

FTA

MOTOR FUEL TAX
SECTION

SURVEY
OF
NATIVE
AMERICAN
ISSUES

September 2019

DISCLAIMER

The information in this booklet was obtained in May, June, July and August of 2019 and could have changed by the time of print.

| SUMMARY OF INFORMATION | | | |
|-------------------------------|-------------------------------|-----------------------------|--------------------------------------|
| State | States with Agreements | States in Litigation | States in Active Negotiations |
| Alabama | No | No | No |
| Alaska | No | No | No |
| Arizona | Yes | No | No |
| Arkansas | No | No | No |
| California | No | No | No |
| Colorado | No | No | No |
| Connecticut | No | No | No |
| Delaware | No | No | No |
| District of Columbia | No | No | No |
| Florida | No | Yes | No |
| Georgia | No | No | No |
| Hawaii | No | No | No |
| Idaho | Yes | No | No |
| Illinois | No | No | No |
| Indiana | No | No | Yes |
| Iowa | No | No | No |
| Kansas | No | No | No |
| Kentucky | No | No | No |
| Louisiana | Yes | No | No |
| Maine | No | No | No |
| Maryland | No | No | No |
| Massachusetts | No | No | No |
| Michigan | Yes | No | Yes |
| Minnesota | Yes | No | No |
| Mississippi | No | No | No |
| Missouri | No | No | No |
| Montana | Yes | No | Yes |
| Nebraska | Yes | No | No |
| Nevada | Yes | No | Yes |
| New Hampshire | No | No | No |
| New Jersey | No | No | No |
| New Mexico | No | No | No |
| North Carolina | No | No | No |
| North Dakota | Yes | No | No |
| Ohio | No | No | No |
| Oklahoma | Yes | No | No |
| Oregon | Yes | No | Yes |
| Pennsylvania | No | No | No |
| Rhode Island | No | No | No |
| South Carolina | No | No | No |
| South Dakota | Yes | No | Yes |
| Tennessee | No | No | No |
| Texas | No | No | No |
| Utah | No | No | Yes |
| Vermont | No | No | No |
| Virginia | No | No | No |
| Washington | Yes | No | No |
| West Virginia | No | No | No |
| Wisconsin | Yes | No | No |
| Wyoming | No | No | No |

The following are not represented in this survey: New York

ALABAMA

- 1. What exemptions, if any, does your state allow Native Americans?**
None for gasoline or motor fuels taxes
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
- 5. Is it a refund to the tribal member?** *NA*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
- 7. What are those estimates?** *NA*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *No*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
- 11. At what point is motor fuel taxed in your state?**
Removal from the terminal rack and upon import
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent of the State*
- 13. Contact person on this issue for your state:**
*Bonita Calhoun
Manager, Motor Fuels Section
PO Box 327540
Montgomery, AL 36132-7540
Phone: 334.242.9608
Fax: 334.242.1199*

ALASKA

1. **What exemptions, if any, does your state allow Native Americans?**
Fuel sold to members of a tribe located on an Indian reservation is exempt from tax.
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *No*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**

Gasoline - Sale by Distributor
Diesel - Sale by Distributor
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent of the state.*
13. **Contact person on this issue for your state:**
Kelly Mazzei
Excise Audit Supervisor
Alaska Dept. of Revenue
550 West 7th Ave., Ste 500
Anchorage, AK 99501
Phone: 907.269.1018
Fax: 907.269.6644
kelly.mazzei@alaska.gov

ARIZONA

1. What exemptions, if any, does your state allow Native Americans?

Motor fuel is taxable on all reservations in the state of Arizona. All tribal governments and members pay the motor fuel tax at the time of purchase.

However, both the tribal governments and members may receive a refund of the tax for motor vehicle fuel and use fuel by perfecting a refund request.

Tribal governments are exempt from motor vehicle fuel (gasoline) and use fuel (diesel) taxes consumed in vehicles used for governmental purposes regardless of on or off highway per ARS 28-5610.A.4.

Enrolled members of a tribe who live on the reservation and purchase motor vehicle fuel and use fuel on the reservation and use it for their own personal consumption regardless of on or off highway are exempt from the motor vehicle fuel and use fuel taxes per ARS 28-5610.A.3.

As per ARS 28-5610.D, tribal exemptions must be perfected by claiming a refund pursuant to ARS 28-5612.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?

Arizona currently has agreements with 3 of the 21 tribes.

The one agreement is with the Navajo Nation where the tribe does collect the taxes. In this case the tribe has required all importers of motor fuel onto the reservation to become licensed and file tax reports and pay the taxes to the tribe as distributors. In this case the agreement establishes a method for the Navajo Nation to report and pay motor fuel taxes to the state for non-member purchases.

Arizona has agreements with two of the other tribes; the White Mountain Apache and the San Carlos Apache, for the purpose of refunding tribal member fuel taxes to the tribal government. However, the agreements are not where the tribes collect any tax and reimburse the state.

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?

Yes, however, refunds of motor fuel taxes are prior to the fund distribution and are not subject to any provisions of the fund.

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?

Not at the time of purchase. As mentioned above, state taxes are imposed and collected by all retail outlets on reservations. The government or member can request a refund of the taxes after the purchase and is perfected by submitting a refund request.

5. Is it a refund to the tribal member?

Yes, for the member's purchases. In the case of the three agreements with the tribes the members do not receive a refund directly from the state. The tribe receives monthly amounts for the members based on the agreement.

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? No

7. What are those estimates? Not available

8. Is your state in litigation with the tribes regarding excise tax issues? No

9. Is your state in active negotiations with the tribes regarding these issues?

Not in terms of motor fuel litigation.

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? No

11. At what point is motor fuel taxed in your state?

At the time of removal at the terminal rack or upon import into the state by truck or rail by a licensed supplier.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

No, the suppliers collect and remit the taxes for convenience and facility only - ARS 28-5606.C specifies the following:

The motor vehicle fuel and use fuel taxes imposed pursuant to this section and the aviation fuel taxes imposed pursuant to section 28-8344 are conclusively presumed to be direct taxes on the consumer or user but shall be collected and remitted to the department by suppliers for the purpose of convenience and facility only. Motor vehicle fuel, use fuel and aviation fuel taxes that are collected and paid to the department by a supplier are considered to be advance payments, shall be added to the price of motor vehicle fuel, use fuel or aviation fuel and shall be recovered from the consumer or user.

13. Contact person on this issue for your state:

*Babette Jensen
Fuel Tax Audit & Compliance Supervisor
Revenue and Fuel Tax Administration
1801 W. Jefferson, Mail Drop 541M
Phoenix, AZ 85007
Phone: 602-712-4390
Fax: 602.712.3445*

ARKANSAS

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *No*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Distributor
Diesel - Receipt by Distributor
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
13. **Contact person on this issue for your state:**
Brooke Shelnut, Auditor
Arkansas Motor Fuel Tax Section
P.O. Box 1752
Little Rock, AR 72203
Phone: 501.682.4800
Fax: 501.682.5599
Email: brooke.shelnutt@dfa.arkansas.gov

CALIFORNIA

1. What exemptions, if any, does your state allow Native Americans?

We have no exemptions under the Diesel Fuel Tax Law or the Motor Vehicle Fuel Tax Law specifically identified as Native American exemptions. A claim for refund of taxes may be submitted by users who use the fuels off the highways of the state.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *No*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e., all revenues must be spent on road construction and maintenance)? *Yes. Funds are deposited in the State Treasury and credited to the Motor Vehicle Fuel Account in the Transportation Tax Fund. Disposition of funds consists of:*

- *Certain administrative costs of the California Department of Tax and Fee Administration and State Controller's Office.*
- *Refunds of taxes overpaid or paid on fuel used for certain nonhighway purposes.*
- *Transfers to Aeronautics Account of receipts attributable to taxes on fuel used in propelling aircraft.*
- *Transfers to Department of Agriculture Account of receipts from taxes on fuel attributable to agriculture off-highway use not claimed for refund by users.*
- *Transfers to the Department of Parks and Recreation to:*
 - *Off-Highway Vehicle Trust Fund of receipts attributable to taxes on fuel used in the off-highway operation of vehicles subject to identification under Division 16.5 of the Vehicle Code for which a refund has not been claimed.*
 - *Harbors and Watercraft Revolving Fund of receipts attributable to taxes on fuel used for propelling vessels.*
 - *State Parks and Recreation Fund ([SB 1](#) revenue is transferred to the State Parks and Recreation Fund rather than Harbors and Watercraft Revolving Fund and the Off-Highway Vehicle Trust Fund).*
- *Transfers to Conservation and Enforcement Services Account (an account in the Off-Highway Vehicle Trust Fund).*
- *Transfers to the General Fund of receipts attributable to taxes imposed on the distribution of motor vehicle fuel used in the operation of motor vehicles off highway (Fuel Tax Swap revenue).*
- *Transfers to the Road Maintenance & Rehabilitation Account of receipts attributable to SB 1 diesel fuel tax increase.*
- *Transfers to the Trade Corridor Enhancement Account of receipts attributable to SB 1 diesel fuel tax increase.*
- *Balance to the State Highway Account.*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members

are not subject to tax? *No*

5. Is it a refund to the tribal member? *Yes. A claim for refund of taxes may be submitted by users who use the fuels off the highways of the state, such as use on tribal land.*

6. Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax? *No*

7. What are those estimates? *NA*

8. Is your state in litigation with the tribes regarding excise tax issues? *No*

9. Is your state in active negotiations with the tribes regarding these issues? *No*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *Yes*

11. At what point is motor fuel taxed in your state?

Gasoline - Taxed at the time of removal from the terminal or refinery rack system by the supplier or at the time of import into the state by the supplier.

