

# Biodiesel

Montana State Motor Fuel Taxes  
and Incentives



# Is Biodiesel Taxable?

Yes. Biodiesel falls under the definition of Special Fuel 15-70-301 (16). Any person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution is considered a “distributor” and must be licensed as such. 15-70-301 (6). This applies to all persons regardless of the amount they produce or manufacture, or if their intent is for personal use only. Every gallon of fuel is taxable.



# Is Biodiesel Taxable on the Reservation?

- Yes, the reason is just like clear diesel, the tax collected on biodiesel is use to build and maintain roads in Montana. This includes the roads/Highways on the reservations.
- An example is the HWY 93 construction. Taxes collected from diesel and biodiesel are being used to pay for the work being done.



# Tax Rates on Biodiesel

- \$0.2775 Special Fuel Tax
- \$0.0075 Petroleum Clean-up Fee



# Personal Use Biodiesel Producer

- File a registration form with MDT showing the type of fuel you are producing for personal use.
- File quarterly tax reports showing the amount of fuel produced and used for personal use.
- Send in check or money order with tax report.
- All forms are available on our website.



# Cooperative Biodiesel Producer

- The cooperative is required to become licensed as a distributor since it is comprised of more than one person.
- Post a bond equal to twice your monthly tax average.
- File monthly tax reports – on the website or by paper.
- Submit your taxes monthly for the fuel produced and used.



# Commercial Biodiesel Producer

- A producer is required to be licensed as a distributor.
- Post a bond equal to twice your monthly tax average. If you import or export biodiesel, you will have to post a minimum bond of \$25,000.
- File monthly tax reports – on the website or by paper.
- Submit your taxes monthly for the fuel produced and used.



# Off-Road Use of Biodiesel

- Biodiesel used off-road is eligible for refund after the fuel tax has been paid.
- To apply for the refund you will need invoices or tax forms showing the taxes were paid on the biodiesel used.
- If the fuel was blended with dyed diesel you will need to show the percentage of fuel that was biodiesel. Such as B-2, B-5 or B20. B-2 is 2% biodiesel blended with 98% diesel.





# Are there any Biodiesel Producer Fuel Tax Incentives?

Yes. The 2005 Montana Legislature created fuel tax incentives for Biodiesel producers, licensed distributors, and retailers selling Biodiesel. 15-70-601 House Bill 756: Provides 10 cents per gallon incentive on each gallon increase of Biodiesel production over the previous year. The tax incentive may be claimed for 1) the first year's total production, 2) the production in the second year that exceeds the production in the first year, and 3) the production in the third year that exceeds production in the second year.

This bill became effective July 1, 2005



# Biodiesel Production Incentive

## 15-70-601

Biodiesel production incentive -- appropriation. (1) (a) There is a tax incentive payable to biodiesel producers for increases in annual production the first 3 years of production. The tax incentive under this section applies to biodiesel upon which the tax has been paid under 15-70-343 by a licensed distributor. For the purposes of this section, the production year is the period from July 1 of the current year to June 30 of the succeeding year.

(b) Payments made by the department are statutorily appropriated, as provided in 17-7-502, from the state general fund.



# Biodiesel Production Incentive

## 15-70-601 cont.

(2) Except as provided in subsection (3), the tax incentive on each gallon of increased biodiesel production over the previous year, in accordance with subsection (1), is 10 cents a gallon for each gallon of increased production. Beginning July 1, 2010, there is no tax incentive.


(3) The tax incentive in subsection (2) may be claimed for:

- (a) the first year's total production;
- (b) the production in the second year that exceeds production in the first year; and
- (c) the production in the third year that exceeds production in the second year



# Biodiesel Production Incentive

## 15-70-601 cont.

- (4) After the department has verified production, the department shall begin payments of the biodiesel tax incentives based on actual production according to the terms of subsection (3).
  - (5) As used in this section, "biodiesel producer" means a person who engages in the business of producing, refining, or manufacturing in Montana biodiesel for sale, use, or distribution.
  - (6) The department shall adopt rules necessary to carry out the provisions of this section.
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# Are there any Biodiesel Fuel Tax Incentives for Distributors or Retailers?

HB 776: Provides a refund of 2 cents per gallon to licensed distributors and 1 cent per gallon to retailers who sell Biodiesel that is produced entirely from Biodiesel ingredients produced in Montana. The refunds must be applied for within 30 days after the quarter ends.

This bill became effective April 28, 2005



# Refund for taxes paid on biodiesel by distributor or retailer 15-70-369

Refund for taxes paid on biodiesel by distributor or retailer -- statement -- payment -- appropriation -- records -- report to interim committee. (1) A licensed distributor who pays the special fuel tax under 15-70-343 on biodiesel, as defined in 15-70-301, may claim a refund equal to 2 cents a gallon on biodiesel sold during the previous calendar quarter if the biodiesel is produced entirely from biodiesel ingredients produced in Montana. (2) The owner or operator of a retail motor fuel outlet may claim a refund equal to 1 cent a gallon on biodiesel on which the special fuel tax has been paid and that is purchased from a licensed distributor if the biodiesel is produced entirely from biodiesel ingredients produced in Montana.



# Refund for taxes paid on biodiesel by distributor or retailer 15-70-369 cont.

(3) (a) To receive the refund allowed under subsection (1) or (2), the licensed distributor or the owner or operator of a motor fuel outlet shall file a statement within 30 days after the end of each calendar quarter on a form provided by the department.

