

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1316

Introduced by
Senators Mendez: Hobbs, Peshlakai, Quezada

AN ACT

AMENDING SECTIONS 28-5601, 28-5605, 28-5606, 28-5610 AND 28-5614, ARIZONA REVISED STATUTES; REPEALING SECTIONS 28-5616 AND 28-5623, ARIZONA REVISED STATUTES; RELATING TO FUEL TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-5601, Arizona Revised Statutes, is amended to
3 read:

4 28-5601. Definitions

5 In this article and articles 2 and 5 of this chapter, unless the
6 context otherwise requires:

7 1. "Blending":

8 (a) Means the mixing of one or more products, regardless of the
9 original character of the product blended, if the product obtained by the
10 blending is capable of use or otherwise sold for use in the generation of
11 power for the propulsion of a motor vehicle, aircraft or watercraft.

12 (b) Does not include blending that occurs in the process of
13 refining by the original refiner of crude petroleum or the blending of
14 products known as lubricating oil and greases.

15 2. "Bulk end user" means a person who receives into the person's
16 own storage facilities in transport truck lots motor fuel for the person's
17 own consumption.

18 3. "Bulk plant" means a motor fuel storage and distribution
19 facility that is not a terminal and from which motor fuel may be removed
20 at a rack.

21 4. "Bulk transfer" means any transfer of motor fuel from one
22 location to another by pipeline tender or marine delivery within the bulk
23 transfer terminal system.

24 5. "Bulk transfer terminal system" means the motor fuel
25 distribution system consisting of refineries, pipelines, marine vessels
26 and terminals. Motor fuel in a refinery, pipeline, vessel or terminal is
27 in the bulk transfer terminal system. Motor fuel in the fuel supply tank
28 of any engine, or in any tank car, rail car, trailer, truck or other
29 equipment suitable for ground transportation, is not in the bulk transfer
30 terminal system.

31 6. "Consumer" means the end purchaser of motor vehicle fuel for use
32 on the highways in this state, the end purchaser of motor vehicle fuel for
33 use in watercraft on waterways of this state or the end purchaser of
34 aviation fuel for use in aircraft.

35 7. "Destination state" means the state, territory or foreign
36 country to which motor fuel is directed for delivery into a storage
37 facility, a receptacle, a container or a type of transportation equipment
38 for the purpose of resale or use.

39 8. "Distributor" means a person who acquires motor fuel from a
40 supplier or another distributor for subsequent sale or use and who may
41 blend or import into or export from this state motor fuel in the original
42 package or container or otherwise but excluding a person who imports motor
43 fuel in the fuel tank of a motor vehicle or aircraft.

1 9. "Dyed diesel fuel" means diesel fuel that is dyed pursuant to
2 United States internal revenue service regulations or requirements,
3 including any invisible marker requirements.

4 10. "Fuel tank" means a receptacle on a motor vehicle, watercraft
5 or aircraft from which fuel is supplied for the propulsion of the motor
6 vehicle, watercraft or aircraft, excluding a cargo tank but including a
7 separate compartment of a cargo tank used as a fuel tank and an auxiliary
8 tank or receptacle of any kind from which fuel is supplied for the
9 propulsion of the motor vehicle, watercraft or aircraft, whether or not
10 the tank or receptacle is directly connected to the fuel supply line of
11 the motor vehicle, watercraft or aircraft.

12 11. "Highway" means any way or place in this state of whatever
13 nature that is maintained by public monies and that is open to the use of
14 the public for purposes of vehicular travel, including a highway under
15 construction.

16 12. "In this state" means any way or place within the exterior
17 limits of the state of Arizona that is maintained by public monies,
18 including any such way or place that is owned by or ceded to the United
19 States of America.

20 13. "Indian reservation" means all lands that are within the limits
21 of areas set aside by the United States for the exclusive use and
22 occupancy of Indian tribes by treaty, law or executive order and that are
23 currently recognized as Indian reservations by the United States
24 department of the interior.

25 14. "Indian tribe" means any organized nation, tribe, band or
26 community recognized as an Indian tribe by the United States department of
27 the interior.

