

**THIRD REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

LCB File No. R071-14

November 17, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-15, NRS 373.083.

A REGULATION relating to taxes imposed on special fuels; establishing the procedure by which certain persons who use special fuel in motor vehicles operated or intended to be operated interstate may submit to the Department of Motor Vehicles a request for reimbursement of certain local taxes imposed on special fuels; providing limitations on the sources from which reimbursements may be made and the total amount of money which may be used in any fiscal year to make reimbursements; establishing the amount of the fee which the Department will charge and collect from each person who submits a request for reimbursement; requiring the Department to establish and administer certain trust accounts for the purpose of paying requests for reimbursement which are approved by the Department; providing that the Department may investigate or conduct an examination or audit of a person who receives reimbursement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Assembly Bill No. 413 of the 2013 Legislative Session authorized the board of county commissioners of a county whose population is 700,000 or more and in which a regional transportation commission has been created and a county tax is imposed on motor vehicle fuel (currently Clark County) to impose, upon approval by a two-thirds majority of the members of the board, additional county taxes on motor vehicle fuel and various special fuels used in motor vehicles. (NRS 373.0663) The Board of County Commissioners of Clark County has imposed the additional taxes authorized by A.B. 413. In any county other than Clark County and Washoe County, upon approval by a majority of the voters at the general election in November 2016, A.B. 413 also requires the board of county commissioners to impose additional county taxes on motor vehicle fuel and various special fuels used in motor vehicles. (NRS 373.0667)

The Department of Motor Vehicles is a party to the International Fuel Tax Agreement (IFTA), a multistate agreement which facilitates the calculation and collection of certain fuel taxes from

interstate trucking companies and others who use special fuel (primarily diesel fuel) in vehicles operated or intended to operate interstate. (NRS 366.175) A.B. 413 requires certain special fuel users to file a return with the Department and requires the Department to adopt regulations establishing a system for auditing such returns to determine whether any amounts are owed by or to the special fuel user as a result of any additional taxes on special fuels authorized or required by A.B. 413. A.B. 413 also requires the Department to charge and collect a fee from the special fuel users who file a request for reimbursement with the Department. (NRS 373.083)

This regulation establishes a system for the submission by a special fuel user of a request for reimbursement of amounts owed to the special fuel user as a result of the additional taxes on special fuels authorized or required by A.B. 413. **Section 5** of this regulation authorizes a person who uses special fuel in a motor vehicle operated or intended to operate interstate and who files quarterly tax returns pursuant to IFTA to request reimbursement of any tax imposed by a county on special fuels pursuant to A.B. 413 for that portion of the special fuel purchased by the taxpayer which is consumed outside Nevada. **Section 5** also sets forth the requirements relating to the submission to the Department of a request for reimbursement. **Sections 6 and 7** of this regulation set forth certain requirements concerning the sources of and amounts of money from which reimbursement may be made. **Section 8** of this regulation establishes the amount of the fee (\$100) which the Department will charge and collect from each person who submits a request for reimbursement. **Section 9** of this regulation provides that the Department or any of its authorized agents may investigate or conduct an examination or audit of any person who submits a request for reimbursement: (1) to determine whether the taxpayer is eligible to receive reimbursement; and (2) to verify any information relating to the request for reimbursement submitted to the Department. **Section 9** also establishes recordkeeping requirements for information relating to any request for reimbursement. **Section 10** of this regulation provides that the Department may adjust the amount of any reimbursement received by a taxpayer if the Department determines after an audit or examination that the taxpayer was not eligible for the reimbursement.

Sections 11-14 of this regulation amend prospectively **sections 5-7 and 9** and become effective contingent on approval by the voters in a county other than Clark County or Washoe County of the ballot question placed on the ballot at the general election in November 2016, which authorizes the board of county commissioners to impose the taxes and the increases in those taxes authorized by NRS 373.0667.

Section 1. Chapter 373 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.

Sec. 3. "International Fuel Tax Agreement" means the agreement entered into by the Department on July 1, 1992, pursuant to NRS 366.175.

Sec. 4. "Taxpayer" means a person who uses special fuel in a motor vehicle operated or intended to operate interstate and who files a quarterly tax return pursuant to the International Fuel Tax Agreement.

Sec. 5. 1. A taxpayer may, in the manner prescribed by this chapter, request reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 or 373.0663 for that portion of the special fuel purchased by the taxpayer which is consumed outside this State.

2. A request for reimbursement of the tax imposed on special fuels pursuant to NRS 373.066 or 373.0663 must:

(a) Be submitted to the Department on a form prescribed by the Department.

