

ENROLLED ACT NO. 25, HOUSE OF REPRESENTATIVES

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2015 GENERAL SESSION

AN ACT relating to fuel tax; providing for taxation of alternative fuel as specified; providing exemptions; providing for collection and distribution of the tax; requiring a decal for electric vehicles; requiring reporting as specified; providing rulemaking authority; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-17-301 through 39-17-311 is created to read:

ARTICLE 3

ALTERNATIVE FUEL TAXES

39-17-301. Definitions.

(a) As used in this article:

(i) "Accountable product" means any product that is subject to the reporting requirements of this state, regardless of its intended use or taxability;

(ii) "Agricultural purposes" means the cultivation of soil, raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, grazing, training and management of livestock, bees, poultry, furbearing animals and wildlife for gain, sale or profit, but excluding a custom operation;

(iii) "Alternative fuels" includes pure methanol, ethanol and other alcohols, blends of eighty-five percent (85%) or more of alcohol with gasoline, natural gas, liquid fuels produced from natural gas, liquefied petroleum gas or propane, coal-derived liquid fuels,

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hydrogen, electricity, pure biodiesel (B100), fuels other than alcohol which are derived from biological materials, renewable diesel and P-Series fuels. The state of Wyoming may designate other fuels as alternative fuels if not previously defined as fuels under this chapter;

(iv) "Billed gallons" means the gallons, gasoline gallon equivalent (GGE) or diesel gallon equivalent (DGE) billed to the customer;

(v) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids generally derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751 for use in diesel engines;

(vi) "Biodiesel blend" means a blend of biodiesel fuel meeting ASTM D6751 with petroleum based diesel fuel, designated Bxx, where xx represents the volume percentage of biodiesel fuel in the blend. The department shall promulgate rules to designate xx for the purposes of this article;

(vii) "Bulk alternative fuel" means thirty-five (35) gallons or more or the gasoline gallon equivalent, diesel gallon equivalent or gasoline gallon equivalent for electricity delivered at one (1) time, excluding alternative fuels delivered into the attached tanks or auxiliary tanks of a licensed motor vehicle;

(viii) "Bulk plant" means a fuel storage and distribution facility, other than a terminal, from which accountable product may be removed at a rack;

(ix) "Common carrier" means a person, including a railroad operator, who transports accountable product and who does not own the product;

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(x) "Commercial vehicle" means as defined in W.S. 31-1-101(a)(i);

(xi) "Compressed natural gas" or "CNG" means natural gas which is compressed and stored in high-pressure containers. It is used as a fuel for natural gas-powered vehicles;

(xii) "Custom operation" means any agricultural purpose done for hire;

(xiii) "Dealer" means any person who sells or offers to sell alternative fuel at a specific location in this state, including any person selling or offering to sell alternative fuel at Wyoming airports;

(xiv) "Department" means the department of transportation;

(xv) "Diesel gallon equivalent" or "DGE" means the diesel gallon equivalent applied to liquefied natural gas in the amount of six and six hundredths (6.06) pounds of liquefied natural gas;

(xvi) "Dispenser" means the point of taxation for compressed natural gas and liquefied natural gas. The "dispenser" is the point where the gas is delivered into the fuel supply tank of a motor vehicle;

(xvii) "Distributor" means any person, other than a dealer, who receives alternative fuel or blends fuel used to propel a motor vehicle for distribution or resale in this state;

(xviii) "E-85" means an accountable product resulting from an eighty-five percent (85%) ethanol and

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fifteen percent (15%) blend of gasoline or which otherwise conforms to the standards as provided in W.S. 40-7-102(a) (xxvi);

(xix) "Electric energy" means the amount of work accomplished by electrical power, usually measured in kilowatt hours (kWh);

(xx) "End user" means any person who uses alternative fuel within this state for the generation of power to propel a motor vehicle upon a highway;

(xxi) "Ethanol" means a colorless, odorless liquid produced synthetically by cracking ethane using ethane from natural gas or naphtha from crude oil, by fermentation from crop biomass such as sugar and corn or from waste products such as household waste and paper mill sludge through chemical decomposition and fermentation. "Ethanol" is also known as ethyl-alcohol or alcohol;

(xxii) "Export" means to obtain alternative fuel used to propel a motor vehicle in this state for sale or other distribution in another state. Alternative fuel delivered out of the state of Wyoming by or for the purchaser constitutes an export by the purchaser;

(xxiii) "Exporter" means a person, other than a supplier, who purchases alternative fuel used to propel a motor vehicle in this state for the purpose of transporting or delivering, other than in the fuel supply tank of a motor vehicle, the alternative fuel to another jurisdiction;

(xxiv) "Gallon" means a gallon as measured on a gross basis as defined in this section;

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(xxv) "Gasoline gallon equivalent" or "GGE" means the gasoline gallon equivalent applied to nonliquefied compressed natural gas in the amount of five and sixty-six hundredths (5.66) pounds of compressed natural gas. The gasoline gallon equivalent applied to electricity is 33.56 kilowatt hours (kWh);

(xxvi) "Gross gallon" means a measured gallon without temperature or barometric adjustments;

(xxvii) "Highway" means any road, thoroughfare or public way of any kind in Wyoming except United States forest service development roads and any public highway which is required to be maintained entirely at private expense;

(xxviii) "Hybrid electric vehicle" means a vehicle that uses two (2) or more distinct power sources to move the vehicle. "Hybrid electric vehicle" includes a vehicle which includes an internal combustion engine and one (1) or more electric motors but vehicles which use other mechanisms to capture and use energy may also be included;

(xxix) "Hydrogen" means the chemical element which can be used as a fuel;

(xxx) "Import" means to bring alternative fuel for use as a motor vehicle fuel into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle. Alternative fuel delivered into this state from out of state by or for the seller constitutes an import by the seller, and alternative fuel delivered by or for the purchaser constitutes an import for the purchaser;

(xxxii) "Importer" means a person, other than a supplier, who purchases alternative fuel outside of this

