

2015 Regular Session

HOUSE BILL NO. 736

BY REPRESENTATIVE ORTEGO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/FUELS, SPECIAL: Provides relative to the state excise tax levied on special fuels and for the administration and collection of the tax

1 AN ACT

2 To amend and reenact R.S. 3:4684 and R.S. 47:818.2(18), (43), (44), and (63), 818.101  
3 through 818.104 and to enact R.S. 47:818.105 through 818.122, relative to state  
4 excise taxes on certain motor fuels; to provide with respect to the levy and collection  
5 of the excise tax levied on special fuels; to provide for the calculation of the rate of  
6 the tax; to provide for collection and administration of the tax; to require issuance  
7 of certain licenses; to provide for certain requirements and limitations; to provide for  
8 certain fees, penalties, and sanctions; to provide for search, seizure, and sale of  
9 certain property; to authorize certain actions by the secretary of the Department of  
10 Revenue; to provide for an effective date; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 3:4684 is hereby amended and reenacted to read as follows:

13 §4684. Fee to be collected for testing, etc.

14 For the purpose of defraying the expenses connected with the inspection,  
15 testing, and analyzing of petroleum products in this state and enforcement of this  
16 Chapter, there shall be collected by the secretary of the Department of Revenue a fee  
17 of four thirty-seconds of one cent per gallon on all petroleum products distributed,  
18 sold, or offered or exposed for sale or use or consumption in the state or used or  
19 consumed in the state which shall be paid before delivery to agents, dealers, or  
20 consumers in the state. The fee does not include ~~liquefied petroleum gas, natural~~

1 ~~gas, or~~ bulk sale or transfers. Excluding bulk sales or transfers, the fee will be  
 2 imposed upon the removal from an Internal Revenue Service approved terminal  
 3 using the terminal rack. The position holder shall collect the fee imposed from the  
 4 person who orders the withdrawal at the terminal rack. Exports out of the state shall  
 5 not be subject to the fee. A fee is also imposed on the above-referenced fuel upon  
 6 import to the state excluding bulk sale or transfer for delivery within the state. This  
 7 fee shall be paid by the first importer. However, no fee shall be due on fuels that are  
 8 eligible for tax refunds under the provisions of R.S. 47:818.15(A)(5) or that are sold  
 9 for use in or distributed to seagoing vessels as defined in R.S. 3:4602. The secretary  
 10 of the Department of Revenue is authorized to seize and hold these products on  
 11 which the fee has not been paid until such time as the fee has been paid. Any  
 12 expense incurred in the seizure and holding of any product so seized shall be  
 13 assessed in addition to the fee and collected at the same time the fee is collected.

14 Section 2. R.S. 47:818.2(18), (43), (44), and (63) and 818.101 through 818.104 are  
 15 hereby amended and reenacted and R.S. 47:818.105 through 818.122 are hereby enacted to  
 16 read as follows:

17 §818.2. Definitions

18 As used in this Part, unless the context requires otherwise, the following  
 19 terms have the meaning ascribed herein:

20 \* \* \*

21 (18) "Compressed natural gas" means natural gas that has been compressed  
 22 ~~and dispensed into motor fuel storage containers~~ and is advertised, offered for sale,  
 23 sold, suitable for use, or used as an engine motor fuel.

24 \* \* \*

25 (43) "Liquefied natural gas" means natural gas that has been cooled to ~~about~~  
 26 ~~a negative 160 degrees Celsius for storage or shipment as a liquid in high-pressure~~  
 27 ~~cryogenic containers~~ a liquid state and is advertised, offered for sale, sold, suitable  
 28 for use, or used as an engine motor fuel.

1           (44) "Liquefied petroleum gas" means the gas derived from petroleum or  
2 natural gas which is in a gaseous state at normal atmospheric temperature and  
3 pressure and maintained in the liquid state at normal atmospheric temperature by  
4 means of suitable pressure ~~and which is dispensed into motor fuel storage containers~~  
5 and is advertised, offered for sale, sold, suitable for use, or used as an engine motor  
6 fuel. The term "liquified petroleum gas" or "LPG" as used in this Part means  
7 propane.