Diesel - Taxed at the time of removal from the terminal or refinery rack system by the supplier or at the time of import into the state by the supplier.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Suppliers are considered taxpayers, not agents of the state.*

13. Contact person on this issue for your state:

Julie Huber

California Department of Tax and Fee Administration (CDTFA)

P.O. Box 942879

Sacramento, CA 94279-0031

Phone: 916.322.5045

Fax: 916.324.2554

e-mail: julie.huber@cdtfa.ca.gov

May 2011

Updated May 2019

COLORADO

- 1. What exemptions, if any, does your state allow Native Americans?**
*Colorado does not have any specific statutory exemptions for Native American
But recognizes any exemptions created by law.*
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?**
Yes, the restrictions are defined in part 4 of title 43, Colorado Revised Statutes and Article X, of Section 18 of the Colorado constitution.
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Not a specific mechanism for that purpose, except that the state does not require tax collection where a federal or other exemption would preempt such taxation.*
- 5. Is it a refund to the tribal member?** *That would be one option generally applicable Under Colorado law.*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
- 7. What are those estimates?** *NA*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *No*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
- 11. At what point is motor fuel taxed in your state?**
Motor fuel is taxed at the Distributor level. (Colorado allows 3 tax deferred Transactions between the distributors).
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *They are considered the taxpayer.*
- 13. Contact person on this issue for your state:**
*Anthony Muller
1375 Sherman St. Room 202
Denver, CO 80261*

CONNECTICUT

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *Prohibited from responding due to State confidentiality statutes.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *NA*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No – Previous negotiations resulted in the Department issuing Ruling No. 2002-3. Ruling No. 2002-3 is available on the Department's web site: www.drs.state.ct.us*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Prohibited from responding due to State confidentiality statutes.*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Sale or use by Distributor
Diesel - Sale or use by Distributor
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?**
In the Department's answer to question 11, it identified the sale or use by distributors as the point at which motor vehicle fuel is taxed in Connecticut. Pursuant to Conn. Gen. Stat. §12-458(a)(2), distributors pay the motor vehicle fuels tax to the State "for the account of the purchaser or consumer." As such, the burden of the motor vehicle fuels tax falls upon the purchaser or user. Consequently, for motor vehicle fuels tax purposes, distributors are the agents of the State and are responsible for collecting and remitting the tax to the State.

13. Contact person on this issue for your state:

Louis P. Bucari

First Assistant Commissioner and General Counsel

Department of Revenue Services

450 Columbus Blvd., Suite 1

Hartford, CT 06103

Phone: 860.297.5798

Fax: 860.297.5684

DELAWARE

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No. We allow tax free sales to exempt entities. In addition to gallons sold to exempt entities and exports, gallons sold between licensed accounts are also included in our distribution totals (which means that gallons sold in multiple transactions are recorded multiple times as tax-free sales).*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Distributor
Diesel – Distributor (legally referred to as “Supplier”)
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?**
Distributors/Suppliers act as "agents of the State". Special fuel user/dealers remit tax based on usage/sales from their licensed tanks.
13. **Contact person on this issue for your state:**
Andrea (Ann) Bayline, Tax & Audit Manager
DelDOT DMV Motor Fuel Tax Administration
Phone: (302)744-2729
Fax: (302)739-2143
E-Mail: andrea.baylinel@state.de.us
Website: <http://mfta.deldot.gov>

DISTRICT OF COLUMBIA

1. **What exemptions, if any, does your state allow Native Americans?** *N/A*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *N/A*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *N/A*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?** *On the motor fuel imports/wholesalers*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
13. **Contact person on this issue for your state:**
Marilou Mintac, Tax Auditor
202-442-6584
marilou.mintac@dc.gov

FLORIDA

- 1. What exemptions, if any, does your state allow Native Americans?**
There are no statutory exemptions in Florida specific to Native Americans. However, Florida recognizes immunity from state taxes if fuel is purchased on tribal lands by a tribal member.
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?**
Nothing is specific to Native American tribes or reservations.
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No. The Tribe or tribal member must apply for a refund to claim the immunity.*
- 5. Is it a refund to the tribal member?** *Tribal member or Tribal Government, as applicable.*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
- 7. What are those estimates?** *NA*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *Yes*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *No*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Yes. The Department has received calls from competing businesses claiming that this puts them at a competitive disadvantage.*
- 11. At what point is motor fuel taxed in your state?**
Gasoline – State taxes, minimum local option taxes, inspection fee, and pollutants tax are due upon import if received outside of a terminal registered with the Internal Revenue Service or upon removal at a terminal rack. Additional county tax rates are due on gasoline upon delivery to service stations or to the ultimate consumer.

Diesel – State, pollutants, and local taxes are due upon import if received outside of a terminal registered with the Internal Revenue Service or upon removal at a terminal rack.

Aviation – State and pollutant taxes are due upon import if received outside of a terminal registered with the Internal Revenue Service or upon removal at a terminal rack.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Agent for end user - incidence of tax is on ultimate consumer.*

13. Contact person on this issue for your state:

Lee Gonzalez

Fuel Tax Compliance Coordinator

2450 Shumard Oak Blvd, Bldg 1

Tallahassee, FL 32399

Phone: 850.717-6764

Fax: 850.922.8426

GEORGIA

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes, must be used for highway maintenance and construction programs.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Taxes on motor fuels are assessed at the time of sale by a licensed distributor to any person or entity who does not hold a valid motor fuel license.
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The taxpayer is the distributor; however, for the retailer tax, it's the consumer (end user).*
13. **Contact person on this issue for your state:**
*Monique Williams
Assistant Director/Taxpayer Services Division
Georgia Department of Revenue
4125 Welcome All Road, Suite 809
Atlanta, GA 30349
Phone: 404.724.7564
Fax: 770.408.5192*

HAWAII

- 1. What exemptions, if any, does your state allow Native Americans?**
The State of Hawaii has no special fuel tax provisions for native Hawaiians.
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *N/A*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?**
Per Section 243-6, Hawaii Revised Statutes, the funds are expended for the following purposes: (1) For payment of interest on and redemption of any bonds duly issued or sold on or after July 1, 1951, under chapter 47 for the financing or aiding in financing the construction of county highway tunnels, approach roads thereto, and highways. Such payments of interest and principal on the bonds when due, shall be first charges on such moneys so deposited in the fund. (2) For acquisition, designing, construction, reconstruction, improvement, repair, and maintenance of county main and general thoroughfares, highways, and other streets, street lights, storm drains, and bridges, including costs of new land therefore, when expenditures for the foregoing purposes cannot be financed under state-federal aid projects. (3) In the case of the city and county of Honolulu, for payment of the city and county's share in an improvement district initiated by the city and county for an improvement listed in (2) above which is permitted to be constructed in the city and county. (4) For the construction of county highway tunnels, overpasses, underpasses, and bridges, where such improvement cannot be made under state-federal aid projects. (5) For purposes and functions connected with county traffic control and preservation of safety upon the public highways and streets. (6) For purposes and functions in connection with mass transit. (7) For acquisition, design, construction, improvement, repair, and maintenance of bikeways. (8) No expenditure shall be made, out of the revenues paid into any such fund, which will jeopardize federal aid for highway construction.

The fuel taxes are collected and distributed to the Highway Special Fund, the Airport Special Fund, the Boating Special Fund, the Trail Access Program, and the General Fund, respectively. The Environmental Response, Energy, and Food Security Tax is also collected and distributed to the Environmental Response Revolving Fund, the Energy Security Special Fund, the Energy Systems Development Special Fund, the Agricultural Development and Food Security Fund, and the General Fund, respectively.
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *N/A*
- 5. Is it a refund to the tribal member?** *N/A*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *Yes*
- 7. What are those estimates?**
For example, we estimate the fully tax exempt amounts used by federal government agencies.
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *N/A*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *N/A*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *N/A*

11. At what point is motor fuel taxed in your state?

In Hawaii, fuel tax essentially becomes due when the fuel enters the State's taxing jurisdiction. The tax is levied on distributors and is imposed only once - if a distributor gets the fuel from another distributor, tax is due only if the first distributor has not paid the tax. "Distributor" is defined in Section 243-1 of the Hawaii Revised Statutes as

"(1) Every person who refines, manufactures, produces, or compounds liquid fuel in the State and sells or uses the same therein; (2) Every person who imports or causes to be imported into the State any liquid fuel and sells it therein, whether in the original packages or containers in which it is imported or otherwise than in such original packages or containers, or who imports any such fuel for the person's own use in the State; (3) Every person who acquires liquid fuel from a person not a licensed distributor and sells or uses it, whether in the original package or container in which it was imported (if imported) or otherwise than in such original package or container; and (4) Every person who acquires liquid fuel from a licensed distributor as a wholesaler thereof and sells or uses it."

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

The distributor is the taxpayer. The distributor is not an agent of the State collecting tax from the end user on behalf of the State.

13. Contact person on this issue for your state:

Roxane Moore

Technical Section, Hawaii Department of Taxation

Phone: (808) 587-1577

Fax: (808) 587-1584

Yibo Hsu

Highways Division, Hawaii Department of Transportation

Phone: (808) 587-1844

Fax: (808) 587-1787

IDAHO

1. What exemptions, if any, does your state allow Native Americans?

Idaho statutes provide that motor fuel tax does not apply to the extent that the fuel is subject to the provisions of an agreement between the State of Idaho and an Indian tribe.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?

Yes. Agreements are in place with the Coeur d' Alene, Shoshone-Bannock, Nez Perce and Kootenai Tribes.

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e., all revenues must be spent on road construction and maintenance)?

Yes. Idaho Const. Art 7, Sec. 17. Receipts from tax on fuel use to propel a motor vehicle on a public highway may only be used for:

- a. Highway construction & maintenance,*
- b. Traffic supervision,*
- c. Administration of the tax,*
- d. Refunds.*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?