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state for the purpose of transporting or delivering, other than in the fuel supply tank of a motor vehicle, the alternative fuel into this state for sale, use or distribution within this state as a motor vehicle fuel;

(xxxii) "Lessor" means any person who, under the terms of a lease, grants the legal right of possession, control of and responsibility for the operation of a vehicle to another person;

(xxxiii) "Liquefied natural gas" or "LNG" means natural gas, primarily methane, which has been liquefied by reducing its temperature to negative two hundred sixty (-260) degrees Fahrenheit at atmospheric pressure;

(xxxiv) "Liquid petroleum gas" or "LPG" means a gaseous product that has been compressed until it is transformed to a liquid and consists primarily of propane, propylene, butane and butylene in various mixtures. The components of LPG are gases at normal temperature and pressures;

(xxxv) "Methanol" means the clear, colorless liquid which is flammable and used as a fuel or fuel additive;

(xxxvi) "Motor vehicle" means as defined in W.S. 31-1-101(a)(xv);

(xxxvii) "P-series fuel" means liquid blend fuels used either alone or mixed with gasoline in any proportion;

(xxxviii) "Plug-in electric vehicle" means any motor vehicle which can be recharged from any external source of electricity, including a wall socket, and the electricity stored in the rechargeable battery drives or

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contributes to drive the wheels of the vehicle. "Plug-in electric vehicle" does not include a hybrid vehicle;

(xxxix) "Point of taxation" means the point within the fuel supply chain where the tax is collected;

(xl) "Position holder" means, with respect to alternative fuel in a terminal, the person who holds the inventory position in the alternative fuel as reflected on the records of the terminal operator. A person holds the inventory position when that person has a contractual agreement with the terminal operator for use of the storage facilities or other terminal related services at a terminal with respect to alternative fuel. "Position holder" includes a terminal operator who owns alternative fuel in a terminal;

(xli) "Rack" means a mechanism for delivering alternative fuel from a refinery or terminal into a transport truck, railroad car or other means of transfer which is outside of the terminal transfer system. For compressed natural gas, liquefied natural gas and liquefied petroleum gas the rack is defined as the dispenser;

(xlii) "Refiner" means any person who produces, refines, manufactures, blends or compounds alternative fuel in this state if the alternative fuel is used to propel a motor vehicle;

(xlili) "Renewable diesel", often referred to as "green diesel" or "second generation diesel", refers to petrodiesel-like fuels derived from biological sources that are chemically not esters and thus distinct from biodiesel. Renewable diesel is chemically the same as petrodiesel, but it is made of biomass;

(xliv) "Supplier" means a person who is:

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(A) Subject to the general taxing jurisdiction of this state;

(B) Registered pursuant to section 4101 of the federal Internal Revenue Code for transactions in alternative fuels in the bulk transfer/terminal distribution system; and

(C) One (1) of the following:

(I) The position holder in a terminal or refinery in this state;

(II) An importer of alternative fuel into this state from another jurisdiction;

(III) A person who acquires alternative fuel from a terminal or refinery from a position holder pursuant to a two-party exchange; or

(IV) The position holder in a terminal or refinery outside this state with respect to alternative fuel which that person imports into this state on the account of that person.

(D) "Supplier" also includes a person who produces alternative fuel used to propel a motor vehicle in this state, alternative fuel used to propel a motor vehicle for import into this state into a terminal or acquires fuel through import by truck or railcar into a terminal or refinery.

(xlv) "Terminal" means an alternative fuel storage and distribution facility that is supplied by pipeline or vessel, and from which alternative fuel may be removed at a rack;

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(xlvi) "Terminal operator" means any person who owns, operates or otherwise controls a terminal;

(xlvii) "Use" or "used" means the consumption of alternative fuel in a motor vehicle upon a highway and includes the reception of alternative fuel into any tank on a motor vehicle which is used by the engine that generates motive power for the vehicle;

(xlviii) "User" means any person who uses alternative fuel within this state in an internal combustion engine for the generation of power to propel a motor vehicle upon a highway;

(xlix) "This article" means W.S. 39-17-301 through 39-17-311.

(b) As used in this chapter, "motor fuels" means gasoline as defined in W.S. 39-17-101(a)(xii), diesel fuel as defined in W.S. 39-17-201(a)(xxi), and alternative fuels as defined in W.S. 39-17-301(a)(iii).

39-17-302. Administration; confidentiality.

(a) The administration of this article is vested in the department which shall prescribe the reporting format and forms for the making of returns, and assessment and collection of license taxes and fees hereby imposed. The department shall promulgate rules and regulations consistent with the provisions hereof as provided by the Wyoming Administrative Procedure Act necessary to the enforcement of the provisions of this article. All tax returns and records are open to examination by the director of the state department of audit or his deputies.

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(b) No state employee who by virtue of his employment has knowledge of the business affairs of any person filing or required to file any tax returns under this article shall make known its contents in any manner or permit any person to have access to any returns or information contained therein except as provided by law or in the following cases:

(i) The delivery to the taxpayer or his legal representatives upon written request of a copy of any return or report in connection with his tax;

(ii) The publication of statistics so classified to prevent the identification of particular returns or reports;

(iii) The inspection by the attorney general of the report or return of any person who brings an action against the state, or against whom an action is contemplated or has been instituted;

(iv) The introduction into evidence of any report or return or information there from in any administrative or court proceeding to which the person making the report or return is a party;

(v) The furnishing of any information to the United States government and its territories, the District of Columbia, any state allowing similar privileges to the department or to the multistate tax commission for relay to tax officials of cooperating states. Information furnished shall be only for tax purposes;

(vi) The inspection of tax returns and records by the department of audit.

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(c) Any person who violates subsection (b) of this section is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000.00), imprisoned for not more than one (1) year, or both.

(d) The department may enter into cooperative agreements with other jurisdictions, for the exchange of information and auditing of users of alternative fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or declaration of amendment is not effective until stated in writing and filed with the department.

(e) An agreement may provide for determining the base jurisdiction for users, users records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of alternative fuel taxes and penalties to another member jurisdiction, paying interest on certain refund requests and other provisions as will facilitate the administration of the agreement.

