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TRD Publication GAS

**GASOLINE TAX REGULATIONS
SECTIONS 7-13-1 THROUGH 7-13-18**

[3.16 NMAC]

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REGULATIONS PERTAINING TO THE GASOLINE TAX ACT CHAPTER 7, ARTICLE 13 NMSA 1978

**7-13-1. GASOLINE TAX--SHORT TITLE.--Chapter 7, Article 13 NMSA 1978 may be cited as the "Gasoline Tax Act".
(Laws 1983, Chapter 204, Section 1)**

3.16.1.8 - CITATIONS

Unless otherwise stated, all citations of statutes within Chapter 3.16 NMAC are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[8/31/96; 3.16.1.8 NMAC - Rn & A, 3 NMAC 16.1.8, 6/14/01]

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

C. "distributor" means any person, not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline in this state. "Distributor" shall be construed so that a person simultaneously may be both a distributor and a retailer or importer;

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

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

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

G. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

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

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

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

K. "motor vehicle" means any self-propelled vehicle or device that is

either subject to registration under Section 66-3-1 NMSA 1978 or used or that may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

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

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

N. "registered Indian tribal distributor" means an Indian nation, tribe or pueblo recognized by the United States whose reservation or pueblo grant lies wholly or partly in this state, a corporation or other enterprise wholly owned by that Indian nation, tribe or pueblo or a corporation or other enterprise wholly owned by one or more members of that Indian nation, tribe or pueblo that is registered with the department as a distributor pursuant to the Gasoline Tax Act; provided that the department shall register a corporation or other enterprise as an Indian tribal distributor only upon certification by the Indian nation, tribe or pueblo that the corporation or other enterprise is wholly owned by that nation, tribe or pueblo or wholly owned by one or more of its members;

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.

(Laws 1999, Chapter 190, Section 1)

3.16.1.7 - DEFINITIONS

For purposes of Part 3.16.1 NMAC and forms and instructions of the department with respect to the Gasoline Tax Act and the taxes imposed by that Act on or after July 1, 1999:

A. “acquired gasoline” means gasoline that comes into the possession of a person but which is not “received” within the meaning of Section 7-13-2.1 NMSA 1978 by that person;

B. “first receiver” means a refiner, an owner of stored gasoline, a person who for purposes of Subsection C of Section 7-13-2.1 NMSA 1978 blends gasoline with other substances, an owner of gasoline immediately after the gasoline is transported off a tribe’s territory or an importer;

C. “owner of stored gasoline” means the person who owns gasoline stored at a pipeline terminal immediately prior to the loading of the gasoline;

D. “refiner” means, except for purposes of Section 7-13-8 NMSA 1978, a person who produces, refines, manufactures, blends or compounds gasoline at a refinery or other facility; and

E. “tax refund gasoline” means gasoline purchased by a person holding a permit issued under Section 7-13-17 NMSA 1978 and used other than in motorboats or vehicles licensed by the motor vehicle division to be operated on the highways of New Mexico, whether such gasoline is dyed or undyed.

[8/31/96, 12/31/97, 9/30/99; 3.16.1.7 NMAC - Rn & A, 3 NMAC 16.1.7, 6/14/01]

3.16.3.7 - DEFINITIONS: For the purposes of Part 3.16.3 NMAC:

A. “Indian tribe” means:

(1) an Indian nation, tribe or pueblo, including:

(a) any political subdivision, agency or department of that Indian nation, tribe or pueblo;

(b) any incorporated or unincorporated enterprise of the Indian nation, tribe or pueblo or its political subdivisions, agencies or departments; and

(c) any corporation required to be considered an Indian and therefore a member of the Indian nation, tribe or pueblo under *Eastern Navaho Industries, Inc. v. Bureau of Revenue*, 552 P.2d 805 (N.M. Ct. App. 1976); and

(2) a member of the Indian nation, tribe or pueblo; and

B. “tribe's territory” or “own tribal territory” means that part of Indian country in New Mexico reserved formally or informally for that Indian nation, tribe or pueblo, including its dependent Indian communities, and, with respect to a member of that tribe, any land in New Mexico allotted, reserved or held in trust by the United States for that member.

[8/31/96, 9/30/99; 3.16.3.7 NMAC - Rn & A, 3 NMAC 16.3.7, 6/14/01]

3.16.3.8 - WHEN GASOLINE IS “RECEIVED” - FIRST INSTANCE

A. On or after July 1, 1999, gasoline is “received” in the first instance in the five circumstances specified in this subsection:

(1) Gasoline produced, refined, manufactured, blended or compounded at a refinery or other facility in this state or stored at a pipeline terminal in this state by any person is “received” by that person when it is loaded at the refinery, other facility or the pipeline terminal into tank cars, tank trucks, tank wagons or other types of transportation equipment;

(2) Gasoline produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is “received” by

that person when it is placed into any tank or other container from which sales or deliveries not involving transportation are made;

(3) Except for gasoline imported by pipeline and stored at a pipeline terminal in New Mexico and gasoline imported in the fuel supply tanks of motor vehicles, gasoline imported into this state is “received” at the time and place it is imported into this state; the person who is the owner of the gasoline at the time of importation is the person who has received the gasoline.

(4) When any substance other than gasoline is blended in New Mexico to produce gasoline and the blending takes place at a place other than a refinery or pipeline terminal, the product becomes gasoline and is “received” at the time and place the blending is completed. The person who owns the blended product at the time of blending is the person who has “received” the gasoline. Example: Gasoline is purchased at a pipeline terminal in New Mexico and brought to a blending facility. Ethanol is also purchased from an ethanol-producing plant and brought to the blending facility. The gasoline and ethanol are blended at the plant in a 9 to 1 ratio. The resultant mixture is “gasoline” for the purposes of the Gasoline Tax Act. The person who blended the product is the person who “received” the additional gallons of gasoline (representing the addition of the ethanol) at the time of blending. See Section 3.16.5.9 NMAC.

(5) When an Indian tribe receives gasoline within its own tribal territory and does not pay gasoline tax with respect to that gasoline because of federal preemption, the gasoline is again received at the time and place it leaves that tribe’s territory by any means other than in the fuel supply tank of a motor vehicle. The person who owns the gasoline at the time the gasoline leaves the tribe’s territory is the person who has “received” the gasoline and, for purposes of reporting and paying tax in this situation, is deemed to be a distributor.

B. This version of this subsection applies to transactions taking place on or after July 1, 1999.

C. Although a first receiver is the first person to receive gasoline, the incidence of the tax and the obligation to report and pay gasoline taxes can be shifted to registered distributors. See Section 3.16.3.9 NMAC.