8                                                               \*       \*       \*

9           ~~"Special fuel decal user" means the owner or operator of a motor~~  
10 ~~vehicle that is propelled by an internal combustion engine or motor capable of using~~  
11 ~~liquefied natural gas, liquefied petroleum gas, or compressed natural gas as fuel.~~  
12 "Special fuel fleet user" shall mean a person who produces compressed natural gas,  
13 liquefied natural gas, or liquefied petroleum gas, or maintains storage facilities for  
14 such fuels, and who delivers all or part of the fuel produced or stored into the fuel  
15 supply tank of a motor vehicle.

16                                                               \*       \*       \*

17       §818.101. Taxes levied; rates; unit of measurement

18           A. There is hereby levied a tax of sixteen cents per gallon on all special fuels  
19 including compressed natural gas as defined by R.S. 47:818.2(18), and liquefied  
20 natural gas as defined by R.S. 47:818.2(42), and liquefied petroleum gas as defined  
21 by R.S. 47:818.2(43) sold, used, or consumed in the state of Louisiana for the  
22 operation of motor vehicles licensed or required to be licensed for highway use.

23           B. The taxes herein levied are in addition to the tax levied in R.S. 47:820.1  
24 as provided in Part VI of this Chapter.

25           C. The tax is to be computed, collected, reported, and paid as hereafter set  
26 forth, ~~except when compressed natural gas, liquefied natural gas, or liquefied~~  
27 ~~petroleum gas is sold to, delivered to, or used by any person who pays the annual~~  
28 ~~fuel tax levied under the provisions of R.S. 47:818.102, the imposition of the tax~~  
29 ~~levied shall not apply~~ in this Subpart.

1           D. Beginning January 1, 2016, the tax levied on special fuels including  
2           compressed natural gas, liquefied natural gas, and liquified petroleum gas shall be  
3           converted from a tax levied per gallon on such fuel to a tax levied based on the  
4           special fuel's energy content as follows:

5           (1) Diesel gallon equivalent for liquefied natural gas. The diesel gallon  
6           equivalent for liquefied natural gas shall be equal to 6.060 pounds of liquefied  
7           natural gas and shall be the unit of measurement of the tax levied pursuant to the  
8           provisions of this Section if the natural gas dispenser lists the price in diesel gallon  
9           equivalents and the natural gas is supplied to the dispenser from a liquefied source.

10           (2) Diesel gallon equivalent for liquefied petroleum gas. The diesel gallon  
11           equivalent for liquefied petroleum gas shall be equal to 4.2 pounds of liquefied  
12           petroleum gas and shall be the unit of measurement of the tax levied pursuant to the  
13           provisions of this Section if the petroleum gas dispenser lists the price in diesel  
14           gallon equivalents and the petroleum gas is supplied to the dispenser from a liquefied  
15           source.

16           (3) Gasoline gallon equivalent for compressed natural gas. The gasoline  
17           gallon equivalent for compressed natural gas shall be equal to 5.660 pounds of  
18           compressed natural gas and shall be the unit of measurement of the tax levied  
19           pursuant to the provisions of this Section if the natural gas dispenser lists the price  
20           in gasoline gallon equivalents and the natural gas is supplied to the dispenser.

21           E. Beginning January 1, 2016, the tax levied pursuant to the provisions of  
22           this Section shall be levied and collected in the manner set forth in this Subpart and  
23           shall not be levied or collected pursuant to a decal program or on an annual basis.

24           ~~§818.102. Users of liquefied natural gas, liquefied petroleum gas, or compressed~~  
25           ~~natural gas annual fuel tax; certain vehicles excepted~~ Point of imposition of  
26           the tax

27           ~~A. The owner or operator of a motor vehicle having a gross weight of ten~~  
28           ~~thousand pounds or less which is propelled by an internal combustion engine or~~  
29           ~~motor capable of using liquefied natural gas, liquefied petroleum gas, or compressed~~

1 natural gas as fuel shall pay the special fuels tax by paying either the annual flat rate  
 2 in the amount of eighty percent of one hundred fifty dollars, based on a sixteen cent-  
 3 per-gallon special fuels tax rate or a variable rate of eighty percent of the current  
 4 special fuels tax rate. The variable tax computation shall be based on estimated fuel  
 5 efficiency of twelve miles per gallon, but not to exceed the annual flat rate. In the  
 6 event of an increase or reduction of the special fuels tax, the annual flat rate shall  
 7 increase or decrease based on one hundred fifty dollars at a sixteen cent-per-gallon  
 8 special fuels tax rate rounded to the nearest dollar, and the variable rate shall be  
 9 based on eighty percent of the per-gallon special fuels tax in effect.