(f) The department may, as required by the terms of an agreement, forward to officers or agents of another jurisdiction any information in the department's possession relative to the manufacture, receipts, sale, use, transportation or shipment of alternative fuels by any person. The department may disclose to officers or agents of another member jurisdiction the location of officers, motor vehicles and other real and personal property of users of alternative fuels.

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(g) An agreement may provide for each member jurisdiction to audit the records of persons based in the jurisdiction to determine if the alternative fuel taxes due each jurisdiction are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of alternative fuels. For persons not based in this state and who have taxable use of alternative fuels in this state, the department may serve the audit findings received from another jurisdiction, in the form of an assessment, on the person as though an audit was conducted by the department.

(h) Any agreement entered into pursuant to this section does not preclude the department from auditing the records of any licensee under this chapter.

(j) If the department enters into any agreement under the authority of this section and the provisions set forth in the agreement are in conflict with any rules or regulations promulgated by the department, the agreement provisions prevail.

39-17-303. Imposition.

(a) Taxable event. The following shall apply:

(i) There is levied and shall be collected a license tax on all alternative fuel used, sold or distributed for sale or use in this state except for those fuels exempted under W.S. 39-17-305;

(ii) The tax imposed by W.S. 39-17-304(a)(iii) shall cease to be collected on the first day of the third month following the date the department of environmental quality notifies the director of the department of transportation that the balance of the corrective action

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account created by W.S. 35-11-1424 exceeds seventeen million dollars (\$17,000,000.00) and the environmental pollution financial responsibility account created by W.S. 35-11-1427 exceeds one million dollars (\$1,000,000.00). The tax shall again be collected beginning on the first day of the third month following the date the department of environmental quality notifies the director of the department of transportation that the balance of the corrective action account has fallen below eleven million dollars (\$11,000,000.00).

(b) Basis of tax. The following shall apply:

(i) The state of Wyoming preempts the field of imposing taxes upon sales of alternative fuels used to propel a motor vehicle and no city, town or county may levy or collect taxes upon the sales of alternative fuels to propel a motor vehicle;

(ii) The taxes imposed on alternative fuel shall be conclusively presumed to be a direct tax on the ultimate or retail consumer. When taxes are paid by any person other than the ultimate or retail consumer, the payment shall be considered as pre-collected and as an advance payment of the purpose of convenience and facility to the consumer and shall thereafter be added to the price of the alternative fuel and recovered from the ultimate or retail consumer, regardless of where or how the taxable fuel is ultimately consumed;

(iii) Any user not otherwise required to be licensed and report the tax levied pursuant to this section under the provisions of W.S. 39-17-306 or 39-17-307 shall be required to be licensed and report all taxes due under this section pursuant to the provisions of W.S. 39-17-306 and 39-17-307;

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(iv) When a supplier, distributor, refiner, importer or exporter imports alternative fuel into or exports alternative fuel from the state of Wyoming in the fuel supply tanks of motor vehicles, the amount of alternative fuel consumed in the vehicles on Wyoming highways shall be deemed to be the product of the total amount of the alternative fuel consumed in his entire operations within and without this state times the total number of miles traveled on the highways within this state divided by the total number of miles traveled within and without this state. In the absence of mileage records, the department may by rule promulgated pursuant to W.S. 39-17-302(a) adopt the mileage basis for determining the taxable use of alternative fuel used in those motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Wyoming. In the absence of records showing the number of miles actually operated per gallon of alternative fuel consumed, it shall be presumed that not less than one (1) gallon, gasoline gallon equivalent (GGE) or diesel gallon equivalent (DGE) of alternative fuel was consumed for every four (4) miles traveled;

(v) A Wyoming licensed supplier, distributor, refiner or importer who is unable to recover the license taxes due from a bulk sale to a licensee who is other than an end user and is not owned, rented or leased by the supplier, distributor, refiner or importer requesting the credit is not liable for the taxes and may credit the amount of unpaid taxes against a later remittance of taxes required under W.S. 39-17-304(a)(i). The department shall promulgate rules to implement this paragraph.

(c) Taxpayer. The following shall apply:

(i) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of

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alternative fuel or the purchaser's agent concerning the destination state of alternative fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

39-17-304. Taxation rate.

(a) Except as otherwise provided by this section and W.S. 39-17-305, the total tax on alternative fuel used to propel a motor vehicle shall be twenty-four cents (\$.24) per gallon. The gasoline gallon equivalent (GGE) shall be used for compressed natural gas, liquid petroleum gas or electricity. The diesel gallon equivalent (DGE) shall be used for liquefied natural gas or renewable diesel. The rate shall be imposed as follows:

(i) There is levied and shall be collected a license tax of twenty-three cents (\$.23) per gallon, gasoline gallon equivalent or diesel gallon equivalent as appropriate on all alternative fuel used, sold or distributed for sale or use in this state to propel a motor vehicle except for those fuels exempted under W.S. 39-17-305;

(ii) Notwithstanding paragraph (i) of this subsection, alternative fuel sold for use in aircraft shall be taxed at four cents (\$.04) per gallon, gasoline gallon equivalent or diesel gallon equivalent as appropriate except for those fuels exempted under W.S. 39-17-305;

(iii) In addition to the tax collected pursuant to paragraphs (i) and (ii) of this subsection, there is levied and shall be collected a license tax of one cent (\$.01) per gallon, gasoline gallon equivalent or diesel gallon equivalent as appropriate on all alternative fuel used, sold or distributed for sale or use in this state to

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propel a motor vehicle except for those fuels exempted under W.S. 39-17-305(a).

39-17-305. Exemptions.

(a) Alternative fuel sold for the purposes of propelling a motor vehicle at a Wyoming terminal rack for export by a person licensed as an exporter in this state is exempt from the license tax imposed under W.S. 39-17-304(a)(i) through (iii). This exemption shall not apply to fuel in the supply tank of a motor vehicle. The exempt sales shall be reported on or before the last day of the month in a format required by the department. The sales reports are invalid if not submitted to the department within one (1) year following date of sale.