[8/31/96, 12/31/97, 9/30/99; 3.16.3.8 NMAC - Rn & A, 3 NMAC 16.3.8, 6/14/01]

3.16.3.9 - WHEN GASOLINE IS “RECEIVED” - SHIFT TO REGISTERED DISTRIBUTOR

A. The definition of “received” imposes the gasoline tax in the first instance on first receivers. If, however, gasoline is delivered at a pipeline terminal or refinery in New Mexico by an owner of stored gasoline or refiner to a distributor registered under the Gasoline Tax Act, the incidence of the tax shifts to the registered distributor. In this case the registered distributor has received the gasoline and is responsible for reporting and paying the gasoline tax with respect to the gasoline received. The distributor receiving the gasoline may not further shift the receipt of the gasoline and the obligation to report and pay gasoline tax to any other person, even if the gasoline is subsequently sold or otherwise transferred to another registered distributor.

(1) Example 1: At its refinery in New Mexico, refiner R loads 8,000 gallons of gasoline into a tank truck owned by distributor A. In this case A has received the gasoline at the refinery (the place of delivery) and is responsible for reporting and paying the gasoline tax.

(2) Example 2: Same facts as example 1, except that distributor A then sells some

of the gasoline to distributor B and unloads it from the truck into a tank belonging to distributor B. Distributor A has received the gasoline and remains liable for the gasoline tax. Distributor B has not received the gasoline.

(3) Example 3: At the pipeline terminal in New Mexico, gasoline is loaded into a tank truck owned by T, a trucking company. T is not a registered distributor but picks up the gasoline for the account of, and delivers it to, 3 registered distributors. In this case, T has accepted delivery of the gasoline at the pipeline terminal as agent for the distributors. The three distributors have received gasoline and must report and pay gasoline tax in proportion to the gasoline each received.

B. If the first receiver delivers gasoline in this state and the person taking delivery of the gasoline is not a registered distributor and is not taking delivery for the account of any registered distributor, the incidence of the tax remains with the first receiver. The first receiver is responsible for reporting and paying the gasoline tax with respect to the gasoline received. Any person once registered as a distributor but who is no longer listed on the list of registered distributors promulgated by the department is not a registered distributor for any period after the person has been removed from the list.

C. When a first receiver is responsible for reporting and paying gasoline tax, that entity must report in the same time and manner as a registered distributor.

[8/31/96, 12/31/97, 9/30/99; 3.16.3.9 NMAC - Rn, 3 NMAC 16.3.9, 6/14/01]

3.16.3.12 - EXCHANGES

A. Exchanges of gasoline between one refiner or pipeline terminal operator and another are exempt deliveries of gasoline under Paragraph 2 of Subsection N of Section 7-13-2 NMSA 1978. When pipeline terminal operators or refiners exchange gasoline, the person to whom the gasoline is delivered takes the place of the person who delivered the gasoline.

B. Example: X is a pipeline terminal operator in New Mexico. Y is a refiner in another state and operates no refinery or pipeline terminal in New Mexico. Z is a registered distributor in New Mexico who distributes Y's brands of gasoline. Because Y does not operate a refinery or pipeline terminal in New Mexico from which it can supply its own distributors and retailers, Y arranges with X to exchange Y's gasoline stored at a pipeline terminal out of state with X's gasoline stored at a New Mexico pipeline terminal. Y then ships or delivers Y's New Mexico gasoline to Z. In this example, Y will be treated as a pipeline terminal operator in New Mexico. Because Y ships or delivers gasoline to Z, a registered distributor, Z has received the gasoline and the obligation to report and pay the tax, just as if X had shipped or delivered the gasoline to Z.

[8/31/96, 12/31/97; 3.16.3.12 NMAC - Rn & A, 3 NMAC 16.3.12, 6/14/01]

3.16.5.10 - ETHANOL MANUFACTURERS' REPORTING REQUIREMENTS

Any person doing business in the state of New Mexico as an ethanol manufacturer shall file monthly reports as required by Section 3.1.12.9 NMAC.

[12/4/89, 8/31/96; 3.16.5.10 NMAC - Rn & A, 3 NMAC 16.5.10, 6/14/01]

3.16.7.9 - ETHANOL MANUFACTURERS REGISTER AS GASOLINE DISTRIBUTORS

Ethanol manufacturers receiving gasoline for use as denaturant in ethanol shall register as gasoline distributors pursuant to Section 7-13-7 NMSA 1978 to obtain that gasoline prior to the payment of tax.

[12/4/89, 8/31/96; 3.16.7.9 NMAC - Rn & A, 3 NMAC 16.7.9, 6/14/01]

7-13-2.1. WHEN GASOLINE RECEIVED AND BY WHOM.--

A. Gasoline that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made; however:

(1) when gasoline is delivered at the refinery or pipeline terminal to a person registered as a distributor pursuant to the Gasoline Tax Act, then it is received there by the distributor to whom it is delivered at the time of the delivery;

(2) when gasoline is delivered at the refinery or pipeline terminal to a person not registered as a distributor pursuant to the Gasoline Tax Act for the account of a person that is registered as a distributor, it is received there by the distributor for whose account it is delivered at the time of delivery; and

(3) gasoline is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. Gasoline imported into New Mexico by any means other than in the fuel supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the gasoline at the time of importation receives the gasoline at the time and place of importation unless the gasoline is delivered to a person who is registered as a distributor pursuant to the Gasoline Tax Act, in which case the distributor is deemed to have received the gasoline at the time and place of importation.

C. Any product other than gasoline that is blended in this state to produce gasoline other than at a refinery or pipeline terminal is received by the person who is the owner of the gasoline at the time and place the blending is completed.

D. If gasoline is received within the exterior boundaries of an Indian reservation or pueblo grant and the gasoline tax is not paid with respect to the gasoline by the person receiving the gasoline within the exterior boundaries of the Indian reservation or pueblo grant, the gasoline is also received when the gasoline is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle. In such a case, the person who owns the gasoline immediately after the time of transportation off the reservation or pueblo grant or, if the gasoline is delivered to a person registered as a distributor pursuant to the Gasoline Tax Act, the distributor receives the gasoline at the time and place the gasoline is transported off the reservation or pueblo grant.

(Laws 1999, Chapter 190, Section 2)

7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GASOLINE TAX".--

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be seventeen cents (\$.17) per gallon received in New Mexico.

**C. The tax imposed by this section may be called the "gasoline tax".
(Laws 1995, Chapter 6, Section 10)**

3.16.3.10 - PREEMPTION OF TAX BY FEDERAL LAW

A. Gasoline received by an Indian tribe on its own territory is not subject to the taxes imposed by the Gasoline Tax Act if taxation of the gasoline received is prohibited by federal law.