See answers to questions one and two.

5. Is it a refund to the tribal member? *No*

6. Has your state estimated the amount of fuel sold in the state that has not been subjected to the full state tax? *Yes*

7. What are those estimates?

19.1 million gallons in 2010

13.8 million gallons in 2011

14.6 million gallons in 2012

14.2 million gallons in 2013

15.4 million gallons in 2014

15.4 million gallons in 2015

15.4 million gallons in 2016

14.8 million gallons in 2017

14.8 million gallons in 2018

8. Is your state in litigation with the tribes regarding excise tax issues? *No*

9. Is your state in active negotiations with the tribes regarding these issues? *No*

10. Have you received complaints from citizens regarding untaxed sales by Native American Retailers? *No*

11. At what point is motor fuel taxed in your state?

Upon receipt by a fuel distributor as defined in Idaho Code 63-2403.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

Taxpayer. Legal incidence of the tax is on the distributor.

13. Contact person on this issue for your state:

Don Williams

Tax Policy Specialist

Idaho State Tax Commission

P.O. Box 36

Boise, ID 83722-0410

Phone: 208.334.7855

Fax: 208.334.7846

ILLINOIS

- 1. What exemptions, if any, does your state allow Native Americans?**
No exemptions specifically for Native Americans
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *N/A*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *N/A*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *N/A*
- 5. Is it a refund to the tribal member?** *N/A*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *N/A*
- 7. What are those estimates?** *N/A*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *N/A*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *N/A*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *N/A*
- 11. At what point is motor fuel taxed in your state?**
Gasoline - Sale by Distributor
Diesel - Sale by Distributor
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent of the State*
- 13. Contact person on this issue for your state:**
Tina Whitehead, Manager
Motor Fuel Tax & Refund Section
Illinois Department of Revenue
PO Box 19477
Springfield, IL 62794
Phone: 217.782.2291
Rev.MotorFuelTax@Illinois.gov

INDIANA

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No. There is new tribal land in Indiana but we have no tax agreement in place at this time.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. Gasoline - IC 6-6-1.1-801 Special Fuels - IC 6-6-2.5-67*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *Yes*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline Excise - First received by gasoline distributor
Diesel Excise – At the terminal rack
Gasoline Use – Sale to a customer who does not have a gasoline use tax permit (non-qualified distributor)
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent of the State*

13. Contact person on this issue for your state:

Julie Smith

Manager – Special Tax

Indiana Department of Revenue

7811 Milhouse Rd, Ste. P

Indianapolis, IN 46241-9612

317-615-2528

317-615-2691 (Fax)

julsmith@dor.in.gov

IOWA

- 1. What exemptions, if any, does your state allow Native Americans?**
Native Americans are allowed a refund of fuel purchased for use on Indian country.
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No, currently there are no agreements with any tribes that have a presence in Iowa.*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. The revenues in the fund are primarily used for road construction and the administration of the Department of Transportation.*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes. Native Americans are allowed a refund of fuel purchased for use on Indian country.*
- 5. Is it a refund to the tribal member?** *No. Currently, the refund is issued to the tribe as a convenience to the members. However, an individual Native American could apply for a refund permit and receive a refund directly.*
- 6. Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *Yes.*
- 7. What are those estimates?** *Estimate of 90,000 gallons of fuel per month. Estimate of \$27,900 in tax per month.*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No. An attempt was made many years ago but no agreement could be reached.*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *No. There were discussions with one tribe, but no agreement could be reached.*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Yes. The Native American retailer has been selling fuel for less than competitors. There have been complaints by local retailers and legislators.*
- 11. At what point is motor fuel taxed in your state?**
Gasoline - Sale by Supplier
Diesel - Sale by Supplier
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The supplier is considered the taxpayer. However, the tax is passed on down through the distribution*

system and is considered to be added to the selling price. Thus, the final consumer does pay the tax.

13. Contact person on this issue for your state:

*Scott Fitzgerald
Statistical Research Analyst
Compliance Services
Tax Management Division
Iowa Dept. of Revenue
Hoover State Office Building
Des Moines, IA 50319
Phone: 515.281.5884
Fax: 515.281-3756
E-mail: scott.fitzgerald@iowa.gov*

KANSAS

1. What exemptions, if any, does your state allow Native Americans?

Kansas imposes fuel tax at the distributor level, manufacturer or upon import; therefore, Kansas exempts Native American retailers from inventory tax only, due to a tax rate increase. (See K.S.A. 79-3408c below).

K.S.A. 79-3408c. Fuel owned on date rate of tax changed; inventory tax or refund; Native American licensed retailer exempt, when. (a) A tax is hereby imposed on the use, sale or delivery of all motor-vehicle fuel or special fuel owned at 12:01 a.m. July 1, 1999, and on July 1 of each year thereafter, by any licensed distributor or licensed retailer at a rate per gallon, or fraction thereof, equal to the amount, if any, by which the tax per gallon, or fraction thereof, in effect on such date as prescribed by K.S.A. 79-3408, and amendments thereto, exceeds the rate of tax upon such motor-vehicle fuel or special fuel which was in effect on the preceding day. Such tax shall be paid by the licensed distributor or licensed retailer owning such motor-vehicle fuel or special fuel at such time and date. On or before the 25th day of the month in which a tax is imposed under this section, every such distributor and retail dealer shall make a report to the director on a form prescribed and furnished by the director showing the total number of gallons, or fraction thereof, of such motor-vehicle fuel or special fuel owned at the time the tax is imposed under this section and such report shall be accompanied by a remittance of the tax due.

Any licensed distributor or licensed retailer who shall fail to make such report or pay such tax, within the time prescribed, shall be subject to the same penalties and interest charges prescribed by the motor-vehicle fuel or special fuel tax law for failure of a licensed distributor to make monthly reports and payments of motor-vehicle fuel or special fuel tax. The provisions of the motor-fuel tax law relating to remedies for the collection of delinquent motor-fuel taxes from distributors shall apply to the collection of taxes imposed by this section, which have become delinquent from licensed distributors and licensed retailers. All taxes, penalties and interest collected by the director under the tax imposed by this section shall be remitted by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the funds and in the amounts specified in K.S.A. 79-34,142, and amendments thereto.

(b) Whenever the rate of tax upon motor-vehicle fuels or special fuels fixed pursuant to K.S.A. 79-3408, and amendments thereto, which become effective on July 1, 1999, or on July 1 in any year thereafter is less than the rate of tax upon such fuel in effect on the preceding day, the licensed distributor or licensed retailer owning such fuel at 12:01 a.m. on the date such reduction in taxes becomes effective shall be entitled to a refund of taxes paid upon such fuel in an amount equal to the amount by which taxes were reduced from the amount of motor-vehicle fuels or special fuels taxes per gallon, or fraction thereof, actually paid upon each gallon, or fraction thereof, of motor-vehicle fuels or special fuels multiplied by the number of gallons of motor-vehicle fuels or special fuels owned by the distributor or dealer on such date. On or before the 25th day of the month in which such

tax is reduced, every such distributor and retailer shall make a report to the director on a form prescribed and furnished by the director showing the total number of gallons of such motor-vehicle fuel or special fuel owned by such distributor or retailer at 12:01 a.m. on the date upon which such tax was reduced. It shall be the duty of the director of taxation to examine all such claims and determine the amount to which each claimant is entitled. In the event any distributor or retailer entitled to such refund shall owe the state any motor-vehicle fuel or special fuel tax, penalties, or interest, the refund authorized by this section shall upon being determined by the director be credited upon the amount of such taxes, penalties and interest. Whenever the director shall determine that any distributor or retailer shall be entitled to a refund under any of the provisions of this section, and such refund cannot be effected by giving credit therefore, as hereinbefore provided, or against the future motor-vehicle fuel or special fuel tax liability of such taxpayer the director shall certify the amount of the refund to the state director of accounts and reports, who shall draw a warrant for the amount so certified on the state treasurer in favor of the distributor or retailer entitled to such refund, and mail, or otherwise deliver, the same to the distributor entitled thereto. Such warrant shall be paid by the state treasurer to such distributor or retailer from the motor-vehicle fuel or special fuel tax refund fund.

(c) The provisions of this section shall not apply to any licensed retailer who is a Native American whose licensed place of business or businesses are located on such retailer's reservation, nor to any Native American tribes having licensed places of business or businesses located on such tribe's reservation.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *No*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?

Yes. K.S.A. 79-3402. The tax imposed by this act is levied for the purpose of producing revenue to be used by the state of Kansas to defray in whole, or in part, the cost of constructing, widening, purchasing of right-of-way, reconstructing, maintaining, surfacing, resurfacing and repair the public highways, including the payment of bonds issued for highways included in the state system of this state, and the cost and expenses of the director of taxation and the director's agents and employees incurred in administration and enforcement of this act and for no other purpose whatever.

4. Does your state have a mechanism in place to ensure that tribal sales are not subject to tax?

Tribal sales are not subject to state taxation. Kansas tax is imposed upstream at the distributor level.