(b) Exchanges or sales of alternative fuel which is sold for the purposes of propelling a motor vehicle between suppliers are exempt from the license tax imposed under W.S. 39-17-304(a)(i) through (iii). Alternative fuel directly exported, other than in the fuel supply tank of a motor vehicle, by a supplier is exempt from the license taxes under this article.

39-17-306. Licenses; permits.

(a) Each alternative fuel supplier, refiner, distributor, terminal operator, importer or exporter of alternative fuel used to propel a motor vehicle shall obtain an annual license from the department to conduct business in this state. Prior to commencing business the supplier, distributor, terminal operator, importer, exporter or refiner shall file an application with the department on forms prescribed and furnished by the department containing the information specified therein. The fee for each type of license is twenty-five dollars (\$25.00). The department may revoke any license granted

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under this section upon proof of violation of any provision of this article.

(b) Each alternative fuel dealer shall obtain an annual license from the department to conduct business in this state. Prior to commencing business the dealer shall file an application with the department on forms prescribed and furnished by the department containing the information specified therein. The application for the license shall state the location of each place where alternative fuel is to be sold or offered for sale. The license shall be used only for one (1) specific location by the dealer in whose name it is issued. The license is valid for one (1) year unless surrendered by the dealer for nonuse or revoked by the department. The dealer shall immediately return the license upon the sale or discontinuance of any licensed location. The license fee is twenty-five dollars (\$25.00) for each location. The department may revoke any license granted under this subsection upon proof of violation of any provision of this article.

(c) The department may enter into reciprocal agreements with other jurisdictions for the licensing of persons under this section who have been licensed under a similar law in another jurisdiction.

(d) The department may require bonds, or accept in lieu of a bond a certificate of deposit meeting the requirements of paragraph (vi) of this subsection, under this article as follows:

(i) When a distributor, supplier or dealer who has been in business for one (1) year or longer and has established a good filing record which is complete, accurate and timely with the department violates a provision of this article, the distributor, supplier or

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dealer shall file a bond with the department equal to the sum of the last available six (6) months tax liability;

(ii) The bond shall be executed with a corporate surety duly licensed to do business in this state. In lieu of a corporate surety bond, the department may accept a cash bond made payable to the department. Any interest earned on a cash bond shall accrue to the licensee. The bond shall be:

(A) Approved as to form by the Wyoming attorney general;

(B) Made payable to the department;

(C) Guarantee payment of delinquent taxes, penalties and interest due under this article and the return of the license issued under this article;

(D) Conditioned on the applicant not practicing any fraud, making any fraudulent representation or violating any law relating to the conduct of the business for which the applicant is licensed under this article.

(iii) The department may require a bond from any licensee whose license has been revoked or who violates any provision of this article. Any licensee who fails to file any report required under this article, remits insufficient funds or is delinquent in filing any two (2) times in a preceding twelve (12) month period shall be required to post a bond as provided in this subsection. Such bond may be waived by the department after a demonstration of a good filing record which is complete, accurate and timely by the licensee for a twelve (12) month period;

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(iv) Failure to post the required bond or certificate of deposit under this subsection shall result in the denial of a license;

(v) In lieu of a surety or cash bond the department may accept a certificate of deposit under the following requirements:

(A) The certificate of deposit:

(I) Shall be issued by a financial institution authorized to do business in Wyoming and qualified by law to act as a depository of public funds in this state;

(II) Shall be payable not more than one (1) year after being deposited with the department.

(B) The department shall be given a first priority security interest in the certificate of deposit. The certificate of deposit shall not be subject to attachment or execution unless the attachment or execution arises out of a suit for delinquent taxes, penalties and interest due under this article and the return of the license issued under this article. The entire amount of the certificate of deposit shall be forfeited to the state if the licensee practices any fraud, makes any fraudulent representation or violates any law relating to the conduct of the business for which he is licensed under this article;

(C) The certificate of deposit and related documents providing for the security interest and forfeiture shall be approved as to form by the Wyoming attorney general;

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(D) The licensee shall pay all cost incurred by the department to perfect its security interest;

(E) Any interest earned on a certificate of deposit shall accrue to the licensee.

(e) No person shall operate a commercial vehicle as defined in W.S. 31-18-101(a)(iii) between Wyoming and other jurisdictions unless the person has a valid international fuel tax agreement license and decals pursuant to W.S. 31-18-502 or a temporary permit under W.S. 31-18-201.

(f) Each applicant for an international fuel tax agreement license and decals shall file an application in a form and manner prescribed by the department and pay the applicable fees for the license and a decal as prescribed by the department pursuant to W.S. 31-18-502.

39-17-307. Compliance; collection procedures.

(a) Returns and reports. The following shall apply:

(i) On or before the last day of each month:

(A) When alternative fuel is purchased to propel a motor vehicle or distributed in Wyoming from a Wyoming licensed supplier, the supplier shall report, using the appropriate equivalency formula, to the department all gallons sold in the state during the preceding calendar month and remit all taxes due for alternative fuel sold to an end user;

(B) When alternative fuel is purchased out of Wyoming for use, sale or distribution to propel a motor vehicle in Wyoming, the Wyoming licensed supplier shall report, using the appropriate equivalency formula, to the

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department all gallons used, sold or distributed during the preceding calendar month and remit all taxes due under this article for fuel sold to an end user;

(C) Each Wyoming licensed supplier with a Wyoming retail location shall report, using the appropriate equivalency formula, to the department all gallons of alternative fuel used to propel a motor vehicle during the preceding calendar month and remit taxes due under this article for fuel sold to an end user or a retail location;

(D) When alternative fuel is purchased in Wyoming from a Wyoming licensed refiner, the refiner shall report, using the appropriate equivalency formula, to the department all gallons used, sold or distributed during the preceding calendar month and remit all taxes due for fuel sold to an end user;

(E) Each Wyoming licensed distributor, importer, exporter with Wyoming retail locations shall report, using the appropriate equivalency formula, to the department all gallons of alternative fuel imported and used to propel a motor vehicle during the preceding calendar month and remit taxes due under this article for fuel sold to an end user or a retail location;

(F) Each Wyoming licensed importer shall report, using the appropriate equivalency formula, to the department all gallons imported and used to propel a motor vehicle during the preceding calendar month and remit taxes due under this article for fuel sold to an end user unless the tax has been paid to an out-of-state licensed supplier;

(G) Any person acquiring biodiesel (B100), ethanol or other alcohols, methanol, butane or other blending components to blend with gasoline, diesel or alternative fuels shall report to the department all

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gallons of biodiesel (B100) ethanol or other alcohols, and methanol, butane or other blending components, purchased and blended during the preceding calendar month and remit all additional taxes due.