B. On or after July 1, 1999, an Indian tribe that is a distributor receives gasoline on its own territory when:

(1) the Indian tribe imports gasoline into New Mexico directly onto the tribe's territory without crossing any intervening ground in New Mexico that is not its own tribal territory;

(2) the Indian tribe blends on its own tribal territory a substance other than gasoline to produce gasoline; or

(3) the gasoline is loaded into the Indian tribe's tank trucks or other transportation equipment at a rack located on its own tribal territory.

C. If an Indian tribe is a distributor and it receives gasoline at any place in New Mexico other than on the tribe's territory, imposition of the tax is not barred by federal law and the Indian tribe must report and pay gasoline tax. Example: Z is a member of an Indian tribe T and is registered as a distributor. Z hires tank trucks to pick up loads of gasoline at a rack which is not on T's territory. Z receives the gasoline at that rack. Z owes gasoline tax on the gasoline received.

D. Like any other distributor, an Indian tribe that is a registered distributor cannot receive gasoline previously received by another distributor.

[8/31/96, 9/30/99; 3.16.3.10 NMAC - Rn, 3 NMAC 16.3.10, 6/14/01]

7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--DATE PAYMENT OF TAX DUE.--

A. A gasoline inventory tax is imposed measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The taxable event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rate of the gasoline inventory tax to apply on each gallon of gasoline held in inventory by a distributor or wholesaler, as provided in Section 7-13-3.2 NMSA 1978, shall be the difference between the gasoline excise tax rate imposed on the day prior to the day in which the gasoline excise tax is increased subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate increase is effective, expressed in cents per gallon.

B. The gasoline inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

(Laws 1993, Chapter 32, Section 3)

7-13-3.2. GASOLINE INVENTORIES. --

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and shall not increase the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

(Laws 1995, Chapter 70, Section 16)

3.16.3.11 - INVENTORY REPORT

On or before the twenty-fifth day of August for those years in which there is an increase or decrease in the tax rate, each gasoline distributor and wholesaler shall report on forms provided by the department the number of gallons of gasoline which that distributor or wholesaler has in inventory as of July 1. Reports are required even if no inventory exists.

[1/5/81, 8/31/96; 3.16.3.11 NMAC - Rn, 3 NMAC 16.3.11, 6/14/01]

7-13-3.5 BOND REQUIRED OF TAXPAYERS.--

A. Except as provided in Subsection H of this section, every taxpayer shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission to transact business in this state as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Gasoline Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any taxpayer required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the taxpayer's monthly gasoline tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a taxpayer shall never be less than one thousand dollars (\$1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the gasoline tax and any penalties and interest for which the taxpayer is or may at any time become liable, then the taxpayer, upon written demand of the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due under the Gasoline Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that such request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department promptly shall notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required

in this section.

G. The taxpayer required to file bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. Every taxpayer who, for the twenty-four month period immediately preceding July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act is exempt from the requirement pursuant to this section to file a bond. A taxpayer required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer under the Gasoline Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

(Laws 1997, Chapter 192, Section 3)

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

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

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

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

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

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

C. gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or a political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo;

D. gasoline received in New Mexico, dyed in accordance with department regulations and used in a manner other than for propulsion of motor vehicles on the highways of this state or motorboats or activities ancillary to that propulsion;

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

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

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

(3) the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on the gasoline; provided that the volume of gasoline deducted pursuant to this subsection shall be the total gallons sold in accordance with the provisions of this subsection multiplied by a fraction the numerator of which is the rate of

the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but if the fraction exceeds one, it shall be one for purposes of determining the deduction;

F. gasoline received in New Mexico and sold by a registered Indian tribal distributor from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land; provided the department certifies that the distributor claiming the deduction sold no less than one million gallons of gasoline from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land during the period of May through August 1998; and provided further that the amount of gasoline deducted by a registered Indian tribal distributor pursuant to this subsection shall not exceed two million five hundred thousand gallons per month, calculated as a monthly average during the calendar year. Volumes deducted pursuant to Subsection E of this section shall not be deducted pursuant to this subsection; and

G. gasoline received in New Mexico on which New Mexico gasoline tax was paid by the out-of-state terminal at which the gasoline was loaded, provided that documentation that the gasoline was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel.

(Laws 2007, Chapter 110, Section 1)

3.16.4.8 - SATISFACTORY PROOF

A. Satisfactory proof of the export of gasoline consists of a manifest or bill of lading showing the amount of gasoline, the name and address of the person to whom the gasoline is sent and the destination outside New Mexico. The person must also comply with the requirements of Subsection A of Section 7-13-4 NMSA 1978.

B. Proof of sale to the United States or any agency or instrumentality thereof or a NATO force shall be furnished to the department upon request. Proof includes documentation, such as contracts, purchase orders and invoices, showing that the purchaser was the United States or a NATO force.

C. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the gasoline was sold.

D. This section is applicable to exports or sales for export on or after June 1, 1997. [1/23/73, 8/31/96, 12/31/97, 4/15/98; 3.16.4.8 NMAC - Rn & A, 3 NMAC 16.4.8, 6/14/01]

3.16.4.9 - DEDUCTION - SALES TO OTHER DISTRIBUTORS

A. Gasoline received by a distributor and sold to another distributor may not be deducted from the amount of gasoline received in New Mexico, even though the other distributor

is bonded and registered, because the purchasing distributor did not “receive” gasoline within the meaning of the act.

B. The tax consequences of sales to other distributors and sales by them to the United States are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

C. Examples:

(1) A, a registered gasoline distributor in New Mexico, received one thousand (1,000) gallons of gasoline in June. B, also a registered distributor who is located in the same city as A, needed one thousand (1,000) gallons of gasoline of the type A had received and arranged to purchase the one thousand (1,000) gallons from A. A may not deduct the one thousand (1,000) gallons from the amount of gasoline A received in June. B is not liable for tax on this gasoline because B did not receive it.

(2) In addition to the facts in example 1, B delivered the one thousand (1,000) gallons of gasoline purchased from A to the United States. A must report the one thousand (1,000) gallons of gasoline as received. A may deduct one thousand (1,000) gallons from the amount of gasoline received as provided in Subsection B of Section 7-13-4 NMSA 1978 if A provides satisfactory proof as required in Section 3.16.4.8 NMAC.

[1/23/73, 8/31/96; 3.16.4.9 NMAC - Rn & A, 3 NMAC 16.4.9, 6/14/01; A, 10/15/02]

3.16.4.10 - INDIRECT SALES TO THE UNITED STATES OR FOR EXPORT

A. The tax consequences of sales of gasoline to the United States or for export by a wholesaler or retailer are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the gasoline to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.