(b) Be accompanied by payment of the fee prescribed by section 8 of this regulation.

(c) Be received by the Department not later than April 1 of the calendar year immediately following the calendar year for which the taxpayer is requesting reimbursement.

(d) Include a request for reimbursement of the tax imposed pursuant to NRS 373.066 or 373.0663 on all special fuels purchased by the taxpayer during the calendar year immediately preceding the date by which, pursuant to paragraph (c), the request must be received by the Department.

(e) Include evidence satisfactory to the Department that the taxpayer filed a quarterly tax return pursuant to the International Fuel Tax Agreement that corresponds to each quarter of the calendar year during which the special fuel was purchased and for which the taxpayer is requesting reimbursement.

(f) Include a copy of a fuel receipt meeting the requirements of subsection 3 or any other evidence satisfactory to the Department to establish the number of gallons of special fuel purchased by the taxpayer and for which the taxpayer is eligible for reimbursement.

(g) Include evidence satisfactory to the Department to establish the number of miles traveled outside this State.

3. A fuel receipt of which a copy is submitted pursuant to paragraph (f) of subsection 2 must be unaltered and:

(a) Include evidence of the purchase of special fuel in a county of this State which imposes a tax on special fuels pursuant to NRS 373.066 or 373.0663; and

(b) Meet the requirements for a fuel receipt set forth under the Articles of Agreement of the International Fuel Tax Agreement.

4. A request for reimbursement shall be deemed to be received by the Department:

(a) If delivered by mail, on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any other country upon an envelope properly addressed to the Department;

(b) If delivered by a private postal or courier service, on the business day last preceding the date of actual delivery to the Department; or

(c) If submitted electronically, on the date the request for reimbursement is received by the Department.

5. The Department will deny a request for reimbursement which is not received by the Department on or before the date specified in paragraph (c) of subsection 2.

Sec. 6. Upon timely receipt of a complete request submitted pursuant to this chapter for reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 or 373.0663 and receipt of any other information required by the Department, the Department will determine whether to grant or deny the request for reimbursement. If the Department approves a request for reimbursement of the tax imposed on special fuels pursuant to NRS 373.066 or 373.0663, for each county in which a tax is imposed on special fuels pursuant to NRS 373.066 or 373.0663:

1. The reimbursement must be paid only from money deposited into the trust account for the county during the current fiscal year in accordance with the provisions of section 7 of this regulation;

2. The total amount of money which must be paid by the county in any fiscal year to reimburse any amounts owed to taxpayers must not exceed 20 percent of the total amount of money collected by the county from any tax imposed on special fuels pursuant to NRS 373.066 or 373.0663; and

3. The reimbursement must not be paid from any money received by the county from any tax imposed pursuant to NRS 373.066 during the term of any bonds outstanding on June 12, 2013, secured by those taxes or of any bonds that refund such bonds, provided that the term of the refunding bonds is not longer than the term of the refunded bonds.

Sec. 7. 1. For each county in which a tax is imposed pursuant to NRS 373.0663, the Department will establish and administer an interest-bearing trust account and will deposit into the trust account an amount equal to 20 percent of the total amount of taxes collected by the county pursuant to NRS 373.0663 each month. After the expiration of the term of any bonds outstanding on June 12, 2013, secured by the proceeds of any tax imposed pursuant to NRS 373.066, for each county in which a tax is imposed pursuant to NRS 373.066, the Department will establish and administer an interest-bearing trust account and will deposit into the trust account an amount equal to 20 percent of the total amount of taxes collected by the county pursuant to NRS 373.066 each month.

2. Except as otherwise provided in subsection 4, the money deposited by the Department into any trust account created pursuant to subsection 1 must be used only to pay requests for reimbursement approved by the Department pursuant to section 6 of this regulation.

3. If in any year the total amount of requests for reimbursement approved by the Department exceeds the amount of money deposited into the trust account of the county during the current fiscal year, the Department will pay the approved requests for reimbursement on a pro rata basis. For the purposes of this subsection, “pro rata basis” means that the amount of each request for reimbursement approved by the Department will be proportionally reduced by multiplying the amount of reimbursement approved by the ratio of the total amount of money deposited into the trust account during the current fiscal year, exclusive of interest, divided by the total amount of requests for reimbursement approved by the Department.

4. At the end of each fiscal year and after the payment of all requests for reimbursement approved by the Department, the Department will distribute to each county for which a trust account has been created pursuant to subsection 1 any balance remaining in the trust account, including the amount of any accrued interest.