(ii) Each person transporting, conveying or bringing alternative fuel used to propel a motor vehicle into this state for sale, use or distribution in this state shall furnish the department a verified statement showing the number of gallons, using the appropriate equivalency formula, of alternative fuel delivered during the month preceding the report, the name of the person to whom the delivery was made and the place of delivery;

(iii) Each person who exports alternative fuel from this state shall report the number of gallons exported, using the appropriate equivalency formula, the destination state and the name of the person to whom exported;

(iv) On or before the last day of each month:

(A) Each dealer, who is not licensed as a distributor, shall submit a statement to the department in a format required by the department showing the number of gallons, gasoline gallon equivalent or diesel gallon equivalent of alternative fuel acquired, the person who supplied the alternative fuel and the total gallons or gallon equivalents sold during the preceding calendar month and remit any taxes due if the point of taxation is at the dispenser;

(B) Each distributor or importer shall, if applicable, submit a statement to the department in a format required by the department for the preceding calendar month for the purpose of obtaining a refund from the department for taxes paid pursuant to this section.

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(v) A person shall not transport alternative fuel used to propel a motor vehicle by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A shipping document issued by a terminal operator or the operator of a bulk plant shall contain the following information:

(A) The identification, including address, of the terminal or bulk plant from which the alternative fuel was received;

(B) The date the alternative fuel was removed;

(C) The amount of alternative fuel removed, indicating gross gallons and net gallons or the equivalent amount based on the gasoline gallon equivalent or diesel gallon equivalent;

(D) The destination state of the alternative fuel, as represented to the terminal operator by the transporter, the shipper or the shipper's agent;

(E) The name of the shipper of the alternative fuel within the bulk plant or terminal;

(F) The consignee's name and address;

(G) The transporter's name;

(H) Any other information required by the department for the enforcement of this article.

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(vi) A person to whom a shipping document was issued for the shipment of alternative fuel used to propel a motor vehicle shall:

(A) Carry the shipping document in the conveyance for which it was issued when transporting the alternative fuel;

(B) Show the shipping document to a law enforcement officer or authorized personnel of the department upon request;

(C) Deliver the alternative fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

(I) Notifies the department when transporting the alternative fuel into a state other than the printed destination state that the person has received instructions for if the shipping document was issued to deliver the alternative fuel to a different destination state;

(II) Writes on the shipping document the change in destination state;

(III) Gives a copy of the shipping document to the distributor or other person to whom the alternative fuel is delivered.

(vii) A person to whom alternative fuel used to propel a motor vehicle is delivered by railroad tank car or transport truck shall not accept delivery of the alternative fuel if the destination state shown on the shipping document for the alternative fuel is a state other than Wyoming. The person to whom the alternative fuel is

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delivered shall examine the shipping document and keep a copy of the shipping document;

(viii) Each supplier, refiner, terminal operator, importer, exporter, distributor and dealer shall keep and preserve records relating to the purchase and sale of alternative fuel for three (3) years. The department may, by rule and regulation, authorize alternate methods of preserving the records required under this section;

(ix) Each person transporting, conveying or importing alternative fuel into the state or producing, refining, manufacturing, blending or compounding and using, selling or distributing alternative fuel for sale or use in this state shall keep and preserve the records relating to the purchase or sale of alternative fuel for three (3) years;

(x) On or before the last day of the month following each calendar quarter, each carrier licensed under the provisions of the international fuel tax agreement shall file, in a format required by the department, a report indicating the total number of miles traveled in all jurisdictions by the carrier's vehicles subject to the tax under this article, the total number of miles traveled by those vehicles in this state, the amount of alternative fuel used by those vehicles in all jurisdictions, the amount of tax under this article paid during the calendar quarter and any other information required by the department to compute the carrier's tax liability. The carrier shall pay all taxes due under this article at the time the report is filed. If the tax on alternative fuel imported in the fuel supply tanks of motor vehicles for taxable use on Wyoming highways can be more accurately determined on a mileage basis, the department may approve and adopt that basis. In the absence of mileage records showing the number of miles actually operated per

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gasoline gallon equivalent or diesel gallon equivalent of alternative fuel consumed, it shall be presumed that not less than one (1) gasoline gallon equivalent or diesel gallon equivalent was consumed for every four (4) miles traveled.

(b) Payment. The following shall apply:

(i) On or before the last day of each month every supplier, refiner, terminal operator, importer and dealer shall pay to the department all license taxes imposed by this article which are due based upon the statement submitted under W.S. 39-17-307(a)(i). Payment may be made by electronic funds transfer;

(ii) The supplier, refiner or importer shall not require payment from the distributor of the license taxes imposed under this article until three (3) business days prior to the date which the taxes are required to be remitted to the state by the supplier, refiner or importer. A licensed distributor may elect to make delayed payments to a licensed supplier, refiner or importer, provided:

(A) If the supplier, refiner or importer has an electronic funds transfer program in operation, the payment is made by electronic funds transfer; and

(B) The distributor continues to make timely payments to the supplier, refiner or importer.

(iii) A distributor or importer who owns a bulk plant in this state may take a shrinkage credit of one percent (1%) on gross gallons, if applicable, of bulk alternative fuel purchased directly from a terminal and delivered in this state for use, sale or distribution. This credit may be claimed on the monthly tax return. A distributor or importer who does not own a bulk plant, but

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owns retail locations and distributes alternative fuel to those locations only shall be entitled to the shrinkage credit on gross gallons, if applicable, of bulk alternative fuel delivered. The shrinkage credit may not apply to some alternative fuels. The department shall promulgate rules which specify the applicability of the credit and provide an application process for the credit.