B. Examples:

(1) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y then sold the gasoline to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may either deduct the one hundred (100) gallons from the amount of gasoline received for that month of May or may elect to take the deduction in any subsequent month in which gasoline is received. Satisfactory proof of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the gasoline was sold.

(2) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler, who resold it to Z, a retailer. Z sold ten (10) gallons to the United States when a United States government vehicle filled up at Z's station. Z reports to Y that this amount of gasoline had been sold to the United States. Y reported this sale on the monthly report to the department as required by Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct ten (10) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received.

Satisfactory proof of Z's sale to the United States is required to be retained by X and Y for at least three years from the end of the calendar year in which the gasoline was sold.

(3) X, a distributor, received one hundred (100) gallons of gasoline in May, paid the gasoline tax and resold the gasoline to Y, a wholesaler. Y delivers the one hundred (100) gallons of gasoline to a customer in Texas. Y reported this export sale on the monthly report pursuant to Section 7-13-6 NMSA 1978. If Y furnishes satisfactory proof to X, X may deduct one hundred (100) gallons from the amount of gasoline received in that month of May or any subsequent month in which gasoline is received. Satisfactory proof of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made.

[1/23/73, 8/31/96; 3.16.4.10 NMAC - Rn & A, 3 NMAC 16.4.10, 6/14/01]

3.16.4.11 - DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY - PROOF OF SALE

A. For purposes of Section 3.16.4.11 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and

(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the North Atlantic Treaty, gasoline sold to a NATO force may be deducted from the total amount of gasoline received in New Mexico.

C. [Reserved.]

D. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the gasoline was sold.

E. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, gasoline sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the gasoline tax.

F. Section 3.16.4.11 NMAC is applicable to sales made to a NATO force on or after July 1, 1995.

[12/22/95, 8/31/96, 4/15/98; 3.16.4.11 NMAC - Rn & A, 3 NMAC 16.4.11, 6/14/01]

3.16.4.12 - INDIRECT SALES TO REGISTERED INDIAN TRIBAL DISTRIBUTORS

Gasoline received and subsequently sold to a registered Indian tribal distributor may be deducted under Subsection E of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico if, for the reporting period in which the sale was made, the distributor's Indian nation, tribe or pueblo has in effect a tax on gasoline substantially equivalent to the gasoline tax. In that case the number of gallons of gasoline that may be deducted equals the product of the number of gallons sold times a fraction, the numerator of which is rate of the tribal tax, expressed in cents per gallon, and the denominator is the rate of the gasoline tax, in the same units. Proof that the tribal tax has been paid with respect to the gasoline must accompany the claim for deduction.

[9/30/99; 3.16.4.12 NMAC - Rn & A, 3 NMAC 16.4.12, 6/14/01]

3.16.4.13 - INDIRECT SALES TO PERSONS ELIGIBLE FOR THE DEDUCTION PROVIDED UNDER SUBSECTION F OF SECTION 7-13-4 NMSA 1978

A. The deduction provided by Subsection F of Section 7-13-4 NMSA 1978 is available only to those distributors certified by the secretary as meeting the qualifications of Subsection F of Section 7-13-4 NMSA 1978. Such distributors, for the purposes of Section 3.16.4.13 NMAC, may be referred to as “certified distributors”.

B. Gasoline received and subsequently sold to a certified distributor may be deducted under Subsection F of Section 7-13-4 NMSA 1978 from the total amount of gasoline received in New Mexico, provided that the total amount deducted under this provision by all receivers of gasoline may not exceed 30,000,000 gallons per certified distributor in any calendar year. The certified distributors are responsible for informing each of their suppliers whenever the number of gallons purchased by the certified distributor exceeds 30,000,000 per calendar year; gasoline tax is due on all such excess gallons. The certified distributor shall be liable for paying gasoline tax with respect to any gallons received in excess of the 30,000,000 limit.

C. The deduction provided at Subsection F of Section 7-13-4 NMAC 1978 applies in the instance in which gasoline is received pursuant to Subsection D of Section 7-13-2.1 NMSA 1978. Once gasoline is properly deducted by a certified distributor pursuant to Subsection F of Section 7-13-4 NMSA 1978, that gasoline is not again subject to the gasoline tax as long as the gasoline does not leave New Mexico prior to retail sale.

[9/30/99; 3.16.4.13 NMAC - Rn & A, 3 NMAC 16.4.13, 6/14/01]

3.16.4.14 - GASOLINE DYE

When gasoline is used in any manner other than those set forth in Subsection A of Section 7-13-17 NMSA 1978 or for propelling vehicles on the highways or propelling boats, it shall be dyed using the dye specified by instruction of the department. If gasoline is not dyed when it is required to be dyed, then no deduction under Subsection D of Section 7-13-4 NMSA 1978 may be claimed with respect to that gasoline.

[9/30/99; 3.16.4.14 NMAC - Rn & A, 3 NMAC 16.4.14, 6/14/01]

7-13-4.4. ADDITIONAL DEDUCTION--CERTAIN RETAIL SALES ON AN INDIAN RESERVATION, PUEBLO GRANT OR TRUST LAND.--In computing the gasoline tax due, a person other than a registered Indian tribal distributor may deduct from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof is provided to the department, gasoline received in New Mexico and sold at retail in New Mexico if:

A. the sale occurs on an Indian reservation, pueblo grant or trust land;

B. the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land;

C. the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on gasoline; provided that the gallons of gasoline deducted pursuant to this section shall be the total gallons sold in accordance with the provisions of this section multiplied by a fraction, the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but, if the fraction exceeds one, the fraction shall be deemed to be one for purposes of determining the deduction; and

D. the person is subject to and in compliance with the tax on gasoline imposed by the Indian nation, tribe or pueblo where the sale occurs.

(Laws 2000, Chapter 50, Section 1)

**7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due. The department may require that the tax returns be provided through electronic means as long as an exception is provided for distributors with limited amounts of fuel distributed.
(Laws 2005, Chapter 109, Section 6)**

3.16.5.8 - GASOLINE TAX RETURN

The distributor's gasoline tax report shall be submitted on forms provided or approved by the department and must be signed by the distributor or his authorized agent.
[1/23/73, 8/31/96; 3.16.5.8 NMAC - Rn, 3 NMAC 16.5.8, 6/14/01]

3.16.5.9 - ETHANOL BLENDED FUEL TAX RETURN

A. Only those distributors engaged in the receipt, production, blending, sale, distribution or transfer of ethanol blended fuel are required to file an ethanol blended fuel tax return. Once a distributor has filed an ethanol blended fuel tax return, the distributor is required to report each month even though no transactions occurred during a given month. If the distributor anticipates no further ethanol blended fuel transactions, the distributor may cease filing monthly returns provided the distributor has received written permission from the department.