Sec. 8. 1. The Department will charge and collect from each taxpayer who submits a request for reimbursement pursuant to this chapter a nonrefundable fee of \$100 for each request. The fee must be paid to the Department using a method of payment accepted by the Department. The Department will not consider any request for reimbursement that is not accompanied by the fee required by this section.

2. If a check or other method of payment submitted to the Department for payment of the fee required by this section is returned to the Department or otherwise dishonored upon presentation for payment, the Department:

(a) Will charge an additional fee in the amount established by the State Controller pursuant to NRS 353C.115 for handling the check or other method of payment; and

(b) Except as otherwise provided in NRS 353.1467, may require that any future payments of the fee required by this section be made by cashier's check, traveler's check, money order or cash.

Sec. 9. 1. The Department or any of its authorized agents may investigate or conduct an examination or audit of any taxpayer who receives a reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 or 373.0663 to:

(a) Determine whether the taxpayer was eligible for the amount of reimbursement received; and

(b) Verify any supporting documentation relating to the request for reimbursement submitted by the taxpayer to the Department.

2. In investigating or conducting an examination or audit of any taxpayer who submits a request pursuant to this chapter for reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 or 373.0663, the Department or any of its authorized agents may examine any books, accounts and records, receipts, invoices and other documents or information relating to the request for reimbursement.

3. All the taxpayer's books, accounts and records, receipts, invoices and other documents and information relating to a request for reimbursement submitted pursuant to this chapter must be available for inspection by the Department or any of its authorized agents during normal business hours.

4. The fact that any of the books, accounts and records, receipts, invoices and other documents and information described in subsection 3 are not maintained in this State at the time of demand does not cause the Department to lose any right of examination at the time and place those documents and information become available.

5. All books, accounts and records, receipts, invoices and other documents and information used by a taxpayer to support a request for reimbursement submitted pursuant to this chapter must be maintained by the taxpayer for at least 4 years after the date on which the request for reimbursement was received by the Department.

Sec. 10. If the Department determines after an audit or examination conducted pursuant to section 9 of this regulation that a taxpayer is not eligible for the amount of reimbursement received, the Department may adjust the amount of reimbursement.

Sec. 11. Section 5 of this regulation is hereby amended to read as follows:

Sec. 5. 1. A taxpayer may, in the manner prescribed by this chapter, request reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 *or 373.0667* for that portion of the special fuel purchased by the taxpayer which is consumed outside this State.

2. A request for reimbursement of the tax imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 *or 373.0667* must:

(a) Be submitted to the Department on a form prescribed by the Department.

(b) Be accompanied by payment of the fee prescribed by section 8 of this regulation.

(c) Be received by the Department not later than April 1 of the calendar year immediately following the calendar year for which the taxpayer is requesting reimbursement.

(d) Include a request for reimbursement of the tax imposed pursuant to NRS 373.066 , ~~or~~ 373.0663 *or 373.0667* on all special fuels purchased by the taxpayer during the calendar year immediately preceding the date by which, pursuant to paragraph (c), the request must be received by the Department.

(e) Include evidence satisfactory to the Department that the taxpayer filed a quarterly tax return pursuant to the International Fuel Tax Agreement that corresponds to each quarter of the calendar year during which the special fuel was purchased and for which the taxpayer is requesting reimbursement.

(f) Include a copy of a fuel receipt meeting the requirements of subsection 3 or any other evidence satisfactory to the Department to establish the number of gallons of special fuel purchased by the taxpayer and for which the taxpayer is eligible for reimbursement.

(g) Include evidence satisfactory to the Department to establish the number of miles traveled outside this State.

3. A fuel receipt of which a copy is submitted pursuant to paragraph (f) of subsection 2 must be unaltered and:

(a) Include evidence of the purchase of special fuel in a county of this State which imposes a tax on special fuels pursuant to NRS 373.066 , ~~373.0663~~ ~~or~~ **373.0667**; and

(b) Meet the requirements for a fuel receipt set forth under the Articles of Agreement of the International Fuel Tax Agreement.

4. A request for reimbursement shall be deemed to be received by the Department:

(a) If delivered by mail, on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any other country upon an envelope properly addressed to the Department;

(b) If delivered by a private postal or courier service, on the business day last preceding the date of actual delivery to the Department; or

(c) If submitted electronically, on the date the request for reimbursement is received by the Department.

5. The Department will deny a request for reimbursement which is not received by the Department on or before the date specified in paragraph (c) of subsection 2.