(c) Timelines. The following shall apply:

(i) Any report, claim, tax return, statement or other document or payments required or authorized by this article to be made or filed to or with the department and which is:

(A) Transmitted through the United States mail is deemed filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or other appropriate wrapper containing it;

(B) Mailed but not received by the department or where received but the cancellation mark is illegible, erroneous or omitted, is deemed filed and received on the date mailed if the sender establishes it was deposited in the mail on or before the due date for filing and submits a duplicate within thirty (30) days following written notification by the department of the nonreceipt;

(C) Received through electronic funds transfer is deemed to have been received when the electronic funds transfer transmission is received by the department;

(D) Received through electronic data interchange is deemed to have been received when the

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electronic data interchange transmission is received by the department.

(ii) Any tax return or license application that is not signed and any tax return which does not contain all pertinent information is considered not filed until the licensee signs or supplies the required information to the department. If the information required in the documents is presented to the department in a format other than that prescribed or otherwise approved by the department, the tax return, application or claim for refund or credit shall be deemed not filed. The licensee shall have ten (10) days to provide the information requested in a manner prescribed or otherwise approved by the department. If the licensee provides the information requested by the department within ten (10) days, the tax return or license application shall be deemed to have been timely filed;

(iii) Evidence that correspondence was mailed from the department to the last known address of a person shall be deemed prima facie evidence that the person received the correspondence after five (5) business days have elapsed from the date the correspondence was mailed. As used in this section, "last known address" means the most current address on file with the department.

(d) The department shall promulgate rules and regulations necessary to define the reporting format requirement for all licensees.

39-17-308. Enforcement.

(a) Audits. The following shall apply:

(i) All tax returns and records are open to examination by the director of the state department of audit or his deputies.

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(b) Interest. The license taxes and penalty shall be collected by the department together with interest of one percent (1%) per month on the license taxes from the due date until payment.

(c) Penalties. The following shall apply:

(i) Any person who conducts the business of a supplier, refiner, distributor, terminal operator, importer, exporter or dealer without holding a valid license as specified in W.S. 39-17-306 is guilty of a misdemeanor punishable as provided in paragraph (vii) of this subsection. Each day in violation of the provisions of this section constitutes a separate offense;

(ii) If any person fails or refuses to file the monthly statement and remit the tax as provided by W.S. 39-17-307(a)(i), the department shall make a statement for that person from the best information available and from such statement shall determine the amount of license taxes required to be paid and add thereto a penalty of ten percent (10%) of the taxes due. The department shall notify the delinquent taxpayer of the total amount due by serving written notice upon such person personally or by United States mail to the last known address as shown on the records of the department. If the delinquent taxpayer proves to the department that the delinquency was due to a reasonable cause, the department shall waive the penalty provided in this paragraph. If the delinquent taxpayer after receiving the statement prepared by the department later renders to the department a true statement covering the same calendar month, the department shall use such statement, adding the penalty of ten percent (10%) and interest of one percent (1%) per month on the license taxes from the due date until payment. The penalty shall be

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waived by the department upon satisfactory written proof the delinquency was due to a reasonable cause;

(iii) Any person who fails to furnish any report or remit any license tax to the department as required by this article is guilty of a misdemeanor. Each offense is punishable as provided in paragraph (vii) of this subsection. In addition, the department may suspend or revoke any license held by the offender and may require the offender, as a condition of any future licensing under this article, to provide a surety bond, cash bond or certificate of deposit as provided by W.S. 39-17-306(d);

(iv) Any supplier, refiner, terminal operator, importer, exporter, distributor or dealer selling alternative fuel subject to the license taxes imposed by this article while delinquent in the payment of any such taxes is liable for double the amount due to be recovered in a suit instituted by and in the name of the state of Wyoming. Upon application made by the state a writ of injunction may be issued, without requiring bond, against the defendants enjoining and restraining them from selling or offering to sell in the state alternative fuel until the license taxes are paid. Upon application made by the state a receiver of the property and business of the defendant may be appointed to impound the same as security for the delinquent tax and any judgment recovered in the suit;

(v) Any person who makes a false statement in a report required by this article is guilty of a misdemeanor punishable as provided in paragraph (vii) of this subsection. In addition, the person shall forfeit all rights to a refund to the extent that the false statement resulted in a refund larger than that to which the person was lawfully entitled;

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(vi) The department may revoke any license granted upon proof of violation of any provision of this article;

(vii) Any person violating any provision of this article, or who procures, aids or abets any person in a violation or noncompliance is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00), imprisoned for not more than six (6) months or both;

(viii) The Wyoming highway patrol and all peace officers of any county or municipality shall aid in the enforcement of this article.

(d) Liens. There are no specific applicable provisions for liens for this article.

(e) Tax sales. There are no specific applicable provisions for tax sales for this article.

39-17-309. Taxpayer remedies.

(a) Interpretation requests. There are no specific applicable provisions for interpretation requests for this article.

(b) Appeals. There are no specific applicable provisions for appeals for this article.