28 15. "Interstate user" means a person registering a use class motor
29 vehicle under chapter 7, article 7 or 8 of this title or section 28-2321
30 or 28-2324.

31 16. "Invoiced gallons" means the gallons actually billed on an
32 invoice in payment to a supplier.

33 ~~17. "Light class motor vehicle" means a motor vehicle that uses use
34 fuel on the highways in this state but excludes a road tractor, truck
35 tractor, truck or passenger carrying vehicle having a declared gross
36 vehicle weight of more than twenty-six thousand pounds or having more than
37 two axles.~~

38 ~~18.~~ 17. "Motor fuel" means motor vehicle fuel, use fuel and
39 aviation fuel.

40 ~~19.~~ 18. "Motor vehicle" means a self-propelled vehicle required to
41 be licensed or subject to licensing for operation on a highway.

42 ~~20.~~ 19. "Permissive supplier" means an out-of-state supplier that
43 elects, but is not required, to have a supplier's license pursuant to this
44 article.

1 ~~21.~~ 20. "Person" means an individual, firm, partnership, joint
2 venture, association, corporation, estate, trust, business trust, receiver
3 or syndicate, this state, any county, city, town, district or other
4 subdivision of this state, an Indian tribe, or any other group or
5 combination acting as a unit.

6 ~~22.~~ 21. "Position holder":

7 (a) Means the person who holds the inventory position in motor fuel
8 in a terminal, as reflected on the records of the terminal operator. For
9 the purposes of this subdivision, "a person who holds the inventory
10 position in motor fuel" means a person who has a contract with the
11 terminal operator for the use of storage facilities and terminaling
12 services for fuel at the terminal.

13 (b) Includes a terminal operator who owns fuel in the terminal.

14 ~~23.~~ 22. "Public monies" means those monies that are received by
15 this state and that are derived all or in part from tax revenues or other
16 funding sources.

17 ~~24.~~ 23. "Qualified terminal" means a terminal that is designated
18 as a qualified terminal pursuant to the United States internal revenue
19 code, regulation and practices and that has been assigned a terminal
20 control number by the United States internal revenue service.

21 ~~25.~~ 24. "Rack" means a mechanism for delivering motor fuel from a
22 refinery, a terminal or a bulk plant into a railroad tank car, a transport
23 truck or other means of transfer that is outside the bulk transfer
24 terminal system.

25 ~~26.~~ 25. "Refiner" means any person who owns, operates or otherwise
26 controls a refinery within the United States.

27 ~~27.~~ 26. "Refinery" means a facility that is used to produce motor
28 fuel from crude oil, unfinished oils, natural gas liquids, transmix or
29 other hydrocarbons or by blending and from which motor fuel may be removed
30 by pipeline, by vessel or at a rack.

31 ~~28.~~ 27. "Road tractor" means a motor vehicle that is designed and
32 used for drawing other vehicles and that is not constructed to carry
33 either a load independently or any part of the weight of a vehicle or load
34 so drawn.

35 ~~29.~~ 28. "Sell" includes a transfer of title or possession,
36 exchange or barter in any manner or by any means.

37 ~~30.~~ 29. "Supplier":

38 (a) Means a person who is registered pursuant to section 4101 of
39 the United States internal revenue code for transactions in motor fuels in
40 the bulk transfer terminal distribution system and who is one of the
41 following:

42 (i) The position holder in a terminal or refinery in this state.

1 (ii) A person who imports motor fuel into this state from a foreign
2 country.

3 (iii) A person who acquires motor fuel from a terminal or refinery
4 in this state from a position holder pursuant to a two party exchange.

5 (iv) The position holder in a terminal or refinery outside this
6 state with respect to motor fuel that that person imports into this state
7 on the account of that person.

8 (b) Includes a permissive supplier unless specifically provided
9 otherwise. Supplier does not include a terminal operator merely because
10 the terminal operator handles motor fuel consigned to the terminal
11 operator within a terminal.

