

## **HIGHWAY FUND DIVERSIONS**

### **Tribal Excise Exemption –**

The Tribal Excise Tax refunds were a one time item. The refunds paid all back excise tax collections from 1986 through 1997 on the purchases of vehicles subject to the excise tax, but exempted by federal court decisions(SIV 92-3035, SIV 94-3039, SIV 97-1015, & SIV98-1037) for enrolled/registered tribal members residing on the reservation(Indian Lands) controlled by the members tribe. The member had to prove ownership and tax payments. The tribal member can only get the exemption, if they are living within the reservation boundaries of the Indian tribe where they are an enrolled member.

The exemption now continues on for those members who title vehicles within the Indian country where they are an enrolled member.

### **Tribal Motor Fuel Tax Exemption –**

Tax is not collected on fuel sold to the reservations.

### **Motor Fuel Refunds (10-47B-149, 10-47B-119) –**

10-47B-149. Monthly adjustment to motor fuel tax fund balance. At the beginning of each month, the secretary shall make adjustments to the motor fuel tax fund balance in the following manner:

(2) Transfer to the motor fuel tax refund fund an amount to pay motor fuel tax refunds for the current month;

10-47B-119. Tax refund to consumer for nonhighway use--Calculation of refund--Portion of refund deposited in value added agriculture subfund. Any motor fuel consumer may apply for and obtain a refund of fuel taxes imposed and paid to this state, for motor fuel purchased and used by consumers in motor vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes or used in motor vehicles or equipment for nonhighway commercial uses. The portion of this refund attributed to nonhighway use of motor vehicles shall be calculated by multiplying the motor vehicle's average miles per gallon during the claim period times the number of nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records and odometer readings. The portion of this refund attributed to nonhighway machinery and equipment shall be supported by individual vehicle fuel disbursement records. Three cents per gallon of each tax refund shall be deposited in the value added agriculture subfund created in § 1-16G-25. For the purposes of this section, the refund applies to any purchases of motor fuel made after July 1, 1999.

Source: SL 1995, ch 71, § 119; SL 1999, ch 5, § 3; SL 1999, ch 58, § 40.

*Brief Synopsis:* Tax refund to consumers for non-highway use. Applies to motor fuel purchased and used by consumers in motor vehicles, recreation vehicles, and farm equipment used for non-highway agricultural purposes or used in motor vehicles or equipment for non-highway commercial uses.

**Conservation Commission (10-47B-119, 10-47B-149) –**

10-47B-149. Monthly adjustment to motor fuel tax fund balance. At the beginning of each month, the secretary shall make adjustments to the motor fuel tax fund balance in the following manner:

(4) Transfer to the coordinated natural resources conservation fund an amount equal to thirty-five percent of the claimed refunds authorized by § 10-47B-119 for the preceding month, not to exceed a cumulative total of one million five hundred thousand dollars in any single fiscal year;

**Snowmobile Trails (10-47B-149) –**

10-47B-149. Monthly adjustment to motor fuel tax fund balance. At the beginning of each month, the secretary shall make adjustments to the motor fuel tax fund balance in the following manner:

(1) Each July transfer an amount to the snowmobile trails' fund equal to the product of multiplying the number of licensed snowmobiles as of July first, times one hundred twenty-five gallons, times the rate of tax provided for motor fuel under this chapter;

**Parks and Recreation (10-47B-149) -**

10-47B-149. Monthly adjustment to motor fuel tax fund balance. At the beginning of each month, the secretary shall make adjustments to the motor fuel tax fund balance in the following manner:

(5) Each July transfer to the parks and recreation fund an amount equal to the product of multiplying the number of licensed motorized boats as of the previous December thirty-first, times one hundred forty gallons, times the rate of tax provided for motor fuels under this chapter;

**10% GF&P Replacement Fees – (31-2-14.3)**

31-2-14.3. Annual appropriation to Department of Revenue and Regulation--Distribution. There is hereby appropriated each fiscal year from the state highway fund the sum of one million thirty-three thousand two hundred sixty-nine dollars and ten cents to the Department of Revenue and Regulation for distribution to the counties. The moneys shall be distributed to the counties in the same amounts as funds were distributed to the counties by the Department of Game, Fish and Parks for license fees in calendar year 1997, pursuant to § 41-6-70. The moneys shall be deposited in the special highway fund of each county. The secretary of revenue shall distribute the money prior to December thirty-first of each year.

Source: SL 1999, ch 59, § 11; SL 2003, ch 272, § 82.

**Aeronautics Fund (10-47B-150) –**

10-47B-150. Taxes used in airplanes and aircraft transferred to state aeronautics fund. The secretary shall ascertain the number of gallons of motor fuel and special fuel purchased, imported, received, or distributed each month in South Dakota for use in airplanes and aircraft and shall transfer the taxes collected thereon to the state aeronautics fund.

Source: SL 1995, ch 71, § 147.

**Rental Sales Tax Loss (32-5B-1.2) –**

32-5B-1.2. Leasing or rental company separate from dealership--Distinct name--Daily rental operations--Exemption from excise tax. Any leasing or rental company which operates within the principal place of business of a dealer, licensed pursuant to chapter 32-6B, is a business separate from the dealership for the purposes of this chapter. A leasing company shall title, license, and tax any leased vehicle which is leased for more than twenty-eight days in a name that is distinct and separate from that of the dealership name as indicated on the dealer license under chapter 32-6B. If the lessee is a rental company leasing vehicles for use in a daily rental operation, neither the lessor nor the lessee is required to pay the excise tax. In order to be exempt, the rental company shall be indicated on the title as the lessee. A rental company shall title and license any rental vehicle which is rented for twenty-eight days or less which is part of the rental company in a name that is distinct and separate from that of the dealership name as indicated on the dealer license under chapter 32-6B.

Source: SL 1986, ch 248, § 3; SL 1988, ch 246; SL 1993, ch 219, § 7; SL 1994, ch 245, § 4.

*Brief Synopsis:* A rental company leasing vehicles for use in a daily rental operation, neither the lessor nor the lessee is required to pay the excise tax.

**Distributor Allowances (10-47B-34) –**

10-47B-34. Percentage allowed to be retained to off-set administrative expenses of timely reporting. Any supplier or out-of-state supplier who properly remits tax under this chapter shall be allowed to retain an amount not to exceed two and one-fourth percent of the tax required to be paid on each gallon of fuel to this state. The amount to be retained is to help off-set the administrative expenses of timely reporting and payment of tax.

Source: SL 1995, ch 71, § 34.

*Brief Synopsis:* Any supplier can retain 2.25% of the tax to be paid to offset the administrative expense for timely reporting and to offset any losses by evaporation or temperature changes.

**Match STP Funds (31-6-9)**

31-6-9. Transportation Commission to match funds. The Transportation Commission shall provide sufficient funds from the state highway fund to match all federal-aid secondary funds used to construct a project under this chapter. This section shall be applicable to federal-aid secondary funds allocated to the counties after July 1, 1989.

Source: SL 1989, ch 251, § 5.