(c) Refunds. The following shall apply:

(i) On or before the last day of each month every distributor shall, if applicable, submit a statement to the department on forms furnished by or in a format required by the department for the preceding calendar month

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for the purpose of obtaining a refund from the department for taxes paid pursuant to W.S. 39-17-307(a) (i);

(ii) Any person exporting alternative motor vehicle fuel from Wyoming for which the license tax has been paid is subject to a refund of the license tax paid. The refund request shall be submitted on or before the last day of the month on forms provided by or in a format required by the department. The refund request is invalid if not submitted within one (1) year of the date of purchase;

(iii) Alternative fuel purchased for agricultural purposes as defined in W.S. 39-17-301(a) (ii) is qualified for a refund of the license tax imposed under W.S. 39-17-304(a) (i) as declared by the applicant. Any person claiming a refund under this paragraph shall submit a record of purchases and shall specify the percentage of such purchases qualifying for the refund on a form provided by or in a format required by the department, along with receipts detailing the bulk gallons, gasoline gallon equivalent (GGE) or diesel gallon equivalent (DGE) purchased and license taxes paid. The department shall establish by rule the format for applying for the refund under this paragraph. The refund form and receipts shall be invalid if not submitted to the department within eighteen (18) months following the date of purchase. Not to exceed sixty (60) days following submission of the information required by this paragraph, the department shall issue a refund of the qualified alternative fuel license tax;

(iv) The department shall by rule promulgated pursuant to W.S. 39-17-302(a) prescribe procedures under which an alternative fuel user who is entitled to at least a two hundred fifty dollar (\$250.00) refund of tax under this article for purchases and use of alternative fuel to propel a motor vehicle in any calendar month may apply for

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and receive the refund at any time after the last day of that month;

(v) The license tax under W.S. 39-17-304(a)(iii) is subject to refund on all alternative fuel sold in Wyoming for transportation of people, goods and equipment in interstate commerce and used outside Wyoming, provided that there is an adequate system for determining whether or not the alternative fuel is used in Wyoming. Nothing in this paragraph shall apply to the use, sale or distribution for use of alternative fuel in Wyoming. The refund request is invalid if not submitted within one (1) year;

(vi) The license tax under W.S. 39-17-304(a)(i) is subject to refund as follows:

(A) Alternative fuel purchased from a Wyoming licensed distributor or dealer by the University of Wyoming and community colleges and public schools located in Wyoming for use in a motor vehicle is subject to refund of the license tax. The record of purchases under this paragraph shall be submitted monthly by the purchaser on refund forms provided by or in a format required by the department, along with receipts detailing gallons, gasoline gallon equivalent (GGE) or diesel gallon equivalent (DGE) purchased and license taxes paid. The refund form and receipts are invalid if not submitted to the department within one (1) year following date of purchase;

(B) Liquefied natural gas (LNG) or renewable diesel sold by a distributor, importer, supplier or dealer to the state of Wyoming or any of its political subdivisions is subject to a refund;

(C) Liquefied natural gas, renewable diesel or compressed natural gas converted to liquefied natural gas at the point of delivery sold by a distributor,

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importer, supplier or dealer and used as heating fuel or to a person engaged in logging operations, mining operations, manufacturing, processing, drilling, exploration or well servicing, highway or other construction or railroad operations when the alternative fuel is consumed directly in logging operations, mining operations, manufacturing, processing, drilling, exploration or well servicing, highway or other construction or railroad operations, or other nonhighway operations or uses is subject to a refund. The record of purchases under this paragraph shall be submitted quarterly on a form provided by or in a format required by the department, along with receipts detailing the gallons, gasoline gallon equivalent or diesel gallon equivalent purchased and license taxes paid. The refund form and receipts shall be invalid if not submitted to the department within one (1) year following date of purchase. The department shall not deduct the state sales and use tax imposed by the provisions of W.S. 39-15-101 through 39-16-211 from the refund to any person who possesses a valid sales or use tax license under W.S. 39-15-106 or 39-16-106, or if the person is exempt from paying sales or use taxes under W.S. 39-15-105 or 39-16-105. A copy of the most recent sales or use tax report or proof that the person is exempt from sales or use taxes shall accompany the claim for refund.

(d) Credits. Credit shall be given for tax paid in Wyoming on alternative fuel purchased to propel a motor vehicle but which is not used in Wyoming. The credit may be carried forward to succeeding reporting periods.

(e) Redemption. There are no specific applicable provisions for redemption for this article.

(f) Escrow. There are no specific applicable provisions for escrow for this article.

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39-17-310. Statute of limitations.

(a) The refund form and receipts, as provided for in W.S. 39-17-309 are invalid if not submitted to the department within one (1) year following date of purchase or eighteen (18) months for agricultural producers seeking refunds.

(b) Each supplier, refiner, terminal operator, importer, exporter, distributor and dealer shall keep and preserve the records relating to the purchase and sale of alternative fuels for not less than three (3) years. The department may authorize, by rule, alternate methods of preserving records required under this section.

39-17-311. Distribution.

(a) Except as otherwise provided in subsection (b) of this section, all alternative fuel license taxes and fees shall be distributed as follows:

(i) All alternative fuel license taxes and fees received by the department under this article shall be transferred to the state treasurer who shall credit them to the proper accounts as specified by the department and in paragraph (iv) of this subsection;

(ii) The state treasurer shall deposit all license fees under W.S. 39-17-306 into the state highway fund;

(iii) The department shall certify to the state treasurer amounts to be credited to appropriate accounts based upon deductions from the taxes collected under this article provided that the department shall deduct the pro rata share of the cost of collecting the taxes received from alternative fuel used for aircraft at any municipal or

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county airport and distribute the remainder to the city, town or county where the airport is located. These funds shall be used for the maintenance of the airport.

(iv) After certifying the amounts provided by paragraph (iii) of this subsection, the department shall certify the balance of taxes collected under this article to the state treasurer who shall distribute the remainder into the accounts within the state highway fund created under this subsection as follows:

(A) Thirteen and one-half percent (13.5%) shall be distributed monthly to county treasurers. Each county treasurer shall credit such revenues to the county road fund for the improvement and maintenance of county roads. The distribution to each county shall be based on:

(I) One-third ($1/3$) in the ratio in which the area of the county bears to the total area of the state;

(II) One-third ($1/3$) in the ratio in which the rural population including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state;

(III) One-third ($1/3$) in the ratio in which the assessed valuation of the county bears to the last total assessed valuation of the state.