12 ~~31.~~ 30. "Terminal" means a storage and distribution facility for
13 motor fuel, which is supplied by pipeline or marine vessel, that is
14 registered as a qualified terminal by the United States internal revenue
15 service and from which motor fuel may be removed at a rack.

16 ~~32.~~ 31. "Terminal bulk transfer" includes the following:

17 (a) A marine barge movement of motor fuel from a refinery or
18 terminal to a terminal.

19 (b) Pipeline movements of motor fuel from a refinery or terminal to
20 a terminal.

21 ~~33.~~ 32. "Terminal operator" means any person who owns, operates or
22 otherwise controls a terminal and who does not use a substantial portion
23 of the motor fuel that is transferred through or stored in the terminal
24 for the person's own use or consumption or in the manufacture of products
25 other than motor fuel. A terminal operator may own the motor fuel that is
26 transferred through or stored in the terminal.

27 ~~34.~~ 33. "Transmix" means the buffer or interface between two
28 different products in a pipeline shipment or a mix of two different
29 products within a refinery or terminal that results in an off-grade
30 mixture that is not usable or salable as motor fuel.

31 ~~35.~~ 34. "Two party exchange" means a transaction:

32 (a) In which motor fuel is transferred from one licensed supplier
33 or licensed permissive supplier to another licensed supplier or licensed
34 permissive supplier.

35 (b) That includes a transfer from the person that holds the
36 original inventory position for motor fuel in the terminal as reflected on
37 the records of the terminal operator.

38 (c) That is simultaneous with removal from the terminal by the
39 receiving exchange party.

40 (d) In which the terminal operator in the terminal operator's books
41 and records treats the receiving exchange party as the supplier that
42 removes the product across a terminal rack for purposes of reporting the
43 events to the department.

44 ~~36.~~ 35. "Use" includes the placing of fuel into any receptacle on
45 a motor vehicle from which fuel is supplied for the propulsion of the

1 vehicle unless the operator of the vehicle establishes to the satisfaction
2 of the director that the fuel was consumed for a purpose other than to
3 propel a motor vehicle on a highway in this state and, with respect to
4 fuel brought into this state in any such receptacle on a use class motor
5 vehicle, the consumption of the fuel in this state. A person who places
6 fuel in a receptacle on a use class motor vehicle of another is not deemed
7 to have used the fuel.

8 ~~37.~~ 36. "Use class motor vehicle" means a motor vehicle that uses
9 use fuel on a highway in this state and that is a road tractor, truck
10 tractor, truck or passenger carrying vehicle having a declared gross
11 vehicle weight of more than twenty-six thousand pounds or having more than
12 two axles.

13 ~~38.~~ 37. "Use fuel" includes all gases and liquids used or suitable
14 for use to propel motor vehicles, except fuels that are subject to the
15 motor vehicle fuel tax imposed by this article.

16 ~~39.~~ 38. "User" includes a person who, within the meaning of the
17 term use as defined in this section, uses fuel in a use class motor
18 vehicle.

19 ~~40.~~ 39. "Vendor" includes a person who sells use fuel in this
20 state and who places the fuel or causes the fuel to be placed into any
21 receptacle on a motor vehicle from which receptacle fuel is supplied for
22 the propulsion, including a service station dealer, a broker and a user
23 who sells use fuel to others.

24 Sec. 2. Section 28-5605, Arizona Revised Statutes, is amended to
25 read:

26 28-5605. Use fuel tax collection; fuel dispenser labels;
27 civil penalty

28 A. A vendor shall not collect more than the use fuel tax imposed
29 pursuant to section 28-5606, subsection B, paragraph 1 from a person who
30 purchases use fuel for use in the propulsion of a ~~light class~~ motor
31 vehicle on a highway in this state ~~or for use in the propulsion of a use~~
32 ~~class motor vehicle that is exempt pursuant to section 28-5432 from the~~
33 ~~weight fee prescribed in section 28-5433 on a highway in this state.~~

34 B. Subject to the following, vendors shall label use fuel
35 dispensers pursuant to standards established by the weights and measures
36 services division of the Arizona department of agriculture:

37 1. Labels on use fuel dispensers shall notify the purchaser of the
38 state use fuel tax rate. The department of transportation shall provide
39 the use fuel dispenser labels to vendors.

