

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 135, As Amended

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO MOTOR FUEL TAX AND TRANSPORTATION; AMENDING SECTION  
 2 40-701, IDAHO CODE, TO REVISE APPORTIONMENT FROM THE HIGHWAY  
 3 DISTRIBUTION ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS;  
 4 AMENDING CHAPTER 7, TITLE 40, IDAHO CODE, BY THE ADDITION OF  
 5 A NEW SECTION 40-701A, IDAHO CODE, TO PROVIDE FOR THE HIGHWAY  
 6 MAINTENANCE, PRESERVATION AND RESTORATION FUND, TO PROVIDE  
 7 FOR MONEYS DEPOSITED INTO THE FUND, TO PROVIDE FOR INTEREST,  
 8 TO PROVIDE FOR APPORTIONMENT OF FUND MONEYS, TO PROVIDE FOR  
 9 CONTINUOUS APPROPRIATION AND TO PROVIDE FOR EXPENDITURES; AND  
 10 AMENDING SECTION 63-2402, IDAHO CODE, TO REVISE THE TAX UPON  
 11 MOTOR FUEL.  
 12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 40-701, Idaho Code, be, and the same is hereby amended to  
 15 read as follows:

16 40-701. HIGHWAY DISTRIBUTION ACCOUNT – APPORTIONMENT. (1) There is  
 17 established in the state treasury an account known as the "Highway Distribution Account," to  
 18 which shall be credited:

- 19 (a) Moneys as provided by sections 63-2412(1)(e)4. and 63-2418(3), Idaho Code;
- 20 (b) All moneys collected by the department, their agents and vendors, and county
- 21 assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise
- 22 specifically provided for; and
- 23 (c) All other moneys as may be provided by law.

24 (2) The highway distribution account shall be apportioned as follows:

25 (a) An amount equal to the motor fuel tax exceeding twenty-five cents (25¢) per  
 26 gallon shall be deposited to the highway maintenance, preservation and restoration fund  
 27 established in section 40-701A, Idaho Code.

28 (b) Thirty-eight percent (38%) to local units of government as provided in section  
 29 40-709, Idaho Code;

30 (bc) Fifty-seven percent (57%) to the state highway account established in section  
 31 40-702, Idaho Code; and

32 (ed) Five percent (5%) to the law enforcement ~~account~~ fund, established in section  
 33 67-2914, Idaho Code. The state controller shall cause the remittance of the moneys  
 34 apportioned to local units of government not later than January 25, April 25, July 25  
 35 and October 25 of each year, and to the state highway account and the law enforcement  
 36 ~~account~~ fund as the moneys become available to the highway distribution account.

37 (3) Interest earned on the investment of idle moneys in the highway distribution account  
 38 shall be paid to the highway distribution account.

1 (4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts  
2 established from highway user revenues, reimbursements, fees or permits shall be invested by  
3 the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with  
4 respect to other surplus or idle moneys in the state treasury. Interest earned on the investments  
5 shall be returned to the various highway trust or asset accounts and subaccounts.

6 SECTION 2. That Chapter 7, Title 40, Idaho Code, be, and the same is hereby amended  
7 by the addition thereto of a NEW SECTION, to be known and designated as Section 40-701A,  
8 Idaho Code, and to read as follows:

9 40-701A. ESTABLISHMENT OF HIGHWAY MAINTENANCE, PRESERVATION  
10 AND RESTORATION FUND – APPORTIONMENT. (1) There is hereby established in the  
11 state treasury a fund known as the "Highway Maintenance, Preservation and Restoration Fund,"  
12 to which shall be credited:

13 (a) Moneys as provided in section 40-701(2)(a), Idaho Code; and

14 (b) All other moneys as may be provided by law.

15 (c) Interest earned on the investment of idle moneys in the highway maintenance,  
16 preservation and restoration fund shall be paid to the fund as provided for in subsection  
17 (2)(b) of this section.