5. Is it a refund to the tribal member? *NA.*

6. Has your state estimated the amount of fuel sold in the state that has not been subjected to the full state tax? *Yes.*

7. **What are those estimates?** *\$2 to \$2.5 million per year.*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No.*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No.*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No.*
11. **At what point is motor fuel taxed in your state?**
Kansas motor fuel tax is due at Distributor of 1st receipt, manufacturer or importer.
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The taxpayer.*
13. **Contact person on this issue for your state:**
*Michael Hale
Legal Services
Kansas Department of Revenue
785-296-2381*

KENTUCKY

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?**
There are no Native Americans operating retail outlets selling gas or diesel and therefore, no need for any agreements.
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Not applicable*
5. **Is it a refund to the tribal member?** *Not applicable*
6. **Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *Not Applicable*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *Not applicable*
9. **Is your state in active negotiations with the tribes regarding these issues?** *Not applicable*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Not applicable as state has no Native American retailers.*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Wholesaler
Diesel - Receipt by Wholesaler
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer and Trust Officer of the State*
13. **Contact person on this issue for your state:**
Carmen Ignat, Supervisor
Motor Fuels Tax Compliance Section
P.O. Box 1303, Station #63
Frankfort, KY 40603-1303
Phone: 502.564.3853
Fax: 502.564.2906

LOUISIANA

- 1. What exemptions, if any, does your state allow Native Americans?**
Per compact with tribe: gasoline tax; cigarette and tobacco taxes; motor vehicle sales and use tax.
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?**
The State of Louisiana has a tax compact with one of the four federally recognized tribes in Louisiana. The compact does not require the tribes to collect Louisiana tax but instead a tribal tax of their own equal to Louisiana tax rates.
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?**
Louisiana's motor fuel taxes go into two funds. Of the 20¢ per gallon tax, 16¢ per gallon is dedicated to Louisiana's Transportation Trust Fund which is managed by the Department of Transportation including for road construction and maintenance; the remaining 4¢ per gallon is dedicated to the TIMED Account [Transportation Infrastructure Model of Economic Development] for specific highway projects as provided for within the statute.
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No. This was the theory behind our compact. However, we have no mechanism to ensure that tribe members are not taxed.*
- 5. Is it a refund to the tribal member?** *No*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *The licensee who sells the product is allowed to take a credit for the gallons sold to the Native American Tribe. This information is currently being captured and included in information provided the Federal Highway Administration.*
- 7. What are those estimates?** *820,000 gallons annually = \$164,000 in Louisiana motor fuel taxes based on FYE June 20184*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *No*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Not lately. The Louisiana Oil and Marketers Association initially complained about undercutting at the pumps on tribal lands following the signing of a tax compact with a second tribe; however, the compact with that tribe was later terminated at the request of the tribe.*

11. At what point is motor fuel taxed in your state?

Gasoline fuels- Taxed when “crossing the terminal rack”, when otherwise leaving the bulk transfer system or when entering the state. This includes ethanol blends.

Diesel fuels – Clear fuel taxed when “crossing the terminal rack”, when otherwise leaving the bulk transfer system or when entering the state. Biodiesel treated the same as diesel.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

Supplier/permissive supplier, position holder or importer of fuel is responsible for paying the tax. In each subsequent sale of tax paid fuel, the tax is included in the selling price so that the tax is paid ultimately by the end user.

13. Contact person on this issue for your state:

*Shirley Bonaccorso
Revenue Tax Research Analyst
Policy Services Division
Louisiana Department of Revenue
PO Box 44098
Baton Rouge, LA 70804-4098
Phone: 225.219.2780
Shirley.bonaccorso@la.gov*

This reply to your inquiry constitutes “informal advice” from the Louisiana Department of Revenue, as contemplated by Louisiana Administrative Code 61:III.101.D.3, which provides that informal advice does not have the force and effect of law and is not binding on the Department, the public, or the individual seeking advice. Informal advice will have no effect on an audit.

MAINE

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No. All gas and special fuel is sold tax paid to retail outlets in Maine.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. Dedicated revenue for the Department of Transportation.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *N/A – tribal sales are not exempt.*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *N/A*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Sale by Distributor
Diesel - Sale by Supplier
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The tax is levied on the consumer, with the distributor or supplier primarily responsible for collection.*
13. **Contact person on this issue for your state:**
Judy A. Methot
Director, Sale, Fuel and Special Tax Division
PO Box 1065
Augusta, ME 04333-1065
Phone: 207.624-9608
Fax: 207.287.6628

MARYLAND

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. After deducting money to pay refunds and administrative expenses and small distributions for natural resources (*see below), the balance of motor fuels revenues is transferred monthly to the Maryland Transportation Trust Fund.
*2.3% for Chesapeake Bay Programs
0.3% for Water Ways Improvement Fund
0.3% for Fisheries Research and Development Fund*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes (diesel, bulk); No (gasoline). Retail diesel purchases would be tax paid. Bulk & retail gas would be tax paid. Bulk diesel could be purchased without tax with exemption certificate.*
5. **Is it a refund to the tribal member?** *Yes. Refund for retail diesel & gas and for bulk gas purchases.*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
*Gasoline - Receipt by Supplier, Sale by Supplier
Receipt by Distributor, Sale by Distributor
Receipt by Wholesaler, Sale by Wholesaler

Diesel - Sale by Supplier
Sale by Distributor
Sale by Wholesaler*

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Taxpayer*

13. Contact person on this issue for your state:

Chuck Ulm

Assistant Director, Field Enforcement Division

P.O. Box 2397

Annapolis, MD 21404-2397

Phone: 410.260.7278

Fax: 410.974.5564

MASSACHUSETTS

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No special agreements*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *MGL 64E sec 13*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *We have never made any estimates of the amount of untaxed fuel sold in MA.*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
*Below the rack – Depending on license.
When fuel is sold for use in a RMV.*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Considered a taxpayer – but not a trustee tax.*
13. **Contact person on this issue for your state:**
*Names: Ms. Janet Sydney and Ms. Brenda McConville
Address: P O Box 7012
Boston, MA 02204*

MICHIGAN

1. What exemptions, if any, does your state allow Native Americans?

The only exemptions for Indian Tribes and their resident members are tied to tax agreements that are in effect at the time in question. The agreements provide exemption and protocols for income tax, sales tax, use tax, motor fuel tax, tobacco tax, single business tax (replaced with MBT), Michigan business tax (replaced with CIT), and Michigan's new corporate income tax. Copies of implemented agreements can be obtained by visiting Treasury's website at www.michigan.gov/treasury. Once there select Taxes, then click either Income Tax or Business Information and choose the Native American option.

The State has also set up exemption protocols for those tribes who have not entered into a tax agreement with the State and the taxes in question are preempted by federal Indian doctrine.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?

The State has tax agreements with 10 of the 12 federally recognized Indian tribes (Tribes) located in Michigan. Such agreements include provisions for motor fuel which do provide for the collection of the State's taxes.

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)? Yes –

*STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963*

§ 9 Use of specific taxes on fuels for transportation purposes; authorization of indebtedness and issuance of obligations.

Sec. 9.

All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and to propel aircraft and on registered motor vehicles and aircraft shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.

Not less than 90 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for the transportation purposes of planning, administering, constructing, reconstructing, financing, and maintaining state, county, city, and village roads, streets, and bridges designed primarily for the use of motor vehicles using tires, and reasonable appurtenances to those state, county, city, and village roads, streets, and bridges.

The balance, if any, of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor

vehicles upon highways and on registered motor vehicles, after the payment of necessary collection expenses; 100 percent of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel aircraft and on registered aircraft, after the payment of necessary collection expenses; and not more than 25 percent of the general sales taxes, imposed directly or indirectly on fuels sold to propel motor vehicles upon highways, on the sale of motor vehicles, and on the sale of the parts and accessories of motor vehicles, after the payment of necessary collection expenses; shall be used exclusively for the transportation purposes of comprehensive transportation purposes as defined by law.

The legislature may authorize the incurrence of indebtedness and the issuance of obligations pledging the taxes allocated or authorized to be allocated by this section, which obligations shall not be construed to be evidences of state indebtedness under this constitution.

- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *For those Tribes without an agreement, the State has set up a refund process for select authorized motor fuel retailers located within a Tribe's Indian Country (as defined in 18 U.S.C. 1151). The retailer must purchase tax paid fuel and may only seek refund on sales made to qualifying members purchasing fuel within their own Tribe's Indian Country.
For those Tribes with a tax agreement, refer to the agreement for details.*
- 5. Is it a refund to the tribal member?** *No. Refunds are to the authorized retailers.*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No.*
- 7. What are those estimates?** *N/A*
- 8. Is your state in litigation with the tribes regarding excise tax issues?**
The State has prevailed in federal litigation against the Keweenaw Bay Indian Community with regards to the State's tobacco tax. See KBIC v. Rising, et al. Case 2:03-cv-00111-RHB Filed 09/12/2005. The State was also involved in a sales/use tax case. The State is currently in litigation with KBIC regarding tobacco, sales and use taxes.
- 9. Is your state in active negotiations with the tribes regarding these issues?**
The State continues to offer non-agreement tribes the option of entering an agreement similar to that signed by the other tribes.
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *Yes*

11. At what point is motor fuel taxed in your state?

Motor fuel tax is imposed on fuel upon importation into Michigan and upon disbursement from a terminal with a Michigan destination per MCL 207.1008. The tax is collected and remitted to Michigan by licensed Importers and Suppliers. The Importers and Suppliers pass this cost on down ultimately to the consumers.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

The legal incidence of the motor fuel tax is upon the consumer. The remitter is pre-collecting and holding in trust for the State.

13. Contact person on this issue for your state:

Regarding Tribal Matters

Julie Jensen and Dave Matelski

Administrative Law Specialist

430 W. Allegan

Lansing, Michigan 48922

Phone: 517.241.2185

Fax: 517.241.3825

Email: jensonj@michigan.gov, matelskid@michigan.gov

MINNESOTA

1. What exemptions, if any, does your state allow Native Americans?

Certain tribal operations deemed as U.S. Government agency ("BIA").

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?

Yes. Revenue sharing - split taxes collected from "retail service stations" on the reservation 50/50 between the tribe and the state. On a quarterly basis, the tribes' portion will be reduced by the amount of per capita tax refund and tribal business use refund.