40 ~~2. If the vendor only sells use fuel to light class motor vehicles~~
41 ~~or use class motor vehicles that are exempt pursuant to section 28-5432~~
42 ~~from the weight fee prescribed in section 28-5433, or both, the vendor~~
43 ~~shall post that limitation and include the tax rate prescribed in section~~
44 ~~28-5606, subsection B, paragraph 1.~~

1 ~~3. If light class motor vehicles and use class motor vehicles are~~
2 ~~allowed to fuel at the same use fuel dispenser, the vendor shall include~~
3 ~~the tax rate prescribed in section 28-5606, subsection B, paragraph 2 and~~
4 ~~post a notice that the tax rate for light class motor vehicles and use~~
5 ~~class motor vehicles that are exempt pursuant to section 28-5432 from the~~
6 ~~weight fee prescribed in section 28-5433 is the tax rate prescribed in~~
7 ~~section 28-5606, subsection B, paragraph 1.~~

8 ~~4. If the vendor prohibits light class motor vehicles or use class~~
9 ~~motor vehicles from dispensing fuel from a specific fuel dispenser, the~~
10 ~~vendor shall post that prohibition.~~

11 ~~5.~~ 2. In addition to posting a sign on a use fuel dispenser that
12 indicates that the price of the use fuel dispensed from that dispenser
13 includes the applicable federal and state taxes, a vendor that dispenses
14 use fuel from a cardlock facility shall require the purchaser of use fuel
15 for ~~light class~~ motor vehicles ~~or use class motor vehicles that are exempt~~
16 ~~pursuant to section 28-5432 from the weight fee prescribed in section~~
17 ~~28-5433, or both,~~ to complete a declaration of status in a form and a
18 manner approved by the director. For the purposes of this paragraph,
19 "cardlock facility" means a use fuel vendor that satisfies all of the
20 following:

21 (a) Is licensed in this state.

22 (b) Sells only to preapproved purchasers of use fuel who have been
23 issued cards, keys or other controlled access to identify the exclusive
24 withdrawal of that particular purchaser.

25 (c) Does not have a representative on the premises to observe the
26 withdrawal of use fuel from the vendor's storage.

27 (d) Measures volumes of fuel dispensed by pump meters or other
28 accurate recording devices.

29 C. A vendor who violates subsection B of this section is subject to
30 a civil penalty of one hundred dollars for each day the violation
31 continues.

32 Sec. 3. Section 28-5606, Arizona Revised Statutes, is amended to
33 read:

34 28-5606. Imposition of motor fuel taxes

35 A. In addition to all other taxes provided by law, a tax of
36 ~~eighteen~~ THIRTY-SIX cents per gallon is imposed on motor vehicle fuel
37 possessed, used or consumed in this state.

38 B. To partially compensate this state for the use of its highways:

39 1. A use fuel tax is imposed on use fuel used in the propulsion of
40 ~~a light class~~ motor ~~vehicle~~ VEHICLES on a highway in this state at the
41 same rate per gallon as the motor vehicle fuel tax prescribed in
42 subsection A of this section, except that there is no use fuel tax on
43 alternative fuels.

~~2. A use fuel tax is imposed on use fuel used in the propulsion of a use class motor vehicle on a highway in this state at the rate of twenty-six cents for each gallon, except that there is no use fuel tax on alternative fuels and use class vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 are subject to the use fuel tax imposed by paragraph 1 of this subsection.~~

~~3.~~ 2. Through December 31, 2024, a use fuel tax is imposed on use fuel used in the propulsion of a motor vehicle transporting forest products in compliance with the requirements of section 41-1516 on a highway in this state at the rate of nine cents for each gallon, except that there is no use fuel tax on alternative fuels.