10 B. The owner or operator of a motor vehicle having a gross weight of more  
 11 than ten thousand pounds and which is propelled by an internal combustion engine  
 12 or motor capable of using liquefied natural gas, liquefied petroleum gas, or  
 13 compressed natural gas shall pay the special fuels tax by paying the rate of eighty  
 14 percent of the special fuels tax rate in effect on all such fuel so used. The aggregate  
 15 annual tax paid by such person shall not be less than eighty percent of one hundred  
 16 fifty dollars based on a sixteen cent-per-gallon special fuels tax per motor vehicle.  
 17 For the purpose of determining the amount of the tax and enforcing this Subsection,  
 18 the number of gallons of liquefied natural gas, liquefied petroleum gas, or  
 19 compressed natural gas used the previous year on the highways of this state shall be  
 20 determined by using the following schedule for calculating the number of miles per  
 21 gallon:

TYPE OF VEHICLE	MILES PER GALLON
(1) Any motor vehicle with two axles that has a gross license tag weight classification of 10,000 pounds to 20,000 pounds	9
(2) Any motor vehicle with two axles that has a gross license tag weight classification in excess of 20,000 pounds	7
(3) Any motor vehicle or motor vehicles with a combination of three axles	6

1       ~~(4) Any motor vehicle or motor vehicles with a combination~~  
2           ~~of four axles~~ ~~5~~

3       ~~(5) Any motor vehicle or motor vehicles with a combination~~  
4           ~~of five axles~~ ~~4~~

5           ~~C. Nothing in this Section shall be construed to apply to nonresident private~~  
6           ~~carriers of passengers temporarily located in or operated on the highways of this state~~  
7           ~~for a period of not more than thirty days nor shall this Section apply to motor~~  
8           ~~vehicles which are owned and operated by persons who have furnished a bond as~~  
9           ~~required by R.S. 47:818.40 and which are domiciled in a state other than Louisiana.~~

10          ~~D. The owner of any school bus, including school board owned buses, which~~  
11          ~~transports Louisiana students and which is propelled by an internal combustion~~  
12          ~~engine or motor capable of using liquefied natural gas, liquefied petroleum gas, or~~  
13          ~~compressed natural gas as fuel shall pay the special fuels tax by paying an annual flat~~  
14          ~~rate in the amount of one-half of the regular flat rate. In the event of an increase or~~  
15          ~~reduction of the sixteen cent-per-gallon special fuels tax, the annual flat rate shall be~~  
16          ~~based on one-half of the flat rate levied under the provisions of Subsection A of this~~  
17          ~~Section.~~

18          ~~E. In order to enforce the provisions of this Section as applicable to motor~~  
19          ~~vehicles which are propelled by an internal combustion engine or motor capable of~~  
20          ~~using liquefied natural gas, liquefied petroleum gas, or compressed natural gas, no~~  
21          ~~such vehicle shall be issued a motor vehicle inspection certificate, as required by~~  
22          ~~R.S. 32:1304, without a current decal as evidence of tax payment.~~

23           A tax is imposed on the sale of compressed natural gas, liquefied natural gas,  
24           or liquefied petroleum gas delivered into the fuel supply tank of a motor vehicle in  
25           connection with a sale of the compressed natural gas, liquefied natural gas, or  
26           liquefied petroleum gas. The person or entity possessing a compressed natural gas,  
27           liquefied natural gas, or liquefied petroleum gas license shall be considered a retail  
28           dealer for purposes of imposition of the tax levied on such fuels and shall be the  
29           party liable for the tax imposed in this Subpart. The retail dealer shall add the

1        amount of the tax to the selling price of the fuel so that the tax is paid by the ultimate  
 2        consumer or purchaser of the fuel. The amount of the tax shall become part of the  
 3        sales price of the fuel, it shall be considered a debt of the purchaser to the retail  
 4        dealer, and, if unpaid, shall be recoverable at law in the same manner as the original  
 5        sales price. The retail dealer shall provide an invoice or receipt to the purchaser that  
 6        states the rate and amount of tax added to the selling price or that indicates that no  
 7        tax was added to the selling price.