B. The distributor's ethanol blended fuel tax report shall be submitted on forms provided or approved by the department and be signed by the distributor or authorized agent.
[1/5/81, 8/31/96; 3.16.5.9 NMAC - Rn, 3 NMAC 16.5.9, 6/14/01]

3.16.5.11 - DETERMINATION OF TIMELINESS

Determination of timeliness for notices, returns, applications and payments of any tax, rebate or surcharge imposed under the Gasoline Tax Act will be made in conformance with the requirements of Section 7-1-9 NMSA 1978 and regulations thereunder.
[1/5/81, 8/31/96; 3.16.5.11 NMAC - Rn & A, 3 NMAC 16.5.11, 6/14/01]

3.16.5.12 - CHANGE OF ADDRESS

Taxpayers must inform the department of any change of address. Any notice to a taxpayer is presumed to be effective and binding upon that taxpayer when it is sent to the last address shown in the department's records.
[1/5/81, 8/31/96; 3.16.5.12 NMAC - Rn, 3 NMAC 16.5.12, 6/14/01]

3.16.5.13 - RETURN MUST REPORT ON UNTAXED SALES

Gasoline tax returns filed by distributors must include reports of sales of gasoline on which the gasoline excise tax has not been paid. Such reports shall be made in the form prescribed by the secretary and shall include the number of gallons sold, the identity of the

purchaser, including the taxpayer identification number, and the date of the sale. The retailer of such gasoline not taxed under the gasoline tax act will be responsible for the gross receipts tax on its receipts from the sale of the gasoline.

[8/31/96; 3.16.5.13 NMAC - Rn, 3 NMAC 16.5.13, 6/14/01]

7-13-6. RETURNS BY WHOLESALERS--EXCEPTION.-- Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department.
(Laws 2005, Chapter 109, Section 7)

3.16.6.8 - GASOLINE WHOLESALER'S REPORT

The gasoline wholesaler's report shall be submitted on forms provided by the department and be signed by the wholesaler or the wholesaler's authorized agent.

[1/23/73, 8/31/96; 3.16.6.8 NMAC - Rn, 3 NMAC 16.6.8, 6/14/01]

7-13-6.1. RETURNS BY RETAILERS--REQUIREMENTS--EXCEPTION.-- Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel.
(Laws 2005, Chapter 109, Section 4)

7-13-6.2. RETURNS BY RACK OPERATORS--REQUIREMENTS.--Rack operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that an information return be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel.
(Laws 2005, Chapter 109, Section 5)

7-13-7. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS AS DISTRIBUTOR, WHOLESALER OR RETAILER.--Each person engaged in the business of selling gasoline in New Mexico as a distributor, wholesaler or retailer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

(Laws 1983, Chapter 204, Section 7)

3.16.7.8 - REGISTRATION - LIST OF REGISTERED DISTRIBUTORS

A. Each person engaged in selling gasoline as a distributor, wholesaler or retailer shall register with the department by filing an application for registration for combined reporting of gross receipts, compensating and withholding tax.

B. The department will prepare and make available to refineries, pipeline terminals, importers and distributors a list of all persons currently registered as distributors under the Gasoline Tax Act. The department will answer all inquiries as to whether a person is included in this list.

[1/23/73, 8/31/96; 3.16.7.8 NMAC - Rn, 3 NMAC 16.7.8, 6/14/01]

3.16.7.10 - [Reserved.]

[2/21/86, 8/31/96; R 7/30/99; 3.16.7.10 NMAC - Rn, 3 NMAC 16.7.10, 6/14/01]

3.16.7.11 - DEPARTMENT MAY REMOVE NONCOMPLYING DISTRIBUTORS FROM LIST

A. In accordance with Section 3.16.7.11 NMAC, the department may cancel the registration of a distributor as a distributor of gasoline and remove its name from the list of distributors registered under the Gasoline Tax Act if the distributor does not substantially comply with the requirements to file gasoline tax returns in the form and manner prescribed by the secretary or to file petroleum products loading fee reports in the form and manner prescribed by the secretary with respect to gasoline loaded or imported by the distributor.

B. The department shall notify the distributor of its intent to cancel the distributor's registration as a distributor of gasoline and to remove its name from the list. The notice shall provide for a hearing at least ten days after the date of the date notice is provided. At the hearing the distributor will be given an opportunity to demonstrate substantial compliance. If, in the judgment of the hearing officer, substantial compliance is not demonstrated, the hearing officer shall order the immediate cancellation of registration as a distributor and removal from the list of distributors.

[8/31/96; 3.16.7.11 NMAC - Rn & A, 3 NMAC 16.7.11, 6/14/01; A, 10/15/02]

3.16.7.12 - LISTING OF REGISTERED INDIAN TRIBAL DISTRIBUTORS:

A. A person registered with the taxation and revenue department as a distributor under the Gasoline Tax Act and who is an Indian nation, tribe or pueblo or an agency or instrumentality thereof, or a corporation or other enterprise wholly owned by an Indian nation, tribe or pueblo or by one or more members thereof, may be designated only by the person's own

Indian nation, tribe or pueblo to be a “registered Indian tribal distributor”. For purposes of the deduction provided by Subsection E of Section 7-13-4 NMSA 1978, the person shall not be considered a “registered Indian tribal distributor” until the department is notified of the designation in writing on official letterhead, signed by the appropriate tribal official. Once the department has been notified that a person has been designated as a “registered Indian tribal distributor”, the designation shall remain in effect until the person is no longer a distributor or the designation is withdrawn by the Indian nation, tribe or pueblo.

B. The department will maintain a list of registered Indian tribal distributors and of certified distributors. The list will be made available to the public. Additions to and deletions from the list will be made promptly and the department shall answer all inquiries as to whether a particular person is a registered Indian tribal distributor.