The first three quarters are based on taxes collected in the year before, then in the fourth quarter the payment is made using the actual taxes for the year in question. Basically the fourth quarter is catch-up or even out time. Example - taxes collected - total per capita - business use x 12.5% = payment due.

Per capita tax refund - based on member population, as shown on most current report to the U.S. Government, times the rate set in the agreement divided by 4. Example - 3800 x \$51.45 or $\$195,510/4 = \$48,877.50$ paid each quarter.

Tribal business use - any use by the tribal business council in vehicles owned by the tribal council will be refunded on a quarterly basis. Example - 4572 gallons x \$.20 = \$914.40.

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)? *Yes. All receipts dedicated to Highway User Trust Fund.*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax? *Yes*

5. Is it a refund to the tribal member? *No*

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? *No*

7. What are those estimates? *NA*

8. Is your state in litigation with the tribes regarding excise tax issues? *No.*

9. Is your state in active negotiations with the tribes regarding these issues? *N/A*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *No*

11. At what point is motor fuel taxed in your state?

Gasoline - Receipt by first licensed Distributor

Diesel - Receipt by first licensed Distributor

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Taxpayer*

13. Contact person on this issue for your state:

Jeremy Neeck

RTS Principal

Mail Station 3333

St. Paul, MN 55146-3333

Phone: 651-556-4728

Fax: 651-556-3107

Jeremy.neeck@state.mn.us

MISSISSIPPI

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *N/A*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Supplier
Diesel - Receipt by Distributor
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *No. The tax is levied on the distributor for the privilege of engaging in business as a distributor.*
13. **Contact person on this issue for your state:**
Danielle Hughes
Director, Petroleum Tax Division
P.O. Box 1033
Jackson, MS 32915
Phone: 601.923.7153
Fax: 601.923.7133

MISSOURI

1. **What exemptions, if any, does your state allow Native Americans?** *There are no Indian reservations or Indian country in Missouri. Statutes providing exemptions have been repealed due to lack of Indian reservations or Indian countries in the state.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *N/A – No Indian reservations or Indian countries in the state.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. By State Constitution - funds must be used for road construction, etc. Missouri Constitution - Article IV § 30*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Does not apply as there are no Indian reservations or Indian countries in Missouri.*
5. **Is it a refund to the tribal member?** *Does not apply*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - At the Rack - Sale by Supplier
Diesel - At the Rack - Sale by Supplier
CNG/LNG/Propane – At the Rack – Sale by Supplier
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent, pre-collecting on behalf of end user.*

13. Contact person on this issue for your state:

Cassandra Willis
Excise Tax Manager
P.O. Box 300
Jefferson City, MO 65105-0300
Phone: 573.751.3804
Fax: 573.522.1720
cassandra.willis@dor.mo.gov

Gerald Robinett
Excise Tax Supervisor
P.O. Box 300
Jefferson City, MO 65105-0300
Phone: 573.751.5795
Fax: 573.522.1720
gerald.robinett@dor.mo.gov

Updated 05/20/2019

MONTANA

1. **What exemptions, if any, does your state allow Native Americans?** *No motor fuel tax exemptions for individuals.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?**
Yes. The Montana Department of Transportation has revenue sharing agreements with all the seven Tribal Governments for gasoline tax revenue sharing.
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *The restrictions of the monies from the Highway Trust Fund include road construction, maintenance and safety. Some of these revenues are statutorily distributed to other entities for uses like weed spraying or "off road" uses such as snowmobiles, motorboats, and ATV's. However, the monies shared with the Tribes do not.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No. In the motor fuel agreements, each tribe agrees to keep in force a tax code that imposes taxes equal to the State gasoline license tax. The tax code applies to gasoline sold to all persons within the Tribe's jurisdiction in a manner similar to the Montana taxes. The department then collects the motor fuel tax and shares the revenue based on the agreed-upon formula.*
5. **Is it a refund to the tribal member?** *No, it is a refund to the tribe.*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No.*
9. **Is your state in active negotiations with the tribes regarding these issues?** *We are constantly providing updates and renewals of agreements when new councils are formed or agreements are renewed.*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Distributor level
Diesel - Distributor level
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The licensed*

distributor is the taxpayer.

13. Contact person on this issue for your state:

Tracy Halubka, Supervisor

Motor Fuel Section

P.O. Box 201001

Helena, MT 59620-1001

Phone: 406.444.0806

Fax: 406.444.5411

NEBRASKA

1. **What exemptions, if any, does your state allow Native Americans?** *Native Americans may purchase fuel tax-free if the purchaser is a resident of a Nebraska Reservation and the purchase is made on a Nebraska Reservation, unless otherwise provided by an agreement between the state of Nebraska and the tribe. This exemption also applies to any purchase made on a Nebraska Reservation by a business that is owned by the Tribal Council. Nebraska has entered into tax-sharing agreements with all three tribes who have fuel outlets on reservation land in Nebraska.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling tobacco, gas or diesel?** *Yes, we have agreements with regard to fuel with all three tribes.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes, tribal sales are subject to tribal taxes, but we have tax-sharing agreements in place.*
5. **Is it a refund to the tribal member?** *Yes. Licensees may sell tax-free if they keep proper documentation. Otherwise, the tribal member applies for a refund. Tax-free sale/refunds are available only for transactions that are outside the parameters of the agreements.*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *Yes*
7. **What are those estimates?** *In 2018, we averaged 462,000 gallons of motor vehicle fuel and 258,000 gallons of clear diesel sold monthly for all three tribes.*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *There was a boundary dispute between the Omaha Tribe of Nebraska and the Village of Pender and the State of Nebraska that was settled by the U.S. Supreme Court in May 2016. The Village of Pender was ruled as remaining within the jurisdiction of the Omaha Tribe.*

The Nebraska Attorney General and Tax Commissioner are also parties to a pending lawsuit suit brought by HCI Distribution Inc. and Rock River Manufacturing. The issue in the suit is whether HCID and RR, as part of the economic branch of the Winnebago Tribe, are subject to Nebraska's cigarette escrow statutes. See Neb. Rev. Stat. §§ 69-2701 through 69-2711. Resolution of the question is intertwined with Nebraska's cigarette taxing scheme, which is an excise tax.
9. **Is your state in active negotiations with the tribes regarding these issues?** *No. Agreements are in place with the three tribes that have fuel outlets on Reservation land.*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *Yes.*

11. At what point is motor fuel taxed in your state?

Gasoline - Receipt by Distributor or Importer

Diesel - Receipt by Distributor or Importer

12 Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Agent of the state.*

13 Contact person on this issue for your state:

Marcia J. Leichner, Manager

Motor Fuels Division

1313 Farnam Street

Omaha, NE 68102-1871

Phone: 402.595.2013

Fax: 402.595.1041

marcia.leichner@nebraska.gov

Updated 05/21/19

NEVADA

1. What exemptions, if any, does your state allow Native Americans?

*Motor Fuel (gasoline, etc.) All motor fuels purchased either from a tribal retail location or on the reservation for the use of a tribal member or for tribal governmental use is exempt from the Nevada fuel tax; and***

*Special fuels (Diesel, etc.) All special fuels purchased either from a tribal retail location or on the reservation for the use of a tribal member or for the tribal governmental use is exempt from the Nevada fuel tax; and***

*(**The tribes can enter into an agreement with the state to purchase their fuel ex-tax and remit applicable excise taxes on sales made to non-tribal members or they can purchase their fuel tax-paid and request a refund on fuel sold to its tribal members.)*

Vehicles used for non-commercial purposes owned by the Tribe and Tribal Members are exempt from certain registration taxes (Governmental and Supplemental) if the vehicle is:

- a. Operated exclusively within the Reservation or*
- b. Primarily garaged within the reservation*

2. Does your State have agreements for the collection of taxes with all tribes who operate retail outlets selling gas, or diesel?

Only some of the tribes have agreements for the collection/remittance of taxes on sales of fuel made to non-tribal members. It is anticipated that eventually all tribes operating a retail location will at some future point in time want to enter into such an agreement.

Diesel (special fuel) same as above.

3. Does your state have a restriction on the expenditures from the fuel tax fund?

No, fuel tax (all) received from sales made to non-tribal members must be remitted to the state. Any fuel tax levied by the Tribe on exempt sales of fuel may be used as the tribe sees fit, for the benefit of its tribal members.

4. Does Nevada have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?

Any sales of fuel made to a tribal member at a tribal retail location or on the reservation are not subject to the Nevada fuel tax; however, if the tribe wishes to levy a tax on the tribal member, that is an internal tribal matter and is subject to the Tribal Constitution and By-laws.

5. Is it a refund to the individual tribal member?

No, see response to question 4.

6. Has your state estimated the amount of fuel sold in the state, which has not been subject to the full state tax?

We keep exact records of the amount of fuel that has been sold at the various tribal retail locations or on reservations as exempt.

7. What are those estimates?

Information available at this time:

Fiscal Year 2014 (Gasoline/Gasohol): 2,257,050 gallons = \$622,837.68 total tax gas exempted.

Gasoline Refunds for FY 14 = 394,915 gallons = \$123,736.02

Fiscal Year 2014 (Diesel): 444,757 gallons = \$118,684.71 total diesel tax exempted.

Diesel Refunds for FY 14 = 46,468 gallons = \$12,295.48

- *In addition, during FY 12, 596,129 gallons of gasoline and 6,105,220 gallons of diesel were exported to California by the tribes.*

8. Is your state in litigation with the tribes regarding excise tax issues? *No.*

9. Is your state in active negotiations with the tribes regarding these issues?

There are twenty-six tribes in Nevada and we have negotiated with all of them concerning the collection taxes on sales made to non-tribal members. Not all of the tribes have retail locations so those tribes prefer to apply for a refund of taxes paid by the tribe on bulk purchases of fuel. Negotiations continue with one tribe for it to become licensed, which will enable it to purchase its fuel ex-tax.