8                B. A tax is imposed on the delivery of compressed natural gas, liquefied  
 9        natural gas, or liquefied petroleum gas into the fuel supply tank of a motor vehicle  
 10        by a special fuel fleet user or other retail dealer not in connection with a sale of the  
 11        compressed natural gas, liquefied natural gas, or liquefied petroleum gas. The  
 12        special fuel fleet user or other retail dealer shall be liable for the tax imposed under  
 13        this Subpart. The retail dealer shall add the amount of the tax to the selling price of  
 14        the fuel so that the tax is paid by the ultimate consumer or purchaser of the fuel. The  
 15        amount of the tax shall become part of the sales price of the fuel, it shall be  
 16        considered a debt of the purchaser to the retail dealer, and, if unpaid, shall be  
 17        recoverable at law in the same manner as the original sales price. The retail dealer  
 18        shall provide an invoice or receipt to the purchaser that states the rate and amount of  
 19        tax added to the selling price or indicates that no tax was added to the selling price.

20        ~~§818.103. Records and reports required by installers of liquefied natural gas,~~  
 21                ~~liquefied petroleum gas, and compressed natural gas carburetion equipment~~  
 22                Presumption of use; backup tax

23                ~~A. Any person who installs or alters liquefied natural gas, liquefied~~  
 24        ~~petroleum gas, or compressed natural gas carburetion equipment shall file with the~~  
 25        ~~secretary a written report, on forms prescribed by the secretary, whenever he installs~~  
 26        ~~or alters such equipment. This report shall be filed not later than fifteen days after~~  
 27        ~~the installation or alteration of the equipment. This person shall maintain records of~~  
 28        ~~every installation or alteration for a period of three years, which records shall be~~  
 29        ~~open to inspection at all reasonable times by the secretary or his authorized designee.~~

1           ~~B. Any person who fails to file the report required in this Section shall be~~  
2           ~~subject to a penalty of one hundred dollars. This penalty shall be multiplied times~~  
3           ~~the number of vehicles on which installation or alterations were performed.~~

4           All compressed natural gas, liquefied natural gas, and liquefied petroleum gas  
5           sold by a special fuels dealer and delivered into the fuel supply tank of a motor  
6           vehicle is presumed to be subject to tax, and the retail dealer is liable for the tax  
7           unless the retail dealer maintains adequate records to establish that the fuel was  
8           exempt from tax.

9           B. All compressed natural gas, liquefied natural gas, and liquefied petroleum  
10          gas delivered into the fuel supply tank of a motor vehicle by a special fuel fleet user  
11          or other special fuels retail dealer not in connection with a sale is presumed to be  
12          subject to tax, and the special fuel fleet user or other retail dealer is liable for the tax  
13          unless the special fuel fleet user or other retail dealer maintains adequate records to  
14          establish that the fuel was exempt from the tax.

15          C. The tax levied pursuant to the provisions of this Subpart shall be due in  
16          all of the following circumstances:

17           (1) A person who obtains a refund of tax on compressed natural gas,  
18           liquefied natural gas, or liquefied petroleum gas by claiming the fuel was used for  
19           an exempt purpose, but actually uses the fuel for a taxable purpose.

20           (2) A person who sells or delivers compressed natural gas, liquefied natural  
21           gas, or liquefied petroleum gas that is delivered into the fuel supply tank of a motor  
22           vehicle, on which tax was not paid, and the person knew or had reason to know that  
23           the fuel would be used for a taxable purpose. The tax imposed in accordance with  
24           the provisions of this Paragraph shall also be imposed on the ultimate consumer.