C. The motor vehicle fuel and use fuel taxes imposed pursuant to this section and the aviation fuel taxes imposed pursuant to section 28-8344 are conclusively presumed to be direct taxes on the consumer or user but shall be collected and remitted to the department by suppliers for the purpose of convenience and facility only. Motor vehicle fuel, use fuel and aviation fuel taxes that are collected and paid to the department by a supplier are considered to be advance payments, shall be added to the price of motor vehicle fuel, use fuel or aviation fuel and shall be recovered from the consumer or user.

D. Motor vehicle fuel and use fuel taxes imposed pursuant to this section on the use of motor vehicle fuel and use fuel and the aviation fuel taxes imposed pursuant to section 28-8344 on the use of aviation fuel, other than by bulk transfer, arise at the time the motor vehicle, use or aviation fuel either:

1. Is imported into this state and is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state.

2. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal in this state.

3. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal or refinery outside this state for delivery to a destination in this state as represented on the shipping papers if a supplier imports the motor vehicle, use or aviation fuel for the account of the supplier or the supplier has made a tax precollection election pursuant to section 28-5636.

E. If motor fuel is removed from the bulk transfer terminal system or from a qualified terminal or is imported into this state, the original removal, transfer or importation of the motor fuel is subject to the collection of the tax. If this motor fuel is transported to another qualified terminal or reenters the bulk transfer terminal system, the subsequent sale of the motor fuel on which tax has been collected is not subject to collection of an additional tax if proper documentation is retained to support the transaction.

1 Sec. 4. Section 28-5610, Arizona Revised Statutes, is amended to
2 read:

3 28-5610. Exemptions

4 A. The following are exempt from motor vehicle fuel and use fuel
5 taxes imposed by section 28-5606 and aviation fuel taxes imposed by
6 section 28-8344:

7 1. Motor fuel for which proof of export is available in the form of
8 a terminal-issued destination state shipping paper or bill of lading and
9 that is either:

10 (a) Exported by a supplier who is licensed in the destination
11 state.

12 (b) Sold by a supplier to a distributor for immediate export.

13 2. Motor fuel that was acquired by a distributor, as to which the
14 tax imposed by this article or section 28-8344 has previously been paid or
15 accrued and that was subsequently exported by transport truck by or on
16 behalf of the distributor in a diversion across state boundaries properly
17 reported to the department. If diverted by a distributor, the distributor
18 shall perfect the exemption by filing a refund application with the
19 department within six months after the diversion.

20 3. Motor vehicle fuel or use fuel that is sold within an Indian
21 reservation to an enrolled member of the Indian tribe who is living on the
22 Indian reservation established for the benefit of that Indian tribe and
23 that is used by the enrolled member for the enrolled member's own
24 benefit. This exemption does not apply to sales within an Indian
25 reservation by an Indian or Indian tribe to non-Indian consumers or to
26 Indian consumers who are not members of the Indian tribe for which the
27 Indian reservation was established or to use fuel used to operate motor
28 vehicles for a commercial purpose outside of the reservation on highways
29 in this state. For the purposes of this paragraph, "Indian" means an
30 individual who is registered on the tribal rolls of the Indian tribe for
31 whose benefit the Indian reservation was created.

32 4. Motor vehicle fuel or use fuel used solely and exclusively as
33 fuel to operate a motor vehicle on highways in this state if the motor
34 vehicle is leased to or owned by and is being operated for the sole
35 benefit of an Indian tribe for governmental purposes only.

36 5. Motor fuel that is moving in interstate or foreign commerce and
37 that is not destined or diverted to a point in this state.

38 6. Motor vehicle or aviation fuel that is sold to the United States
39 or an instrumentality or agency of the United States.

40 7. Taxable use fuel that has been accidentally contaminated so as
41 to be unsalable as highway fuel as proved by proper documentation.

42 8. Dyed diesel fuel, including fuel used by either of the
43 following:

1 (a) A farm tractor or implement of husbandry designed primarily for
2 or used in agricultural operations and only incidentally operated or moved
3 on a highway.

4 (b) A road roller or vehicle that is all of the following:

5 (i) Designed and used primarily for grading, paving, earthmoving or
6 other construction work on a highway.

7 (ii) Not designed or used primarily for transportation of persons
8 or property.

9 (iii) Incidentally operated or moved over the highway.