18 (2) Moneys in the highway maintenance, preservation and restoration fund shall be  
19 apportioned as follows:

20 (a) Forty percent (40%) to local units of government as provided in section 40-709,  
21 Idaho Code; and

22 (b) Sixty percent (60%) with all interest accruing thereon, to remain in the highway  
23 maintenance, preservation and restoration fund established in this section for expenditure  
24 by the Idaho transportation department in accordance with the provisions of subsection  
25 (3) of this section.

26 (3) Moneys in the highway maintenance, preservation and restoration fund as provided  
27 in subsection (2)(b) of this section are hereby continuously appropriated to the Idaho  
28 transportation department. Expenditures of moneys from the fund by the department shall be  
29 made only for the maintenance, preservation and restoration of the state highway system. In  
30 no event shall expenditures be made from this dedicated fund for capacity expansion projects.  
31 Provided however, that no moneys shall be expended from such fund unless and until the  
32 department has made plans for and begun implementation of a statewide pavement management  
33 system or similar management tool that is efficient, effective and widely accepted in the trade  
34 or practice for coordinating a statewide system for the management of pavement maintenance.

35 SECTION 3. That Section 63-2402, Idaho Code, be, and the same is hereby amended to  
36 read as follows:

37 63-2402. IMPOSITION OF TAX UPON MOTOR FUEL. (1) A tax is hereby imposed  
38 upon the distributor who receives motor fuel in this state. The legal incidence of the tax  
39 imposed under this section is borne by the distributor. The tax becomes due and payable upon  
40 receipt of the motor fuel in this state by the distributor unless such tax liability has previously  
41 accrued to another distributor pursuant to this section. The tax shall be imposed without regard  
42 to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

1 (2) The tax imposed in this section shall be at the rate of twenty-~~five~~seven cents (~~25~~27¢)  
2 per gallon of motor fuel received. This tax shall be subject to the exemptions, deductions and  
3 refunds set forth in this chapter.

4 (3) Nothing in this chapter shall prohibit the distributor who is liable for payment of  
5 the tax imposed under subsection (1) of this section from including as part of the selling price  
6 an amount equal to such tax on motor fuels sold or delivered by such distributor; provided  
7 however, that nothing in this chapter shall be deemed to impose tax liability on any person to  
8 whom such fuel is sold or delivered except as provided in subsection (6) of this section.

9 (4) Any person coming into this state in a motor vehicle may transport in the  
10 manufacturer's original tank of that vehicle, for his own use only, not more than thirty (30)  
11 gallons of motor fuel for the purpose of operating that motor vehicle, without complying with  
12 the provisions of this chapter.

13 (5) The tax imposed in this section does not apply to:

14 (a) Special fuels that have been dyed at a refinery or terminal under the provisions of  
15 26 U.S.C. section 4082 and regulations adopted thereunder, or under the clean air act and  
16 regulations adopted thereunder except as provided in section 63-2425, Idaho Code; or

17 (b) Special fuel dispensed into a motor vehicle which uses gaseous special fuels and  
18 which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

19 (c) Special fuels that are gaseous special fuels, as defined in section 63-2401, Idaho  
20 Code, except that part thereof that is delivered into the fuel supply tank or tanks of a  
21 motor vehicle; or

22 (d) Aircraft engine fuel subject to tax under section 63-2408, Idaho Code.

23 (6) Should the distributor of first receipt be exempt from imposition of the tax as a  
24 matter of federal law, by virtue of its status as a federally-recognized Indian tribe or member  
25 of such tribe, such distributor shall not bear the tax's legal incidence and must pass the tax  
26 through as part of the selling price of the fuel. Such distributor shall retain the administrative  
27 obligation to remit the tax, and such obligation shall accrue upon receipt in accordance with  
28 subsection (1) of this section. Should a retailer otherwise subject to the tax be exempt from  
29 imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized  
30 Indian tribe or member of such tribe, the retailer shall not bear the tax's legal incidence and  
31 must pass the tax through as part of the selling price of the fuel to the consumer, unless such  
32 consumer is exempt from imposition of the tax as a matter of federal law, by virtue of its  
33 status as a federally-recognized Indian tribe or membership in such tribe, and the retailer shall  
34 be entitled to claim a credit against taxes otherwise due and owing under this chapter or a tax  
35 refund, together with interest, attributable to the fuel purchased by such consumer.