25          C. The tax liability imposed by this Subpart shall be in addition to any other  
26          penalty imposed under this Subpart.

27          §818.104. ~~Application, payment of tax, decals; penalties~~ Special fuel retail dealer's  
28          license; application procedure



1           A. ~~Any person who wishes to operate, upon the highways of this state, a~~  
2 ~~motor vehicle which uses or is capable of using liquefied natural gas, liquefied~~  
3 ~~petroleum gas, or compressed natural gas as motor fuel shall make application, on~~  
4 ~~or before July thirty-first of each year, to the secretary for permission to operate the~~  
5 ~~motor vehicle on the highways of this state. The application shall be made on a form~~  
6 ~~furnished and prescribed by the secretary and shall contain any information which~~  
7 ~~the secretary may reasonably require.~~

8           B. ~~The applicant shall pay to the secretary, at the time that application is~~  
9 ~~made, the tax levied under this Subpart. Upon payment of the tax and approval of~~  
10 ~~the application, the secretary shall issue to the taxpayer a decal to operate that motor~~  
11 ~~vehicle upon the highways of this state for the period from July first to June thirtieth.~~  
12 ~~If a person makes an application for a vehicle acquired, altered, or converted after~~  
13 ~~July first of the current year, the amount of the tax due shall be reduced by one-~~  
14 ~~twelfth for each month that has elapsed since July first.~~

15           C. ~~Any person who operates more than one motor vehicle using or capable~~  
16 ~~of using liquefied natural gas, liquefied petroleum gas, or compressed natural gas~~  
17 ~~shall pay the tax and obtain a decal for each motor vehicle which he wishes to~~  
18 ~~operate upon the highways of this state. Each decal shall be affixed to the motor~~  
19 ~~vehicle in the manner prescribed by the secretary so that the decal is clearly visible.~~

20           D. ~~The secretary shall provide a procedure for the payment of the tax and the~~  
21 ~~issuance on an annual basis.~~

22           E. ~~Any person who sells or transfers title of a motor vehicle which is~~  
23 ~~propelled by an internal combustion engine or motor capable of using liquefied~~  
24 ~~natural gas, liquefied petroleum gas, or compressed natural gas as fuel shall transfer~~  
25 ~~the decal at the time of the transfer of the vehicle. The secretary shall prescribe a~~  
26 ~~procedure for such transfer of decals and the Department of Revenue shall be~~  
27 ~~notified at the time of any such transfer.~~

28           F. ~~It shall be a violation of this Subpart for any person to operate or cause to~~  
29 ~~be operated a motor vehicle upon the highways of this state which is subject to the~~

1 ~~requirements of this Subpart upon which the tax has not been paid or for which no~~  
2 ~~permit has been issued or to which no decal is attached. In addition to all other~~  
3 ~~liability, such person shall be liable for a penalty of fifty dollars for the first violation~~  
4 ~~and a penalty of one hundred dollars for each subsequent violation.~~

5 A person may not sell or deliver compressed natural gas, liquefied natural  
6 gas, or liquefied petroleum gas that is delivered into the fuel supply tank of a motor  
7 vehicle and on which tax is imposed unless the person holds a compressed natural  
8 gas, liquefied natural gas, or liquefied petroleum gas special fuel retail dealer's  
9 license issued by the secretary.

10 B. In order to apply for a special fuel retail dealer's license, an applicant shall  
11 submit an application to the Department of Revenue on a form provided by the  
12 secretary and shall furnish a bond as required in R.S. 47:818.108 in an amount  
13 applicable to the license in which the applicant is applying. Applications shall  
14 include all of the following:

15 (1) The legal name and name under which the applicant transacts or intends  
16 to transact business.

17 (2) The mailing and physical address of the applicant's principal office,  
18 residence, or place of business in this state, and the address of any other location in  
19 this state in which the applicant operates.

20 (3) The applicant's federal employer identification number or, if an  
21 individual, the social security number in the absence of the federal employer  
22 identification number.

23 (4) The applicant's Louisiana revenue account number, if already assigned.