[9/30/99; 3.16.7.12 NMAC - Rn & A, 3 NMAC 16.7.12, 6/14/01]

7-13-8. MISDEMEANOR FOR ANYONE OTHER THAN PRODUCER, REFINER OR PIPELINE COMPANY TO TRANSPORT OR STORE DRIP GASOLINE--MISDEMEANOR TO USE DRIP GASOLINE IN VEHICLE OPERATED ON HIGHWAYS OF THIS STATE--ENFORCEMENT BY STATE POLICE--MAGISTRATE COURT JURISDICTION.--

A. Any person other than a recognized producer, refiner or pipeline company who transports or stores drip gasoline in New Mexico without having in his possession an instrument in writing issued and signed by a recognized seller of gasoline stating the names and addresses of the seller and purchaser, the date of sale and the amount sold and price paid therefor shall, upon conviction thereof, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

B. Whoever uses drip gasoline in a motor vehicle operated on the highways of this state shall, upon conviction thereof, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

C. The New Mexico state police shall have the responsibility of enforcing the provisions of this section.

D. Jurisdiction over actions brought under this section is granted to magistrate courts.

(Laws 1974, Chapter 14, Section 1)

3.16.8.7 - DEFINITIONS

A. As used in Section 7-13-8 NMSA 1978 and in Part 3.16.8 NMAC:

(1) "pipeline company" means any person who owns or operates a pipeline for the transportation of petroleum products, including natural gas;

(2) "producer" means any person regularly engaged in the production of petroleum products, including natural gas, by drilling or operating wells for that purpose;

(3) "recognized" means publicly holding oneself out as and generally known to be engaged in the specified activity;

(4) "refiner" means any person regularly engaged in refining petroleum products, including natural gas, to separate the components thereof for sale;

(5) "seller of gasoline" means a distributor, wholesaler or retailer as defined in Subsections C, S and O of Section 7-13-2 NMSA 1978; and

(6) "store" includes storing for any purpose including, but not limited to, storing for resale, storing while awaiting consumption, storing in the tank of a motor vehicle and storing while awaiting transportation.

B. The above definitions shall be construed so that a person may be a producer, refiner, pipeline company and seller of gasoline all at the same time.

[8/31/96; 3.16.8.7 NMAC - Rn & A, 3 NMAC 16.8.7, 6/14/01]

**7-13-10. VALIDATION OF PLEDGES.--All prior pledges of any amounts distributed to municipalities and counties pursuant to Section 64-26-19 NMSA 1953 (being Laws 1967, Chapter 170, Section 8 repealed by Laws 1971, Chapter 207, Section 16) which heretofore have been made to the payment of bonds of municipalities and counties pursuant to Sections 3-31-1, 3-33-24, 3-34-1 through 3-34-4 or 3-39-12 NMSA 1978 or any other statute and all action of the governing bodies of such municipalities and counties preliminary to and in the authorization of such pledges are validated, ratified, approved and confirmed.
(Laws 1983, Chapter 204, Section 8)**

**7-13-11. CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE.--Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for tax paid on gasoline destroyed by fire, accident or acts of God while in the possession of a distributor, wholesaler or retailer.
(Laws 1993, Chapter 32, Section 8)**

*****Effective January 1, 2016*****

7-13-11. CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID--ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE--ON GASOLINE PREVIOUSLY RECEIVED FROM A SOURCE OTHER THAN A REFINER OR PIPELINE TERMINAL.--

A. Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for tax paid on gasoline destroyed by fire, accident or acts of God while in the possession of a distributor, wholesaler or retailer.

B. Upon the submission of proof satisfactory to the department, a rack operator may submit, and the department may allow, a claim for refund of a New Mexico tax paid on gasoline previously received in New Mexico from a source other than a refiner or pipeline terminal in this state and placed in a terminal from which it will be loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment.

C. No person may submit claims for refund pursuant to the provisions of this section more frequently than quarterly. No claim for refund may be submitted or allowed on less than one hundred gallons.

D. The department may prescribe the documents necessary to support a claim for refund pursuant to the provisions of this section.

(Laws 2015 S.S., Chapter 2, Section 19)

3.16.11.7 - DEFINITIONS

“Destroyed” includes being rendered unusable as fuel or as a cleaning fluid in some manner other than a “use” as defined in Section 3.16.14.7 NMAC.
[1/23/73, 8/31/96; 3.16.11.7 NMAC - Rn & A, 3 NMAC 16.11.7, 6/14/01]

3.16.11.8 - SATISFACTORY PROOF

Proof of the destruction of gasoline shall state the amount of gasoline in the person's possession immediately prior to the destruction and the amount remaining immediately after the destruction. The proof shall state the circumstances of the destruction and shall be attested by the claimant. The proof shall be on forms provided by the department and shall accompany the

person's application for refund. [1/23/73, 8/31/96; 3.16.11.8 NMAC - Rn, 3 NMAC 16.11.8, 6/14/01]

3.16.11.9 - ACCIDENT

A. An “accident” includes any event happening by chance, unexpectedly taking place or occurring not according to the usual course of events. An event may sometimes be termed accidental even though it results from ordinary negligence. The following examples illustrate the effect of this definition.

B. Examples:

(1) X is a distributor. X's driver while delivering to a service station negligently dumps diesel fuel into the gasoline storage tank (Tank A) and gasoline into the diesel fuel storage tank (Tank B). Each tank is nearly full. In order to return the station to operation, X pumps both tanks dry and dumps the resulting mixture into another tank (Tank C) which contains a small amount of gasoline. In this situation, the gasoline dumped into Tank B and the gasoline in Tank A into which diesel fuel was dumped are destroyed, because each becomes a mixture which does not satisfy the definition contained in Subsection H of Section 7-13-2 NMSA 1978. All this gasoline was destroyed by accident within the meaning of Section 3.16.11.9 NMAC, and X may obtain a refund for gasoline tax paid on the gasoline dumped into Tank B and the gasoline in Tank A upon submission of satisfactory proof. The gasoline in Tank C was also destroyed within the meaning of Section 3.16.11.7 NMAC. However, the gasoline in Tank C was not destroyed by accident because X knew there was some gasoline in the tank and knew it would be destroyed when the diesel fuel and gasoline mixture was dumped into it. X will not be granted a refund for gasoline tax paid on the gasoline in Tank C.

(2) Y is a distributor. An underground pipe develops a leak because of corrosion and some gasoline is destroyed. The department will not grant a refund since corrosion is not an accident within the meaning of Section 7-13-11 NMSA 1978.

[1/23/73, 8/31/96; 3.16.11.9 NMAC - Rn & A, 3 NMAC 16.11.9, 6/14/01]

3.16.11.10 - [Reserved.]

[3.16.11.10 NMAC - Rn, 3 NMAC 16.11.10, 6/14/01]

3.16.11.11 - STATUTE OF LIMITATIONS

No refund may be made under Section 7-13-11 NMSA 1978 unless the person claiming the refund notifies the department of the destruction of the gasoline within thirty (30) days of the actual destruction, and the claim for refund is made within six (6) months of the date of destruction.

[1/5/81, 8/31/96; 3.16.11.11 NMAC - Rn & A, 3 NMAC 16.11.11, 6/14/01]

7-13-12. MANIFEST OR BILL OF LADING REQUIRED WHEN TRANSPORTING GASOLINE.--Every person transporting gasoline from a refinery or pipeline terminal in this state, importing gasoline into this state or exporting gasoline from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the gasoline or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting gasoline without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the gasoline so transported was legally acquired by a registered distributor who assumed liability for payment of the tax imposed by the Gasoline Tax Act. (Laws 1993, Chapter 32, Section 10)

3.16.12.8 - MANIFEST OR BILL OF LADING

A. A manifest or bill of lading shall be satisfactory if it contains the following information and is signed by the consignor:

- (1) the type and amount of gasoline originally shipped;
- (2) the amount of gasoline accepted by the company or consignee as certified by the signature of the consignee or consignees;
- (3) the date and place of shipment; and
- (4) the name of the carrier.

B. The consignor is required to retain these manifests or bills of lading for three years from the end of the calendar year in which the gasoline is transported within, imported into or exported from New Mexico.

[1/23/73, 8/31/96; 3.16.12.8 NMAC - Rn, 3 NMAC 16.12.8, 6/14/01]

7-13-17. PERMIT TO PURCHASE UNDYED GASOLINE FOR CERTAIN OFF-ROAD USE AND TO CLAIM REFUND OF TAX.--

A. Any person using gasoline in the operation of a clothes cleaning establishment, in stoves or other appliances burning gasoline, or operators of aircraft using aviation gasoline exclusively in the operation of aircraft, upon proper showing of the permit provided for in this section, may purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of this section.

B. Upon submission of proof satisfactory to the department that the requirements of this subsection have been met, the department shall allow a claim for refund of gasoline tax paid on gasoline purchased and used in the manner described in Subsection A of this section by holders of permits issued under this section. The individual purchases of gasoline, other than that used for aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the fifty gallon minimum. No claim for refund may be presented or allowed on less than one hundred gallons so purchased. The secretary may prescribe by regulation or instruction the documents necessary to support a claim for refund made pursuant to the provisions of this subsection.

C. The department shall create permits, in form and content as the secretary may prescribe, that will allow persons to purchase gasoline to which dye has not been added for the uses specified in Subsection A of this section. The secretary shall prescribe the method by which a person may apply for a permit.

D. The secretary, upon notice and after hearing, may suspend for a period of up to one year or revoke the gasoline tax refund permit of any person who makes any false statement on an application for a permit or on a claim for refund made pursuant to the provisions of this section, who uses the gasoline in a motor boat or in a vehicle registered to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act.

(Laws 1998, Chapter 44, Section 2)

3.16.13.8 - PERMIT TO PURCHASE DYED GASOLINE

A. Any person who desires to purchase gasoline dyed in accordance with Section 7-13-18 NMSA 1978 and obtain a refund of gasoline tax paid on the gasoline shall apply for and obtain a permit from the department. An application for such a permit shall be on a form provided by the department and shall contain the information and statements required by Section 3.16.13.10 NMAC. No claim for refund shall be honored until the applicant possesses a permit issued by the department.

B. All applications for issuance of a refund permit shall be signed by the permittee in

the case of an individual, a partner in the case of a partnership or an officer or authorized agent in the case of a corporation.

[1/23/73, 8/31/96; 3.16.13.8 NMAC - Rn & A, 3 NMAC 16.13.8, 6/14/01]

3.16.13.9 - SUSPENSION OF PERMIT TO PURCHASE DYED GASOLINE

A. Whenever the department has reason to believe that any person has made a false statement on an application for a permit under Section 3.16.13.8 NMAC or on a claim for refund under Section 3.16.14.8 NMAC, has used tax refund gasoline in a motor boat or in a vehicle licensed to operate on the highways of New Mexico or has violated any other provision of the Gasoline Tax Act or the regulations promulgated thereunder, the department shall schedule a formal hearing pursuant to the provisions of Section 7-1-24 NMSA 1978 of the Tax Administration Act to determine whether or not the person's permit to purchase tax refund gasoline should be suspended.

B. The person shall be notified of the hearing. Notification shall inform the permittee of suspected violations of particular provisions of the Gasoline Tax Act and shall briefly advise the permittee of the procedures employed in formal hearings and of remedies subsequent to the formal hearing if the permit is suspended. At the end of the hearing, or within thirty (30) days thereafter, the department shall enter a written decision and order.

C. The department may schedule an informal conference with the person before holding the formal hearing.

[1/23/73, 8/31/96; 3.16.13.9 NMAC - Rn & A, 3 NMAC 16.13.9, 6/14/01]

3.16.13.10 - EQUIPMENT LIST REQUIRED

A. As part of the application for a gasoline tax refund permit, each person is required to submit to the department a written list of the machinery or equipment which will consume tax refund fuel. The description, year, make, model and motor number or serial number of each item of machinery or equipment shall be included in the list.

B. Each person holding a refund permit must file annually, within thirty (30) days of the end of the calendar year, a list of changes on the equipment list, stating the description, year, make, model and motor number or serial number of each item of equipment added or deleted and the place of purchase or lease or bailment, as the case may be, of each of the items of machinery or equipment added.

C. Upon notice and after a hearing as described in Section 3.16.13.9 NMAC, the department may suspend the gasoline tax refund permit of any person who fails to file an updated equipment list.

[1/23/73, 8/31/96; 3.16.13.10 NMAC - Rn & A, 3 NMAC 16.13.10, 6/14/01]

3.16.14.7 - DEFINITIONS: "USE" DEFINED

"Use" of gasoline occurs when it is consumed in the operation of an internal combustion engine or stove or when it becomes so adulterated in a dry cleaning process that it is no longer suitable for fuel.

[1/23/73, 8/31/96; 3.16.14.7 NMAC - Rn, 3 NMAC 16.14.7, 6/14/01]

3.16.14.8 - MINIMUM GALLONAGE

A. In order to be eligible for a refund, individual purchases of non-aviation gasoline must be made in quantities of fifty (50) gallons or more. There is no minimum gallonage applicable to individual purchases of aviation gasoline.

B. Applications for refunds will be processed only for refunds of tax on one hundred (100) gallons of gasoline or more. Purchasers of gasoline may accumulate invoices to reach this one hundred (100) gallon minimum subject to the fifty (50) gallon minimum individual purchase requirement. The following example illustrates the effect of Section 3.16.14.8 NMAC.

C. Example: Alpha purchased one twenty-five (25) gallon lot of tax refund non-aviation gasoline during each of the months of January, February, March and April of a year. In May of that same year, Alpha applied for a refund on one hundred (100) gallons of dyed gasoline purchased and used within six (6) months. The refund will not be granted because the purchases were not in fifty (50) gallon quantities.