(B) Fourteen percent (14%) shall be credited by the state treasurer to the county treasurers of the various counties for their road construction funds, except that an amount equal to the contribution required of the counties for the cost of the university's technology transfer program under W.S. 21-17-115(a)(ii) or thirty-one

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thousand two hundred fifty dollars (\$31,250.00), whichever is less shall be first distributed to the highway fund. Each county treasurer shall credit the revenues to the road construction fund in that county. The department shall allocate to each county a share based fifty percent (50%) upon the ratio which the rural population of each county including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state and fifty percent (50%) based on the ratio which the area of the county bears to the total area of the state. Any interest earned on invested funds allocated to counties shall be retained by each county and shall be used for project costs as provided by W.S. 24-2-110(a);

(C) Fifteen percent (15%) shall be distributed as follows:

(I) To the highway fund, an amount equal to the contribution required of the cities and towns for the cost of the university's technology transfer program under W.S. 21-17-115(a)(iii) or thirty-one thousand two hundred fifty dollars (\$31,250.00), whichever is less;

(II) The remainder to be distributed monthly to incorporated cities and towns to be used in their street and alley programs as follows:

(1) Seventy-five percent (75%) based on the taxes paid upon alternative fuel sold to and distributed by dealers located within each incorporated city and town;

(2) Twenty-five percent (25%) in the ratio which the population of each city or town bears to the total population of all cities and towns.

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(D) Fifty-seven and one-half percent (57.5%) to the state highway account.

(v) All taxes collected under W.S. 39-17-304(a)(iii) shall be transferred to the state treasurer who shall deposit them only into the state highway fund. The provisions of this section and W.S. 39-17-305(c) shall not apply to the tax imposed by W.S. 39-17-304(a)(iii). Any refund for any overpayment of the one cent (\$.01) tax imposed by W.S. 39-17-304(a)(iii) shall be taken from the taxes collected pursuant to W.S. 39-17-304(a)(iii).

(b) All alternative fuel license taxes and fees related to liquefied natural gas, biodiesel or renewable diesel shall be distributed as follows:

(i) All alternative fuel license taxes and fees received by the department under this article related to liquefied natural gas, biodiesel or renewable diesel shall be transferred to the state treasurer who shall credit them to the proper accounts;

(ii) The state treasurer shall deposit all license fees under W.S. 39-17-306 into the state highway fund;

(iii) All taxes collected under W.S. 39-17-304(a)(ii) related to liquefied natural gas, biodiesel or renewable diesel shall be transferred to the state treasurer who shall deposit them only into the state highway fund. The provisions of paragraph (iv) of this subsection shall not apply to the tax imposed by W.S. 39-17-304(a)(iii). Any refund for any overpayment of the one cent (\$.01) tax imposed by W.S. 39-17-304(a)(iii) shall be taken from the taxes collected pursuant to W.S. 39-17-304(a)(iii);

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(iv) The state treasurer shall:

(A) Deduct not to exceed two percent (2%) of the taxes collected under this article and distributed under this subsection corresponding to the actual cost of the administration of this article for the month and credit the money to the highway fund;

(B) Distribute monthly the remainder as follows:

(I) Twenty percent (20%) shall be distributed to county treasurers. Each county treasurer shall credit the revenues to the county road fund for the improvement and maintenance of county roads. The distribution shall be based on:

(1) One-third (1/3) in the ratio in which the area of the county bears to the total area of the state;

(2) One-third (1/3) in the ratio in which the rural population including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state;

(3) One-third (1/3) in the ratio in which the assessed valuation of the county bears to the last total assessed valuation of the state.

(II) Five percent (5%) shall be distributed to incorporated municipalities based on the ratio that the total population of the municipality bears to the total population of all municipalities within the state. Each treasurer of a municipality shall credit the

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revenues to the municipal street fund for the improvement and maintenance of municipal streets;

(III) The remaining revenues shall be credited to the state highway fund for the maintenance, construction and reconstruction of state highways.

(C) Deduct the pro rata share of the cost of collecting the taxes received from alternative fuel used for aircraft at any municipal or county airport and distribute the remainder to the city, town or county where the airport is located. These funds shall be used for the maintenance of the airport.

Section 2. W.S. 31-3-102(a) by creating a new paragraph (xxiii), 39-17-101(a)(xxiv), 39-17-111(d)(ii) and 39-17-201(a)(xxx) are amended to read:

31-3-102. Miscellaneous fees.

(a) The following fees shall be collected for the instruments or privileges indicated:

(xxiii) For a decal for a plug-in electric vehicle as defined in W.S. 39-17-301(a)(xxxviii)\$50.00

39-17-101. Definitions.

(a) As used in this article:

(xxiv) "Alternative fuel" means ~~any accountable product other than gasoline, gasohol, diesel fuel, dyed diesel fuel, kerosene or dyed kerosene~~ as defined in W.S. 39-17-301(a)(iii);

39-17-111. Distribution.

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(d) After certifying the amounts provided by subsection (c) of this section, the department shall certify the balance of taxes collected under this article to the state treasurer who shall distribute the remainder into the accounts within the state highway fund created under this subsection as follows:

(ii) Fourteen percent (14%) shall be credited by the state treasurer ~~to the counties' road construction account in the highway fund for distribution by the department~~ to the county treasurers of the various counties for their road construction funds, except that an amount equal to the contribution required of the counties for the cost of the university's technology transfer program under W.S. 21-17-115(a)(ii) or thirty-one thousand two hundred fifty dollars (\$31,250.00), whichever is less shall be first distributed to the highway fund. Each county treasurer shall credit the revenues to the road construction fund in that county. The department shall allocate to each county a share based fifty percent (50%) upon the ratio which the rural population of each county including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state and fifty percent (50%) based on the ratio which the area of the county bears to the total area of the state. Any interest earned on invested funds allocated to counties shall be retained by each county and shall be used for project costs as provided by W.S. 24-2-110(a);

39-17-201. Definitions.

(a) As used in this article:

(xxx) "Alternative fuel" means ~~any accountable product other than gasoline, gasohol, diesel fuel, dyed~~

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~~diesel fuel, kerosene or dyed kerosene~~ as defined in W.S. 39-17-301(a)(iii);

Section 3. W.S. 39-17-104(e) and 39-17-204(e) are repealed.

Section 4. This act is effective July 1, 2015.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk