

57-43.2-02. Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A refiner, supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

57-43.2-02.1. Additional special fuel tax.

Repealed by S.L. 1997, ch. 499, § 3.

57-43.2-02.2. Refund of tax for fuel used for heating and for an agricultural, industrial, or railroad purpose.

Repealed by S.L. 1999, ch. 528, § 7.

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
2. Special fuel, other than diesel fuel, sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

57-43.2-02.4. Special fuels tax exemption for hydrogen.

Expired under S.L. 2005, ch. 575, § 3.

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of propane and a tax of four cents per gallon is imposed on all sales of diesel fuel and other special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

57-43.2-03.1. Dyed special fuel use by a city.

A city that has computerized fuel dispensing equipment that allows tracking of fuel usage by its vehicles shall report to the tax commissioner, on a form prescribed by the commissioner, the highway and nonhighway use of dyed special fuels dispensed through that equipment. The city shall pay taxes under this chapter appropriate for that usage.

57-43.2-04. Tax chargeable to consumer.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-04.1. Tax collection allowance.

The person required to remit the tax imposed by this chapter shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions.

Any person to whom special fuel is sold on which the tax imposed by this chapter has been paid, who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

57-43.2-04.3. Refund of tax on tax-exempt sales.

When a person purchasing special fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

57-43.2-04.4. Credit for taxes paid on worthless accounts and refunds.

Taxes paid on special fuels represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

57-43.2-04.5. Refund to emergency medical services operation.

Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for special fuel purchased and used by the emergency medical services operation.

57-43.2-04.6. Refund of tax for fuel used for a refrigeration unit on a truck.

A consumer who buys or uses any special fuel for a refrigeration unit that has a separate supply tank on a truck or trailer on which the special fuels tax imposed under section 57-43.2-02 has been paid may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.

57-43.2-05. Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license - License fees.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner. The commissioner may require a separate license for liquefied petroleum gases.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.

- e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

- 3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.
- 4. Based on the information provided in a special fuels retailer's license application and on the special fuels tax laws in effect at the time the application is filed, the tax commissioner may determine, on those conditions and terms as the commissioner deems reasonable and necessary, that a special fuels retailer license is not required:
 - a. If there is a subsequent change in the special fuels tax laws that would require the person to obtain a license, the tax commissioner shall notify the person of the change and that a license application must be submitted. The person shall submit an application within thirty days of the notice provided in this subdivision. If the application is not filed, the tax commissioner may take the action necessary to enforce the license requirements of this section.
 - b. If there is a subsequent change in the applicant's business practices that may require the person to obtain a retail license, the person must submit a revised license application. The tax commissioner shall review the revised application and make a redetermination as to whether a special fuels license is required.
 - c. If the tax commissioner determines there was an omission or erroneous information provided in a license application and that a license would have been required under this section if correct and complete information had been provided, the tax commissioner shall assess tax, penalty, and interest from the date the license application was received. The tax must be assessed as provided in section 57-43.2-15 and must be based on the best information available. Subsection 4 of section 57-43.2-14 applies to the time period in which an assessment may be made under this subsection.