24 (5) If the applicant is not an individual, the names and social security  
25 numbers of the principal officers of an applicant corporation or the members of an  
26 applicant partnership or limited liability company, the managers of the facility, and  
27 the office, street, and post office box addresses of each.

28 (6) Any other information required by the secretary.

1           C. Upon approval of the bond required in R.S. 47:818.108, the secretary  
2           shall issue the appropriate license or licenses to the applicant.

3           D. A special fuel retail dealer's license for compressed natural gas, liquefied  
4           natural gas, or liquefied petroleum gas is not transferable and unless as otherwise  
5           provided in this Subpart shall remain in effect until surrendered, canceled, or  
6           revoked. The license must be posted in a conspicuous place or kept available for  
7           inspection at the principal place of business of the license holder. A copy of the  
8           license must be kept at each place of business or other place of storage from which  
9           compressed natural gas, liquefied natural gas, or liquefied petroleum gas is sold,  
10          distributed, or used and in each motor vehicle used by the license holder to transport  
11          compressed natural gas, liquefied natural gas, or liquefied petroleum gas purchased  
12          by the license holder for resale, distribution, or use.

13          E. A compressed natural gas, liquefied natural gas, or liquefied petroleum  
14          gas special fuel retail dealer's license is permanent and shall be valid during the  
15          period the license holder has in force and effect the required bond or security and  
16          furnishes timely reports and supplements as required by the secretary, or until the  
17          license is surrendered by the license holder or canceled by the secretary. The  
18          secretary shall cancel a license if the license holder has not reported a delivery of  
19          compressed natural gas, liquefied natural gas, or liquefied petroleum gas during the  
20          previous nine months.

21          F. The secretary shall maintain a record of all persons to whom a license has  
22          been issued under this Subpart and all persons holding a current license issued under  
23          this Subpart by license category.

24          §818.105. Interstate Trucker's License

25          A. An interstate trucker's license authorizes a person who commercially  
26          operates a motor vehicle fueled by compressed natural gas, liquefied natural gas, or  
27          liquefied petroleum gas with two axles and a registered gross weight in excess of  
28          twenty-six thousand pounds, a motor vehicle that has three or more axles, or a motor  
29          vehicle used in combination and the registered gross weight of the combination

1 exceeds twenty-six thousand pounds, to report and pay the tax and take a credit or  
2 claim a refund as provided by this Subpart.

3 B. An interstate trucker's license is valid from the date of issuance until  
4 December 31 of each calendar year or until the license is surrendered by the license  
5 holder or canceled by the secretary, whichever occurs first. The secretary may renew  
6 an interstate trucker's license each calendar year if the license holder furnishes timely  
7 reports as required in this Subpart. The holder of an interstate trucker's license shall  
8 reproduce the license and carry a photocopy in each commercial motor vehicle being  
9 operated in or traveling to or from this state.

10 C. An interstate trucker's license shall not be transferable.

11 §818.106. License application procedure; grounds for denial of a license

12 A. In order to obtain a license under this Subpart an applicant shall file an  
13 application with the secretary on forms provided by the secretary and shall furnish  
14 a bond as required in R.S. 47:818.108 in an amount applicable to the license in which  
15 the applicant is applying. Applications shall include all of the following information:

16 (1) The legal name and name under which the applicant transacts or intends  
17 to transact business.

18 (2) The mailing and physical address of the applicant's principal office or  
19 place of business in this state, the applicant's residence, and the address of any other  
20 location in this state in which the applicant operates.

21 (3) The applicant's federal employer identification number or, if an  
22 individual, the applicant's social security number in the absence of a federal  
23 employer identification number.

24 (4) The applicant's Louisiana revenue account number, if already assigned.

25 (5) If the applicant is not an individual, the names and social security  
26 numbers of the principal officers of the applicant's corporation or the members of an  
27 applicant's partnership or limited liability company, the managers of the facility, and  
28 the office, street, and post office box addresses of each.

29 (6) Any other information required by the secretary.

1           B. Upon approval of the bond required in R.S. 47:818.108, the secretary  
2           shall issue the appropriate license or licenses to an applicant.