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *Initially, yes, but not in a long time.*

11. At what point is motor fuel taxed in your state?

At the distributor level for all motor fuels and special fuels.

12. Is the one identified in question 11 considered the tax payer, or are they and agent of the state, collecting tax from the end user on the state's behalf? *Taxpayer*

13. Contact Person on this issue for your state

Karen Stoll kstoll@dmv.nv.gov or (775) 684-4610

Or

Dawn Lietz dlietz@dmv.nv.gov or (775) 684-4626

NEW HAMPSHIRE

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No. New Hampshire does not have Native American tribes located within the State.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *All monies collected go to the Highway Fund.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No. New Hampshire does not have Native American tribes located within the State.*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No.*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No. New Hampshire does not have Native American tribes located within the State.*
11. **At what point is motor fuel taxed in your state?**
All motor fuel is taxed at the Distributor (Last Licensee model) level. Typically the tax attaches when placed into a retail stations tank or the first sale to a non-licensed entity. NH categorizes diesel fuel as a "special fuel". Special fuels are basically any fuels used in an internal combustion engine to propel vehicles on the State's ways.
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*

13. Contact person on this issue for your state:

Scott Bryer

Chief of Road Toll Operations

33 Hazen Drive

Concord, NH 03305

Phone: 603.223.8081

Fax: 603.271.6758

NEW JERSEY

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. Money is appropriated annually by the legislature for expense incurred by taxation in administering motor fuel tax. The remainder goes to the Highway Transportation Fund - roads, bridges, etc.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *Yes. This is from alternative fuels that are taxed at half the rate of gasoline or .0525 cents per gallon.*
7. **What are those estimates?** *Presently less than 1%.*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline and diesel fuel are taxed at as they are removed from the terminal.
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *The taxes imposed are imposed on the consumer, but shall be precollected for the facility and convenience of the consumer*
13. **Contact person on this issue for your state:**
*Mike Palombo,
Auditor
State of New Jersey-Division of Taxation
Excise Tax Branch
P.O. Box 189
Trenton, NJ 08646-0269*

Phone: 609.633-8536

Fax: 609-292-2863

Email: Michael.palombo@treas.nj.gov

NEW MEXICO

- 1. What exemptions, if any, does your state allow Native Americans?**
 - *Purchase of gasoline or special fuel for exclusive use of tribe.*
 - *Gasoline sold to a Registered Indian Tribal Distributor for sale at retail on their own land.*
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *N/A*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
- 5. Is it a refund to the tribal member?** *N/A*
- 6. Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *No*
- 7. What are those estimates?** *N/A*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *N/A*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
- 11. At what point is motor fuel taxed in your state?**

Gasoline - Receipt by first Distributor except import can be passed to the next registered distributor

Diesel - Receipt by first Supplier
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
- 13. Contact person on this issue for your state:**

Laura Lujan, Tax Auditor
NM Taxation & Revenue
P.O. Box 630
Santa Fe, NM 87504
Phone: (505) 827-0923
Laura.lujan1@state.nm.us

NEW YORK STATE

New York State did not participate in the survey

- 1. What exemptions, if any, does your state allow Native Americans?**
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?**
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?**
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?**
- 5. Is it a refund to the tribal member?**
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?**
- 7. What are those estimates?**
- 8. Is your state in litigation with the tribes regarding excise tax issues?**
- 9. Is your state in active negotiations with the tribes regarding these issues?**
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?**
- 11. At what point is motor fuel taxed in your state?**
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?**
- 13. Contact person on this issue for your state:**

NORTH CAROLINA

1. What exemptions, if any, does your state allow Native Americans?

The motor fuel tax is due on all fuel sold on tribal land. North Carolina does not exempt motor fuel sales to Native American Indians. However, the tribal government or individual tribal members may request a refund of the paid motor fuel tax.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas, or diesel?

Pursuant to N.C.G.S. §105-449.114(c), North Carolina has entered a Memorandum of Understanding with the tribal government to make refunds of fuel taxes to the Tribe in its collective capacity on behalf of tribal members residing on trust land. A tribal member may request a refund individually, however the amount refunded to any individual tribal member will be deducted from the refund issued to the Tribe in its collective capacity.

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?

Yes. North Carolina Gen. Stat. §105-449.125 establishes the distribution of tax revenue collected from the fuel tax, which is distributed among various funds and accounts. A specified portion of the collected fuel tax is allocated to a Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund as well as a Water and Air Quality Account. The remainder of the collected fuel tax is allocated between the Highway Fund and the Highway Trust Fund. North Carolina Gen. Stat. §105-449.126 specifies that a portion of the fuel tax allocated to the Highway Trust Fund be credited to the Wildlife Resource Fund and the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund.

The Highway Fund was established to charge the Department of Transportation with various responsibilities among which are to establish, construct, and maintain a statewide highway system. The statutes do not specify all expenditures of the Highway Fund.

The Highway Trust Fund as stated in G.S. §136-176 must be used in the following manner:

- To plan, design, and construct the projects of the Intrastate System and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects,*
- To plan, design, and construct the urban loops and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops,*
- To supplement the appropriation to cities for city streets, and,*
- For secondary road construction and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary roads*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal

members are not subject to tax?

Not at the time of purchase. North Carolina Gen. Stat. §105-449.62, imposes the fuel tax on the end-user; therefore, all motor fuel sold on the tribal trust lands has the North Carolina excise and inspection taxes included in the price per gallon. However, pursuant to a Memorandum of Understanding entered between the Department of Revenue and the Tribe, a refund is issued to the Tribe in its collective capacity for the fuel taxes paid by Native Americans who reside on trust lands.

5. Is it a refund to the tribal member?

The refund indicated in Question 4 is made to the Native American Tribe; however, it does not preclude a tribal member from filing for their individual refund. In those situations, the Tribe refund is reduced by all individual member refunds requested.

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?

North Carolina tracks the number of gallons and dollars that are refunded to Native American Tribes and tribal members.

7. What are those estimates?

North Carolina averages annual refunds of motor fuel excise and inspection taxes in the amount of \$1,300,793.45 or 3,705,964 gallons to Native American Tribes and tribal members.

8. Is your state in litigation with the tribes regarding excise tax issues?

North Carolina is not in litigation with any tribes regarding excise tax issues.

9. Is your state in active negotiations with the tribes regarding these issues?

North Carolina is not in active negotiations with any tribes regarding motor fuel excise tax issues.

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?

All motor fuel is taxed on Tribal trust lands; therefore, there is no disparity in prices. There have been no complaints filed with the Attorney General's office or the Secretary of Revenue's office concerning excise taxes.

11. At what point is motor fuel taxed in your state?

Gasoline - Terminal Rack

Diesel - Terminal Rack

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

North Carolina General Statute §105-449.62 states in part "...The tax is collected from the supplier or importer of the fuel because this method is the most efficient way to collect the tax. The tax is designed, however, to be paid ultimately by the person who

consumes the fuel. The tax becomes a part of the cost of the fuel and is consequently paid by those who subsequently purchase and consume the fuel."

By statute, the supplier or importer is an agent of the state for an efficient tax collection process.

13. Contact person on this issue for your state.

John Panza

Director

North Carolina Department of Revenue

Excise Tax Division

Phone: 919-707-7582

Fax: 919-715-1826

john.panza@ncdor.gov

NORTH DAKOTA

1. What exemptions, if any, does your state allow Native Americans? *Tribal/state tax agreements exist on all four reservations in North Dakota (all are basically the same except for the distribution of revenue which is based on the member and nonmember census):*

- a. *Dyed fuel and propane sales to members enrolled on the reservation of delivery are tax exempt.*
- b. *Clear diesel and gas are subject to the tribal tax.*

One tribe occupies trust land in the state but has no members living on the trust land.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *We are currently administering motor fuel agreements with four of the tribes located within the state. The fifth tribe is on trust land and is non-compliant.*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e., all revenues must be spent on road construction and maintenance)? *All state fuel tax revenues are deposited into a Highway Tax Distribution Fund. The North Dakota Constitution mandates that all fuel tax revenues are to be used for road construction and road maintenance purposes.*

All tribal fuel tax revenues are distributed to the tribes which can expend the revenues as they see fit.

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax? *Based on the tribal/state tax agreements, members pay the tribal tax not the state tax; both tax rates are the same.*

5. Is it a refund to the tribal member? *No.*

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? *The volume of fuel sold, which is subject to the tribal/state agreements and revenues distributed accordingly, can be determined. However, the volume of fuel sold by the tribe not in compliance can't be determined.*

7. What are those estimates? *NA*

8. Is your state in litigation with the tribes regarding excise tax issues? *No.*

9. Is your state in active negotiations with the tribes regarding these issues? *Requests for information and submission of monthly tax reports have been issued.*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *No.*

11. At what point is motor fuel taxed in your state?

On a sale by a Supplier, Distributor, or Retailer to a customer or end user.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

North Dakota statutes require dealers licensed with the Tax Commissioner to remit the tax. The statutes also provide for a pass-through of the tax. Therefore, the entities identified above are agents of the state collecting tax from the end user on the state's behalf.