(b) The statement provided by a licensed distributor must set forth information required by the department, including the gallons of biodiesel sold and the source of ingredients used to produce biodiesel.

(c) The statement provided by the owner or operator of a retail motor fuel outlet must set forth information required by the department, including the gallons of biodiesel purchased.

# Refund for taxes paid on biodiesel by distributor or retailer 15-70-369 cont.

(4) The payment of the refund allowed by this section must be made by the department within 90 days after the claim for a refund is filed by the licensed distributor or the owner or operator of a retail motor fuel outlet. Tax refund payments under this section are statutorily appropriated, as provided in 17-7-502, from the state general fund.

(5) The records of each licensed distributor or owner or operator of a retail motor fuel outlet must be kept for a period of not more than 3 years and must include receipts, invoices, and other information as the department may require.





# Refund for taxes paid on biodiesel by distributor or retailer

## 15-70-369 cont.

(6) The department or its authorized representative may examine the books, papers, or records of any licensed distributor or owner or operator of a retail motor fuel outlet.

(7) The department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the refund under this section, the total amount of the refund claimed, and the department's cost associated with administering the refund.



# Special Fuel

## 15-70-301. Definitions.

(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.

(b) Biodiesel is also known as "B-100".

(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.



# Special Fuel

## 15-70-301. Definitions.

(18) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.



# 18.10.105 WHAT CONSTITUTES SPECIAL FUEL

- (1) Fuel taxable under the Special Fuel Tax Act includes diesel fuel, stove oils, heating oils, burner fuels, kerosene, or any other combination of hydrocarbon fuels used for the operation of motor vehicles, except fuels subject to the gasoline license tax or to the license tax on vehicles operated by liquefied petroleum gas or compressed natural gas.



# Special Fuel 15-70-343.

**Special fuel license tax -- rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed by injector at a refinery or terminal for off-highway use; or

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.



# Tax on Special Fuel 15-70-321

**Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

# Tax on Special Fuel

## 15-70-321 cont.

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27  $\frac{3}{4}$  cents per gallon.

(3) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.



# Why can't Biodiesel be Considered Tax-Exempt - Dyed?

18.10.112 DYED SPECIAL FUEL (1) The department has adopted the following provisions relating to dye color and concentration requirements for tax-exempt diesel fuel, excluding buses and governmental vehicles.

(a) In Montana red dye will be used to identify all tax-exempt special fuel, regardless of the sulfur content of that fuel. Colored special fuel from Canada will be considered tax exempt if the dye concentration has been approved by the Canadian authorities, but it may not be used on public roads.

(b) The special fuel will satisfy the federal dyeing requirement if it contains the dye solvent red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard solvent red 26 or contains any dye of a type and in a concentration that has been approved by the commissioner of internal revenue service. The presence of dye at a concentration of 2.0 milligrams per liter (mg/l) , or greater is considered to be in violation of 15-70-330 , MCA.





# Dyed Special Fuel 18.10.112

(2) Dyed special fuel can be purchased tax free in Montana and Canada, but it is illegal to use it on the public roads, regardless of where it was purchased, except for the movement of off-road vehicles traveling from one location to another as indicated in ARM [18.10.110](#) and any vehicles described in ARM [18.10.111](#).

(3) Motor carrier services division officers making a routine stop of a commercial vehicle or visiting a road construction project site may take a fuel sample from bulk tanks and supply tanks of vehicles, equipment and other internal combustion engines. The sample may be analyzed for dye concentration by a laboratory selected by the Montana department of transportation.

(4) Use of high sulphur dyed special fuel on public roads is prohibited by the federal environmental protection agency (EPA) , as set forth in 40 CFR 80.29.



# Dyed Special Fuel 18.10.112

(5) Contractors may not store and/or use dyed diesel in equipment, motor vehicles, and stationary engines used upon public roads and/or within MDT project limits as defined in [15-70-321](#), MCA. Contractors in violation of this section are subject to penalties upon conviction as defined in [15-70-330](#), MCA, and may be suspended for up to 6 months from participating in future MDT contracts.

(6) The dye must be injected by means of a mechanical injection process to diesel fuel at the terminal rack. All dyed special fuel sold in, imported to, or exported from the state of Montana shall have dye added in accordance with federal requirements of type and quantity and will be injected by mechanical injection systems or by a system approved by the department.



# Dyed Special Fuel 18.10.112

## (7) Exceptions:

(a) If a mechanical injection system is inoperative, the terminal may "splash dye" special fuel for tax free sales. Terminals must notify the department on the first working day after the injection system becomes inoperative. The terminal shall note on each invoice and bill of lading that the fuel is splash dyed and file a separate fuel tax report for splash dyed fuel. The terminal shall keep records of the date and time the dye injection system became inoperative and when the injection system was made operational. All records shall be kept and be available for inspection upon request of the department or representative:



# Dyed Special Fuel 18.10.112

(b) If a mechanical injection system should inject an insufficient amount of dye to meet state and federal standards, the terminal may splash dye keeping the same records as in (a) .

(c) The terminal operator or his designated representative may splash dye under the above conditions. Each terminal shall keep a record of persons conducting splash dying. Transport drivers shall not be listed as persons conducting splash dying.

(d) Special fuels splash dyed and not meeting all of the above standards shall be considered by the state as undyed fuel and the terminal responsible for splash dying the fuel shall be liable for all tax, penalty and interest on the fuel.