10 ~~B. A use class vehicle shall pay the use fuel tax for light class~~
11 ~~motor vehicles prescribed by section 28-5606, subsection B, paragraph 1 if~~
12 ~~the vehicle is a truck and satisfies all of the following:~~

13 ~~1. Is at least twenty-five years old.~~

14 ~~2. Has been issued a historic vehicle license plate pursuant to~~
15 ~~section 28-2484.~~

16 ~~3. Is not used as a commercial vehicle.~~

17 ~~C.~~ B. Notwithstanding subsection A, paragraph 8 of this section,
18 the following are not exempt from use fuel taxes imposed by section
19 28-5606:

20 1. A vehicle that was originally designed for the transportation of
21 persons or property and to which machinery is attached or on which
22 machinery or other property may be transported.

23 2. A dump truck.

24 3. A truck mounted transit mixer.

25 4. A truck or trailer mounted crane.

26 5. A truck or trailer mounted shovel.

27 ~~D.~~ C. Except as provided in subsection ~~E~~ D of this section, a
28 person who claims an exemption pursuant to this section shall perfect the
29 exemption by claiming a refund pursuant to section 28-5612.

30 ~~E.~~ D. Subject to sections 28-5645 through 28-5649, dyed diesel
31 fuel is exempt from use fuel taxes at the time of sale.

32 Sec. 5. Section 28-5614, Arizona Revised Statutes, is amended to
33 read:

34 28-5614. Refunds; use fuel

35 ~~A. If a vendor pays the use fuel tax rate for use class motor~~
36 ~~vehicles on use fuel that is actually used in the propulsion of a light~~
37 ~~class motor vehicle on a highway in this state or that is actually used in~~
38 ~~the propulsion of a use class motor vehicle that is exempt pursuant to~~
39 ~~section 28-5432 from the weight fee prescribed in section 28-5433 on a~~
40 ~~highway in this state and for the purpose of convenience and facility~~
41 ~~only, the vendor may apply to the department for a refund of the~~
42 ~~difference between the amount of the use class motor vehicle use fuel tax~~
43 ~~paid and the amount of the light class motor vehicle use fuel tax on the~~
44 ~~same number of gallons purchased.~~

1 ~~B.~~ A. If a person who transports forest products on a highway in
2 this state in compliance with the requirements of section 41-1516 pays the
3 use fuel tax rate prescribed in section 28-5606, subsection B, paragraph
4 ~~2- 1~~ for a use class motor vehicle that is eligible for the use fuel tax
5 rate prescribed in section 28-5606, subsection B, paragraph ~~3- 2~~, the
6 person may apply to the department for a refund of the difference between
7 the amount of the use fuel tax paid and the use fuel tax rate prescribed
8 for a motor vehicle transporting forest products.

9 ~~C.~~ B. The director may prescribe any forms the director deems
10 necessary to implement this section.

11 ~~D. A vendor may file an application for a refund pursuant to this~~
12 ~~section either:~~

13 ~~1. On a monthly basis subject to the limitations prescribed in~~
14 ~~section 28-5612.~~

15 ~~2. If the amount of the requested refund is at least seven hundred~~
16 ~~fifty dollars, except that a vendor shall not file an application for a~~
17 ~~refund pursuant to this paragraph more frequently than once each week.~~

18 ~~E.~~ C. The director shall:

19 1. Pay the refund from current use fuel tax receipts.

20 2. Deduct the refund from the monthly use fuel tax receipts before
21 the deposit pursuant to section 28-5730 is made.

22 Sec. 6. Repeal

23 Sections 28-5616 and 28-5623, Arizona Revised Statutes, are
24 repealed.

25 Sec. 7. Requirements for enactment; two-thirds vote

26 Pursuant to article IX, section 22, Constitution of Arizona, this
27 act is effective only on the affirmative vote of at least two-thirds of
28 the members of each house of the legislature and is effective immediately
29 on the signature of the governor or, if the governor vetoes this act, on
30 the subsequent affirmative vote of at least three-fourths of the members
31 of each house of the legislature.