[1/23/73, 8/31/96; 3.16.14.8 NMAC - Rn & A, 3 NMAC 16.14.8, 6/14/01]

3.16.14.9 - DOCUMENTS REQUIRED TO SUPPORT A CLAIM FOR REFUND

All claims for refund shall be submitted on the original copy of department form GTR-1. This form must be completed and signed by the permittee in the case of an individual, a partner in the case of a partnership or an officer or authorized agent in the case of a corporation or limited liability company. All GTR-1 claims must also be completed and signed by the seller. A notarized affidavit on a form provided by the department may be submitted in lieu of a lost, original form GTR-1 if filed within the time limitation required by Subsection C of Section 7-1-26 NMSA 1978.

[5/10/78, 8/31/96; 3.16.14.9 NMAC - Rn & A, 3 NMAC 16.14.9, 6/14/01]

3.16.14.10 - PAYMENT REQUIRED

No refund shall be made unless it appears to the satisfaction of the department that the entire price of the gasoline, including passed-on tax required by Subsection C of Section 7-13-3 NMSA 1978, has been paid.

[1/23/73, 8/31/96; 3.16.14.10 NMAC - Rn & A, 3 NMAC 16.14.10, 6/14/01]

3.16.14.11 - TIMELY CLAIM

A. A claim for refund of gasoline tax on tax refund gasoline must be filed within six (6) months of the date the gasoline was purchased and used. The department shall consider the postmark of the claim for refund as its date. The gasoline must have been used prior to the time the claim for refund is submitted. The following examples illustrate the effect of Section 7-13-17 NMSA 1978.

B. Example 1: C purchased fifty (50) gallons of tax refund gasoline on January 1. On July 10 of that same year, C bought a second fifty (50) gallons of tax refund gasoline. On the following July 20, C filed an application for a refund on one hundred (100) gallons. This refund will not be allowed since the first purchase was not within six (6) months of the date of the application for refund as required by Section 3.16.14.11 NMAC and the second purchase by itself does not meet the one hundred (100) gallon minimum required by Section 3.16.14.8.

C. Example 2: P purchased fifty (50) gallons of tax refund gasoline on January 1. On the following June 30, P purchased a second fifty (50) gallons of tax refund gasoline and on the same day filed an application for refund. The claim for refund will not be allowed unless P can show that all the gasoline was used before July 1 of that same year.

D. Example 3: D purchased fifty (50) gallons of tax refund non-aviation gasoline in January. D purchased another fifty (50) gallons in the following March. D used the one hundred (100) gallons of gasoline and filed a claim for refund in April of that same year. The refund will be made because:

- (1) the individual purchases were of fifty (50) gallons each;
- (2) the refund applies to one hundred (100) gallons of gasoline; and
- (3) the one hundred (100) gallons of gasoline were used before the claim for refund was filed.

[6/13/84, 12/4/89, 8/31/96; 3.16.14.11 NMAC - Rn & A, 3 NMAC 16.14.11, 6/14/01]

3.16.14.12 - CONTAINERS

A. Tax refund gasoline shall be placed in containers which are labeled with the words “Tax Refund Gasoline” in letters at least two inches high and the label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, the required label must be displayed above ground at the point where gasoline is placed in the container and removed from the container, or if gasoline is placed in the container at one point and removed from the container at a different point, such a label must be placed at each point.

B. In addition to the above, aviation gasoline to be used for aviation purposes shall be placed only in containers labeled with the words “For Aviation Use Only” in letters at least two inches high, which label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, such a label must be displayed above ground in the same manner required of the “Tax Refund Gasoline” label.

C. Containers bearing these markings may not be used for any purpose other than the storage of aviation gasoline or properly dyed tax refund gasoline.

D. Any penalty imposed by the department for any violation of Section 3.16.14.12 NMAC will be presumed to apply both to the permittee and to the person filling the container.
[1/23/73, 8/31/96; 3.16.14.12 NMAC - Rn & A, 3 NMAC 16.14.12, 6/14/01]

7-13-18. DYED GASOLINE--PERMISSIBLE USES--PENALTIES FOR MISUSE.--

A. Gasoline distributors and wholesalers who are registered as distributors or wholesalers with the department may sell gasoline to be used other than in motor boats or in vehicles licensed to operate on the highways. These distributors and wholesalers shall mix with the gasoline an identifying dye in a manner consistent with state and federal law and regulations. The department shall furnish without charge the dye upon request. Such dyed gasoline may not be used in motor boats or in vehicles registered to be operated upon the highways of this state.

B. Any person who uses dyed gasoline in a motor boat or in a vehicle registered to be operated upon the highways of this state is liable for a civil penalty for each occurrence in an amount equal to the greater of one hundred dollars (\$100) or the rate of the gasoline tax multiplied by the capacity in gallons of the fuel supply tank or tanks of the motor boat or vehicle.

(Laws 1998, Chapter 44, Section 3)

3.16.15.8 - DYE

A. An amount of dye sufficient to make the gasoline appear purple to a person with normal vision shall be added to all tax refund gasoline except that sold pursuant to Section 3.16.15.10 NMAC. It shall be the responsibility of the wholesalers and distributors, as well as the permittee, to make certain that all applicable tax refund gasoline is dyed.

B. In addition to grounds set forth in other regulations, any of the following violations may result in the suspension of the gasoline tax refund permit of a person pursuant to Section 3.16.13.9 NMAC:

- (1) if dyed gasoline is found in a fuel tank of a vehicle licensed to be operated on the highway;
- (2) if undyed gasoline is found in a storage container labeled "Tax Refund Gasoline";
- (3) if dyed gasoline is found in an unlabeled storage container; or
- (4) if dyed gasoline is found in a fuel tank of a motor boat.

[1/23/73, 5/16/73, 8/31/96; 3.16.15.8 NMAC - Rn & A, 3 NMAC 16.15.8, 6/14/01]

3.16.15.9 - PERSON TO WHOM DYED GASOLINE MAY BE SOLD

Distributors and wholesalers may sell dyed gasoline only to persons possessing a valid permit issued by the department to buy dyed gasoline under the provisions of Section 7-13-17 NMSA 1978.

[1/23/73, 8/31/96; 3.16.15.9 NMAC - Rn & A, 3 NMAC 16.15.9, 6/14/01]

3.16.15.10 - PURCHASE OF TAX REFUND GASOLINE WITHOUT DYE

Persons using gasoline in the operation of dry cleaning establishments and in stoves or other gasoline burning appliances and persons using aviation gasoline solely in the operation of aircraft may buy gasoline for these purposes without dye upon proof to the department that they qualify to buy such gasoline. An application for such a permit shall establish to the satisfaction of the department that the applicant is in one of the classes entitled to purchase tax refund gasoline which has not been dyed.

[1/23/73, 8/31/96; 3.16.15.10 NMAC - Rn, 3 NMAC 16.15.10, 6/14/01]