3           C. The secretary may refuse to issue a license under this Subpart if any of the  
4           following conditions apply to the applicant or any principal of the applicant:

5           (1) A license or registration issued under this Subpart was canceled by the  
6           secretary for any reason set forth in R.S. 47:818.42 or 818.107.

7           (2) A license or registration issued by another state was revoked, denied, or  
8           canceled for cause.

9           (3) A federal certificate of registry issued under 26 USC 4101 and the  
10          regulations adopted thereunder, or a similar federal authorization, was revoked.

11          (4) The applicant or any principal of the applicant has been convicted of any  
12          offense involving fraud or misrepresentation or has been convicted of any other  
13          offense that indicates that the applicant or any principal of the applicant may not  
14          comply with this Subpart if issued a license.

15          (5) The applicant or any principal of the applicant is in arrears to the state  
16          for any taxes.

17          (6) The applicant or any principal of the applicant is determined to not be the  
18          real party in interest.

19          (7) The applicant or any principal of the applicant's agents, officers, or  
20          employees have a prior conviction for motor fuel tax evasion in this state or in any  
21          state, federal, or foreign jurisdiction.

22          (8) For good cause as determined by the secretary.

23          D. The secretary shall be prohibited from issuing a license when an applicant  
24          or anyone connected with the applicant's business has been previously convicted of  
25          any violation of this Subpart or of any felony under the laws of this state or of the  
26          United States.

27          §818.107. License revocation; cancellation

1           A. The secretary may revoke the license of any person licensed under this  
2           Subpart, upon written notice sent by certified mail to the licensee's last known  
3           address, for any of the following reasons:

4                   (1) Filing by the licensee of a false return, report of the data or information  
5                   required by this Subpart.

6                   (2) Failure, refusal, or neglect of the licensee to file a return, report or  
7                   information required by this Subpart.

8                   (3) Failure of the licensee to pay the full amount of all taxes due or pay any  
9                   penalties or interest due required to be paid by the licensee.

10                   (4) Failure of the licensee to keep accurate records of the quantities of  
11                   compressed natural gas, liquefied natural gas, or liquefied petroleum gas received,  
12                   produced, refined, manufactured, compounded, sold, or used in Louisiana.

13                   (5) Failure to file a new, larger, or additional surety bond as required by the  
14                   secretary pursuant to R.S. 47:818.108 of this Subpart.

15                   (6) Conviction of the licensee, licensee's agents, officers or employees, or  
16                   a principal of the licensee for any act prohibited under this Subpart.

17                   (7) Failure, refusal, or neglect of a licensee to comply with any other  
18                   provision of this Subpart or any rule promulgated pursuant to this Subpart.

19                   (8) Having a license or registration issued by another state canceled for  
20                   cause.

21                   (9) The licensee is determined to not be the real party in interest.

22                   (10) Any prior license of the real party in interest has been revoked for  
23                   cause.

24                   (11) The licensee, or any of the licensee's agents, officers, or employees, has  
25                   a prior conviction for motor fuel tax evasion in this state or any state, federal, or  
26                   foreign jurisdiction and the conviction was not disclosed on the application.

27           B. The secretary shall be prohibited from granting a license or shall be  
28           required to suspend any license previously granted for a period of at least thirty days,  
29           or until such time as the applicant supplies the secretary with evidence to the

1 contrary, where there is prima facie evidence that the applicant, in the discretion of  
2 the secretary, is not a person of good moral character, or has violated the provisions  
3 of this Subpart or any rules, regulations, or instructions issued in connection with  
4 issuance of a license. The period of suspension set forth in this Section shall not  
5 exceed ninety calendar days from the date of suspension, unless at the end of the  
6 ninety-day period the secretary determines that the reason for the suspension still  
7 exists. In such instances, the secretary may continue the period of suspension until  
8 sufficient evidence has been provided by the licensee that the reason for suspension  
9 no longer exists.

10 C. The secretary shall cancel any license upon the written request of the  
11 licensee or upon a change in ownership or control of the licensed business.