13. Contact person on this issue for your state:

*Doug Arndt,
Motor Fuel Auditor
Office of State Tax Commissioner
State Capitol, 600 East Boulevard Ave.
Bismarck, ND 58505-0599
Phone: 701.328.2050
Fax: 701.328.1942
darndt@nd.gov*

Updated 5/28/2019

OHIO

1. **What exemptions, if any, does your state allow Native Americans?** *There are currently no Native American-specific exemptions.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *Tribes who are operating retail locations are required to be licensed in the same manner as all other retail dealers.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes, highway related expenses.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Not at this time.*
5. **Is it a refund to the tribal member?** *Refunds are available to any individual or organization should they meet the requirements for being issued a refund.*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Wholesaler
Diesel - Sale by Wholesaler
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
13. **Contact person on this issue for your state:**
Matthew Long, Supervisor
Excise & Energy Tax Division
Ohio Department of Taxation
4485 Northland Ridge Blvd.
Columbus, OH 43229
Phone: 614.466-1096
Fax: 206.350-6722

Matthew.Long@tax.state.oh.us

Updated 05/22/19

OKLAHOMA

1. What exemptions, if any, does your state allow Native Americans?

Effective 10/1/96 federally recognized Indian Tribes are exempt from motor fuel tax used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of the state; however, if a federally recognized Indian Tribe enters into an agreement contract with the State of Oklahoma which allows them to be paid quarterly on the percentage of state motor fuel tax and assessment collected and those Indian Tribes engaged in the business of selling motor fuel, will also receive so much per gallon sold at an Indian outlet, then those members of the accepting tribe shall not be individually eligible for the exemption provided above.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *Yes. Oklahoma Statutes, Title 68, Section 500.63*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)? *Yes. The tribe shall use the money exclusively for tribal government programs limited to highway and bridge construction, health, education, corrections, and law enforcement.*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax? *Yes. Non-contracting tribal members apply for refunds.*

5. Is it a refund to the tribal member? *Yes. Oklahoma Statute, Title 68, Section 500.10. This refund only applies to tribal members whose tribe has not entered into an agreement contract with the State of Oklahoma.*

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? *No*

7. What are those estimates? *N/A*

8. Is your state in litigation with the tribes regarding excise tax issues? *No*

9. Is your state in active negotiations with the tribes regarding these issues? *No*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *No. Not since 10/01/96 when our point of taxation went to the rack and our tribal agreements for the collection of fuel went into effect.*

11. At what point is motor fuel taxed in your state?

Gasoline - Sale by Supplier

Diesel - Sale by Supplier

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *An agent collecting tax from the end user.*

13. Contact person on this issue for your state:

*Christy Dixon
Revenue Unit Manager
2501 N. Lincoln Blvd.
Oklahoma City, OK 73194
Phone: 405.522-4197
Fax: 405.522-2072*

Updated 6/2019

OREGON

1. What exemptions, if any, does your state allow Native Americans?

Specific exemptions. Tribal members may apply for refunds of fuels tax for fuel used on reservation roads not supported by the state highway fund. Tribal governments may apply for tax refunds for fuel used in tribal vehicles. In addition, Oregon law allows us to enter into agreements with Native American Tribes that have retail fueling operations to refund fuel taxes on fuel used by Native Americans on the Reservation and not on public roads financed by state gas taxes.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *No, not with all tribes. The Department has an agreement in place with the Confederated Tribes of the Umatilla Indian Reservation, The Confederated Tribes of the Warm Springs Reservation of Oregon, and The Klamath Tribes.*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)? *Yes*

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax? *No.*

5. Is it a refund to the tribal member? *See answer to #1.*

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? *No*

7. What are those estimates? *N/A*

8. Is your state in litigation with the tribes regarding excise tax issues? *No*

9. Is your state in active negotiations with the tribes regarding these issues? *Yes*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *Yes*

11. At what point is motor fuel taxed in your state?

Motor Vehicle Fuel - Motor vehicle fuel is taxed upon the first sale, use or distribution after withdrawal from terminal storage in Oregon. Gasoline can be imported to Oregon ex-tax by a licensed motor vehicle fuel dealer and sold ex-tax to another licensed dealer. The next sale, use or distribution is a taxable transaction.

Use Fuel (diesel, bio-diesel, natural gas, propane) - The incidence of taxation on use fuel occurs when the fuel is delivered into the fuel tank of the vehicle to

be used on Oregon public highways. In most cases, the retail seller of fuel into motor vehicle fuel tanks will collect the tax and remit it to ODOT.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

In the case of gasoline, the motor vehicle fuel dealer is liable for the tax based on the first sale, use or distribution provision regardless of whether the tax has been collected from the customer or not. The motor vehicle fuel dealer is the taxpayer, not an agent.

The use fuel seller is liable for the tax when they deliver the fuel into the vehicle fuel tank whether or not he collects the tax from the customer. The Use Fuel seller would be considered an agent for the State in the situations when they do collect the tax.

13. Contact person on this issue for your state:

Doug Kleeb

Fuels Tax Manager

Oregon Dept of Transportation

Phone: 503.378.5773

Douglas.J.KLEEB@odot.state.or.us

PENNSYLVANIA

1. **What exemptions, if any, does your state allow Native Americans?** *None, except for legal interpretations. Pa does not have sovereign nations within the Commonwealth.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *NA*
5. **Is it a refund to the tribal member?** *NA*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No.*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Sale by Distributor (registered)
Diesel - Sale by Distributor (registered)
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Distributor is considered an agent. Both borne by consumer taxes.*

13. Contact person on this issue for your state:

Steve Wisyanski, Director
swisyanski@pa.gov

Matt Andrechik,, Acting Taxing Manager
maandrechi@pa.gov

Bureau of Motor & Alternative Fuel Taxes
Pa. Dept of Revenue
(717) 783-9191

RHODE ISLAND

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No. No tribal retail operations in Rhode Island.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. 19 cents per gallon RI Department of Transportation, 7 cents per gallon RI Public Transit Authority, 1 cent per gallon RI Department of Elderly Affairs, 1 cent per gallon General Fund Revenue, and 2 cents per gallon GARVEE Bonds.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No. The few Native Americans in Rhode Island reside outside the confines of a tribal reservation.*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?** *Distributor.*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
13. **Contact person on this issue for your state:**
*Theriza Iafrate
Rhode Island Division of Taxation
One Capitol Hill
Providence, RI 02908-5800
Phone: 401.574-8934
Fax: 401.574-8914*

SOUTH CAROLINA

As relates to Motor Fuel Tax:

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *N/A*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *N/A*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *N/A*
5. **Is it a refund to the tribal member?** *N/A*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *N/A*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *N/A*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *N/A*
11. **At what point is motor fuel taxed in your state?** *Terminal rack*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent of the state*
13. **Contact person on this issue for your state:**
 - Name: Carol Player*
 - Title: Non-resident auditor*
 - Address SC Dept of Revenue*
 - PO Box 125*
 - Columbia, SC 29214*
 - Phone: 803-898-5911*
 - FAX: 803-896-0066*
 - E-mail: Carol.player@dor.sc.gov*

SOUTH DAKOTA

- 1. What exemptions, if any, does your state allow Native Americans?**
Motor fuel and special fuel sold in bulk to a Tribal Indian school approved by the State. Sales of motor fuel and special fuel on reservations to a tribal member of that reservation are exempt.
- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling tobacco, gas or diesel?** *We have comprehensive tax agreements covering motor fuel and special fuel and tobacco with seven tribes.*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. A constitutional provision.*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes, other than on reservations that we have tax agreements with. On these reservations, tribal members pay a tribal tax that the state administers.*
- 5. Is it a refund to the tribal member?** *No*
- 6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
- 7. What are those estimates?** *N/A*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *Yes, with some tribes.*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *The complaints we have received have come from retail stations located in close proximity to stations that can sell their fuel untaxed. They are unable to compete and struggle to maintain business.*
- 11. At what point is motor fuel taxed in your state?**
Gasoline - Rack or upon importation into the state
Diesel - Rack or upon importation into the state
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Legal incidence of the fuel tax is on the user of the fuel. The tax is pre-collected at the rack or upon importation into the state.*

13. Contact person on this issue for your state:

Rosa Yeager

Director / Division of Motor Vehicles

South Dakota Dept. of Revenue

445 E Capitol Ave

Pierre, SD 57501

Phone: 605.773.2578

Rosa.Yeager@state.sd.us

Updated 07/23/2019

TENNESSEE

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *NA*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Distributor
Diesel - at terminal rack
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *For gasoline - "taxpayer", for diesel - "agent".*
13. **Contact person on this issue for your state:**
Rodney Pendley
Manager
Andrew Jackson State Office Bldg.
500 Deaderick St.
Nashville, TN 37242
Phone: 615.532-6124
Fax: 615.741.5319

TEXAS

1. What exemptions, if any, does your state allow Native Americans?

A retailer located on an Indian reservation recognized by the United States government may claim a refund of tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain specific records to substantiate the sale. Comptroller Rule 3.432(n).

Exempt tribal entities and tribal members may claim a refund of tax paid on gasoline only purchased from a retailer not located on an Indian reservation if the gasoline is used for a purpose other than in a motor vehicle. The user must maintain specific records to substantiate the purchase and use.

2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel? *No*

3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?

Yes. Texas state motor fuel taxes are constitutionally dedicated - 25% of net motor fuel tax revenue is allocated to the available school fund and 75% is dedicated to the state highway program.

4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax? *No*

5. Is it a refund to the tribal member? *See answer to Question No. 1*

6. Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax? *No*

7. What are those estimates? *NA*

8. Is your state in litigation with the tribes regarding excise tax issues? *No*

9. Is your state in active negotiations with the tribes regarding these issues? *No*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *No*

11. At what point is motor fuel taxed in your state?

The terminal rack (upon removal); Importer (upon entering the state). Blender (taxed at the point gasoline blended fuel or blended diesel fuel is made in this state outside the bulk transfer/terminal system).

Gasoline - Sale by a Texas licensed Supplier or Permissive Supplier at an IRS-registered terminal with a Texas destination is subject to Texas motor fuels tax.

