~~any~~] a connected  
3 trailer or semitrailer;

4 L. "person" means an individual or any other  
5 entity, including, to the extent permitted by law, any federal,  
6 state or other government or any department, agency,  
7 instrumentality or political subdivision of any federal, state  
8 or other government;

9 M "rack operator" means the operator of a refinery  
10 in this state or the owner of gasoline stored at a pipeline  
11 terminal in this state;

12 N. "registered Indian tribal distributor" means an  
13 Indian nation, tribe or pueblo recognized by the United States  
14 whose reservation or pueblo grant lies wholly or partly in this  
15 state, a corporation or other enterprise wholly owned by that  
16 Indian nation, tribe or pueblo or a corporation or other  
17 enterprise wholly owned, operated and managed by one or more  
18 members of that Indian nation, tribe or pueblo that is  
19 registered with the department as a distributor pursuant to the  
20 Gasoline Tax Act; provided that the department shall register a  
21 corporation or other enterprise as an Indian tribal distributor  
22 only upon certification by the Indian nation, tribe or pueblo  
23 that the corporation or other enterprise is wholly owned,  
24 operated or managed by that nation, tribe or pueblo or wholly  
25 owned, operated or managed by one or more of its members;

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O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer. "

Section 2. Section 7-13-4 NMSA 1978 (being Laws 1991, Chapter 9, Section 32, as amended) is amended to read:

"7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New

1 Mexico during the tax period, provided satisfactory proof  
2 thereof is furnished to the department:

3 A. gasoline received in New Mexico, but exported  
4 from this state by a rack operator, distributor or wholesaler  
5 other than in the fuel supply tank of a motor vehicle or sold  
6 for export by a rack operator or distributor; provided that, in  
7 either case:

8 (1) the person exporting the gasoline is  
9 registered in or licensed by the destination state to pay that  
10 state's gasoline or equivalent fuel tax;

11 (2) proof is submitted that the destination  
12 state's gasoline or equivalent fuel tax has been paid or is not  
13 due with respect to the gasoline; or

14 (3) the destination state's gasoline or  
15 equivalent fuel tax is paid to New Mexico in accordance with  
16 the terms of an agreement entered into pursuant to Section  
17 9-11-12 NMSA 1978 with the destination state;

18 B. gasoline received in New Mexico sold to the  
19 United States or any agency or instrumentality thereof for the  
20 exclusive use of the United States or any agency or  
21 instrumentality thereof. Gasoline sold to the United States  
22 includes gasoline delivered into the supply tank of a  
23 government-licensed vehicle of the United States;

24 C. gasoline received in New Mexico sold to an  
25 Indian nation, tribe or pueblo or ~~any~~ a political

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1 subdivision, agency or instrumentality of that Indian nation,  
2 tribe or pueblo for the exclusive use of the Indian nation,  
3 tribe or pueblo or any political subdivision, agency or  
4 instrumentality thereof. Gasoline sold to an Indian nation,  
5 tribe or pueblo includes gasoline delivered into the supply  
6 tank of a government-licensed vehicle of the Indian nation,  
7 tribe or pueblo;

8 D. gasoline received in New Mexico, dyed in  
9 accordance with department [~~regulations~~] rules and used in  
10 [~~any~~] a manner other than for propulsion of motor vehicles on  
11 the highways of this state or motorboats or activities  
12 ancillary to that propulsion;

13 E. gasoline received in New Mexico and sold at  
14 retail by a registered Indian tribal distributor if:

15 (1) the sale occurs on the Indian reservation,  
16 pueblo grant or trust land of the distributor's Indian nation,  
17 tribe or pueblo;

18 (2) the gasoline is placed into the fuel  
19 supply tank of a motor vehicle on that reservation, pueblo  
20 grant or trust land; and

21 (3) the Indian nation, tribe or pueblo has  
22 certified to the department that it has in effect an excise,  
23 privilege or similar tax on the gasoline; provided that the  
24 volume of gasoline deducted pursuant to this subsection shall  
25 be the total gallons sold in accordance with the provisions of

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1 this subsection multiplied by a fraction the numerator of which  
2 is the rate of the tribal tax certified to the department by  
3 the Indian nation, tribe or pueblo and the denominator of which  
4 is the rate of the gasoline tax imposed pursuant to the  
5 Gasoline Tax Act, but if the fraction exceeds one, it shall be  
6 one for purposes of determining the deduction; and

7 F. gasoline received in New Mexico and sold by a  
8 registered Indian tribal distributor from a ~~[nonmobile storage~~  
9 ~~container]~~ permanent fuel storage bulk plant facility that is  
10 approved by and certified annually by the department and  
11 located within that distributor's Indian reservation, pueblo  
12 grant or trust land ~~[for resale outside that distributor's~~  
13 ~~Indian reservation, pueblo grant or trust land]~~; provided the  
14 department certifies that the distributor claiming the  
15 deduction sold no less than one million gallons of gasoline  
16 from a nonmobile storage container located within that  
17 distributor's Indian reservation, pueblo grant or trust land  
18 ~~[for resale outside that distributor's Indian reservation,~~  
19 ~~pueblo grant or trust land during the period of May through~~  
20 ~~August]~~ before September 1998; and provided further that the  
21 amount of gasoline deducted by a registered Indian tribal  
22 distributor pursuant to this subsection shall not exceed two  
23 million five hundred thousand gallons per month, calculated as  
24 a monthly average during the calendar year. Volumes deducted  
25 pursuant to Subsection E of this section shall not be deducted



1 pursuant to this subsection. "

2 Section 3. EFFECTIVE DATE. -- This effective date of the  
3 provisions of this act is July 1, 2001.

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