Sec. 12. Section 6 of this regulation is hereby amended to read as follows:

Sec. 6. Upon timely receipt of a complete request submitted pursuant to this chapter for reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 *or 373.0667* and receipt of any other information required by the Department, the Department will determine whether to grant or deny the request for reimbursement. If the Department approves a request for reimbursement of the tax imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 ~~or~~ *373.0667*, for each county in which a tax is imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 ~~or~~ *373.0667*:

1. The reimbursement must be paid only from money deposited into the trust account for the county during the current fiscal year in accordance with the provisions of section 7 of this regulation;

2. The total amount of money which must be paid by the county in any fiscal year to reimburse any amounts owed to taxpayers must not exceed 20 percent of the total amount of money collected by the county from any tax imposed on special fuels pursuant to NRS 373.066 , ~~or~~ 373.0663 ~~or~~ *373.0667*; and

3. The reimbursement must not be paid from any money received by the county from any tax imposed pursuant to NRS 373.066 during the term of any bonds outstanding on June 12, 2013, secured by those taxes or of any bonds that refund such bonds, provided that the term of the refunding bonds is not longer than the term of the refunded bonds.

Sec. 13. Section 7 of this regulation is hereby amended to read as follows:

Sec. 7. 1. For each county in which a tax is imposed pursuant to NRS 373.0663 ~~or~~ *373.0667*, the Department will establish and administer an interest-bearing trust account

and will deposit into the trust account an amount equal to 20 percent of the total amount of taxes collected by the county pursuant to NRS 373.0663 *or 373.0667, as applicable*, each month. After the expiration of the term of any bonds outstanding on June 12, 2013, secured by the proceeds of any tax imposed pursuant to NRS 373.066, for each county in which a tax is imposed pursuant to NRS 373.066, the Department will establish and administer an interest-bearing trust account and will deposit into the trust account an amount equal to 20 percent of the total amount of taxes collected by the county pursuant to NRS 373.066 each month.

2. Except as otherwise provided in subsection 4, the money deposited by the Department into any trust account created pursuant to subsection 1 must be used only to pay requests for reimbursement approved by the Department pursuant to section 6 of this regulation.

3. If in any year the total amount of requests for reimbursement approved by the Department exceeds the amount of money deposited into the trust account of the county during the current fiscal year, the Department will pay the approved requests for reimbursement on a pro rata basis. For the purposes of this subsection, “pro rata basis” means that the amount of each request for reimbursement approved by the Department will be proportionally reduced by multiplying the amount of reimbursement approved by the ratio of the total amount of money deposited into the trust account during the current fiscal year, exclusive of interest, divided by the total amount of requests for reimbursement approved by the Department.

4. At the end of each fiscal year and after the payment of all requests for reimbursement approved by the Department, the Department will distribute to each county for which a trust account has been created pursuant to subsection 1 any balance remaining in the trust account, including the amount of any accrued interest.

Sec. 14. Section 9 of this regulation is hereby amended to read as follows:

Sec. 9. 1. The Department or any of its authorized agents may investigate or conduct an examination or audit of any taxpayer who receives a reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 , ~~373.0663~~ *or 373.0667* to:

(a) Determine whether the taxpayer was eligible for the amount of reimbursement received; and

(b) Verify any supporting documentation relating to the request for reimbursement submitted by the taxpayer to the Department.

2. In investigating or conducting an examination or audit of any taxpayer who submits a request pursuant to this chapter for reimbursement of any tax imposed on special fuels pursuant to NRS 373.066 , ~~373.0663~~ *or 373.0667*, the Department or any of its authorized agents may examine any books, accounts and records, receipts, invoices and other documents or information relating to the request for reimbursement.

3. All the taxpayer's books, accounts and records, receipts, invoices and other documents and information relating to a request for reimbursement submitted pursuant to this chapter must be available for inspection by the Department or any of its authorized agents during normal business hours.

4. The fact that any of the books, accounts and records, receipts, invoices and other documents and information described in subsection 3 are not maintained in this State at the time of demand does not cause the Department to lose any right of examination at the time and place those documents and information become available.

5. All books, accounts and records, receipts, invoices and other documents and information used by a taxpayer to support a request for reimbursement submitted pursuant to this chapter must be maintained by the taxpayer for at least 4 years after the date on which the request for reimbursement was received by the Department.

Sec. 15. 1. This section and sections 1 to 10, inclusive, of this regulation become effective upon filing with the Secretary of State.

2. Sections 11 to 14, inclusive, of this regulation become effective on January 1, 2017, for each county in which a majority of the registered voters in the county voting on the question placed on the ballot pursuant to subsection 2 of section 13 of chapter 540, Statutes of Nevada 2013, at page 3586, approve the question authorizing the board of county commissioners to impose, for the period beginning on January 1, 2017, and ending on December 31, 2026, the taxes and the increases in those taxes authorized by NRS 373.0667.