Diesel - Sale by a Texas licensed Supplier or Permissive Supplier at an IRS-registered terminal with a Texas destination is subject to Texas motor fuels tax.

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?

Licensed Suppliers are taxpayers.

The tax is passed down through the distribution system and is considered to be added to the selling price. The tax is ultimately paid by the person using or consuming the fuel.

13. Contact person on this issue for your state:

Julian "JD" Daniels

Tax Policy - Direct Tax Section

Texas Comptroller of Public Accounts

1700 N. Congress Avenue Austin, TX 78711

800-531-5441 ext. 50440 (toll free)

512-475-0440 (direct line)

julian.daniels@cpa.texas.gov

UTAH

- 1. What exemptions, if any, does your state allow Native Americans?** *Utah has two tribal agreements. One that provides a refund of taxes paid to the tribe for all purchases made by tribal members on the reservation. The other discounts the Utah tax to the amount of the tribal tax imposed on the reservation.*

In addition, by rule Native America Tribal Governments are exempt.

- 2. Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
- 3. Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
- 4. Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
- 5. Is it a refund to the tribal member?** *N/A*
- 6. Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *Yes*
- 7. What are those estimates?** *Revenue losses authorized by law for a 12-month period on Native American fuel is estimated to be approximately \$360,000 per year.*
- 8. Is your state in litigation with the tribes regarding excise tax issues?** *No*
- 9. Is your state in active negotiations with the tribes regarding these issues?** *Yes*
- 10. Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
- 11. At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Licensed Distributor / Wholesaler
Diesel - Terminal Rack or Import
- 12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*

13. Contact person on this issue for your state:

John Manning

Tax Audit Manager

Utah State Tax Commission

Phone: (801) 297-4678

Fax: (801) 297-4799

jmanning@utah.gov

VERMONT

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *No*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *NA*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Receipt by Distributor
Diesel - Sale by Distributor
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Gasoline – Distributor is the taxpayer. Diesel – distributor, retailer & User are considered the taxpayer.*
13. **Contact person on this issue for your state:**
Bruce Bierbaum
MV Tax Audit Supervisor
120 State Street
Montpelier, VT 05602
Phone: 802.828.0522
Fax: 802.828.3577

VIRGINIA

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Revenue from fuel tax collection is spent on transportation in Virginia.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *No*
5. **Is it a refund to the tribal member?** *No*
6. **Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?**
Gasoline - Sold by Supplier
Diesel - Sold by Supplier

At the Rack
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *They are considered the taxpayer; however in most cases, they collect taxes on the state's behalf.*
13. **Contact person on this issue for your state:**
Tammy West, Director
Phone: 804.367.0883

WASHINGTON

1. **What exemptions, if any, does your state allow Native Americans?** There are various exemptions for tribal entities and individuals. *Vehicle excise tax license fees for Tribal Government vehicles. A fishing treaty exists for some tribe's tribal members for a refund in their fishing operations. State fuel tax exemption for tribes buying taxed fuel for resale when they have an Agreement with the state.*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** No. *We have agreements with 24 of the 29 Tribes in Washington State to provide reimbursement for fuel tax previously paid. A tribe may have a retail outlet for selling gas and not have an agreement with the State.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** Yes.
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** No.
5. **Is it a refund to the tribal member?** No. *Refunds on taxed fuel sales go to the Tribal Government, with the exception of one Tribe having an agreement that is a court ordered consent decree. A tribal member operating under the provisions of the fishing treaty may file for a refund.*
6. **Has your state estimated the amount of fuel sold in the state which has not been subjected to the full state tax?** Yes, based on deliveries to Washington reservations, refunds to tribes, and agreements with tribes.
7. **What are those estimates?** \$49 million through refunds to the tribe.
8. **Is your state in litigation with the tribes regarding excise tax issues?** No.
9. **Is your state in active negotiations with the tribes regarding these issues?** No.
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** Yes.
11. **At what point is motor fuel taxed in your state?** *Motor fuel and special fuel (diesel) are taxed at the terminal rack when fuel is removed, upon importation, or production outside the bulk transfer terminal system.*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *We license suppliers, distributors (importer/exporter), and blenders (manufacture fuel) for both motor and special fuel Licensees are considered the taxpayer.*

13. Contact person on this issue for your state:

*Katherine Ataman
Fuel Tax & Refunds Manager
Prorate & Fuel Tax Services
Post Office Box 9228
Olympia, WA 98507-9228
Phone: 360-664-1416
Fax: 360-570-7852*

Email: kataman@dol.wa.gov

WEST VIRGINIA

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. All fuel taxes are for highway construction maintenance and road bond retirement. ½ of 1% goes to the State Tax Department for Administration and enforcement.*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *NA*
5. **Is it a refund to the tribal member?** *NA*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *NA*
7. **What are those estimates?** *NA*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No*
11. **At what point is motor fuel taxed in your state?** *Upon removal from the terminal rack or upon the import into West Virginia.*
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Taxpayer*
13. **Contact person on this issue for your state:**
Matthew Irby
Director
Tax Account Administration Division
PO Box 2389
Charleston, WV 25328
Phone: 304.558.8700
Fax: 304.558.8713

WISCONSIN

1. **What exemptions, if any, does your state allow Native Americans?**
Native Americans are not subject to the Wisconsin excise tax on fuel they purchase if the fuel is delivered to them on their tribal reservation, except where any of the fuel is purchased for resale to non-Native Americans.

2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *Yes. Native American retailers purchase these products tax paid. They receive refunds for sales made to resident tribal members. Gas & clear diesel fuel - 100% refund on sales to resident tribal members.*

3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes. All motor vehicle fuel taxes become part of the Segregated Transportation Fund that is administered by the Dept. of Transportation.*

4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes. Products are purchased tax paid and we issue refunds based upon actual sales or a percentage based upon an agreement.*

5. **Is it a refund to the tribal member?** *No. Refunds are to the Tribal Government or Tribal vendors. No refunds are issued to individual tribal members.*

6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *Actual amounts for the fiscal year ended June 30, 2007: Wisconsin refunded to Native American tribes on 8,853,427 gallons of gasoline and 545,874 gallons of clear diesel fuel for a total refund of \$2,904,384.*

| FY ended | Gas | Diesel | Amount |
|-----------|-----------|---------|--------------|
| 6/30/2008 | 8,467,243 | 800,456 | \$ 2,863,719 |
| 6/30/2009 | 8,881,409 | 748,798 | \$ 2,975,229 |
| 6/30/2010 | 8,898,762 | 691,934 | \$ 2,963,525 |
| 6/30/2011 | 8,679,976 | 685,856 | \$ 2,894,045 |
| 6/30/2012 | 8,585,748 | 679,635 | \$ 2,863,003 |
| 6/30/2013 | 7,521,456 | 543,127 | \$ 2,491,956 |
| 6/30/2014 | 9,816,136 | 534,079 | \$ 3,198,216 |
| 6/30/2015 | 8,617,559 | 473,754 | \$2,809,216 |
| 6/30/2016 | 8,938,702 | 499,778 | \$2,916,490 |
| 6/30/2017 | 9,520,237 | 555,993 | \$3,113,555 |
| 6/30/2018 | 8,030,137 | 435,533 | \$2,615,892 |
| 6/30/2019 | 9,476,611 | 481,704 | \$3,077,119 |

7. **What are those estimates?** *Actual amounts—see question 6.*

8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*

9. Is your state in active negotiations with the tribes regarding these issues? *N/A*

10. Have you received complaints from citizens regarding untaxed sales by Native American retailers? *Yes*

1.

11. At what point is motor fuel taxed in your state?

Gasoline - Receipt by Supplier

Diesel - Receipt by Supplier

12. Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf? *Taxpayer, but the law provides that in each subsequent sale or distribution of motor vehicle fuel on which the tax has been collected, the tax collected shall be added to the selling price so that the tax is paid ultimately by the user of the motor vehicle fuel.*

13. Contact person on this issue for your state:

Sun Ann Nelson, Revenue Management Supervisor

Excise Tax Unit

P O Box 8900

Madison, WI 53708-8900

Phone: 608.261.8985

Fax: 608.261.7049

sue.nelson@wisconsin.gov

WYOMING

1. **What exemptions, if any, does your state allow Native Americans?** *None*
2. **Does your state have agreements for the collection of taxes with all tribes who operate retail outlets selling gas or diesel?** *No.*
3. **Does your state have a restriction on expenditures from the fuel tax fund (i.e. all revenues must be spent on road construction and maintenance)?** *Yes*
4. **Does your state have a mechanism in place to ensure that tribal sales to tribal members are not subject to tax?** *Yes. Refund Process*
5. **Is it a refund to the tribal member?** *Yes. The refund requests are submitted by the tribes in accordance with the MOU between the Eastern Shoshone and Northern Arapaho tribes and the State of Wyoming.*
6. **Has your state estimated the amount of fuel sold in the state, which has not been subjected to the full state tax?** *No*
7. **What are those estimates?** *N/A*
8. **Is your state in litigation with the tribes regarding excise tax issues?** *No*
9. **Is your state in active negotiations with the tribes regarding these issues?** *No*
10. **Have you received complaints from citizens regarding untaxed sales by Native American retailers?** *No complaints since the last survey.*
11. **At what point is motor fuel taxed in your state?**
Gasoline – Rack or upon importation into the state
Diesel – Rack or upon importation into the state
12. **Is the one identified in question 11 considered the taxpayer, or are they an agent of the state, collecting tax from the end user on the state's behalf?** *Agent collecting from the end user.*
13. **Contact person on this issue for your state:**
Wayne Hassinger
Fuel Tax Manager
WYDOT - FTA
5300 Bishop Boulevard
Cheyenne, WY 82009-3340
Phone: 307.777.3909
Fax: 307.777.4769