12 D. Upon revocation or cancellation of a license, the license shall be  
13 surrendered to the secretary and the tax levied in accordance with the provisions of  
14 this Subpart shall become due and payable within fifteen days on all untaxed  
15 compressed natural gas, liquefied natural gas, and liquefied petroleum gas held in  
16 storage or otherwise in the possession of the licensee and all compressed natural gas,  
17 liquefied natural gas, and liquefied petroleum gas sold, delivered, or used prior to the  
18 revocation or cancellation on which the tax has not been paid.

19 E. If the secretary revokes a license, the secretary shall be prohibited from  
20 issuing a new license to the same applicant for a period of three years from the date  
21 of revocation.

22 §818.108. Bond requirements; amounts

23 A. Upon approval of the application by the secretary, the applicant shall file  
24 a surety bond executed in favor of the secretary in the amount as follows:

25 (1) For a compressed natural gas retail dealer, liquefied natural gas retail  
26 dealer, or liquefied petroleum retail dealer, the amount of the bond shall be a  
27 minimum of fifty thousand dollars or an amount equal to three months tax liability,  
28 whichever is greater. Only one surety bond shall be required for a person requiring  
29 multiple licenses.

1           (2) For an interstate trucker, the amount of the bond shall be a minimum of  
2           twenty thousand dollars or an amount equal to three months tax liability, whichever  
3           is greater.

4           (3) For any person requiring multiple licenses, the minimum bond shall be  
5           equal to the highest bond level required.

6           B. The secretary may require an additional bond amount from the licensee  
7           when liability upon the previous bond is discharged or reduced by a judgment  
8           rendered, payment made, or is otherwise disposed of, the licensee no longer meets  
9           the conditions for waiver of bond as set forth in Subsection F of this Section, or if,  
10          in the opinion of the secretary, any surety on the previous bond becomes  
11          unsatisfactory.

12          C. The licensee must file the additional bond amount within thirty days from  
13          the date such notice is mailed by the secretary. The secretary may immediately  
14          revoke the licensee's license upon the expiration of the thirty-day period if the  
15          licensee fails to provide the additional bond amount requested.

16          D. The surety must be authorized to engage in business within this state.  
17          The surety bond shall be conditioned upon faithful compliance with the provisions  
18          of this Part, including the filing of the returns and payment of all tax prescribed by  
19          this Subpart. The surety bond shall be approved by the secretary as to sufficiency and  
20          form and shall indemnify the state against any loss arising from the failure of the  
21          licensee to pay for any cause the tax levied by this Subpart.

22          E. Any surety on an existing bond furnished by a person required to be  
23          licensed may notify the secretary in writing of its intent to cancel the bond. The  
24          secretary shall immediately notify the licensee of the intent of the surety to cancel,  
25          and the licensee shall have thirty days from the date of receipt of such notice to  
26          provide a sufficient replacement bond. The secretary may immediately cancel the  
27          licensee's license upon expiration of the thirty-day period set out above if the  
28          licensee fails to provide a new replacement bond. The surety requesting cancellation  
29          shall remain liable for any liability already accrued or which shall accrue during the



1 thirty-day period set out above, but shall not be responsible for any liability which  
2 accrues after said thirty-day period.

3 F. The secretary is authorized to waive the furnishing of this surety bond by  
4 any licensee who meets all the following:

5 (1) Has and agrees to maintain assets in Louisiana of a net value of not less  
6 than one and one-fourth times the amount of the bond which would otherwise be  
7 required.

8 (2) Has not been delinquent in remitting taxes accrued or accruing under this  
9 Subpart during the three-year period immediately preceding the filing of an  
10 application for waiver of the bond.

11 G. If any licensee whose bond has been waived by the secretary becomes  
12 delinquent in remitting taxes due under this Subpart, the secretary may require that  
13 the licensee furnish a bond in the amount required in this Section, and such licensee  
14 shall not be eligible for a waiver of the bond for a period of three years from the date  
15 the bond is furnished.

16 §818.109. Duties of persons holding tax payments as trustees

17 A. A person who receives or collects tax due in accordance with the  
18 provisions of this Subpart shall hold the amount received or collected in trust for the  
19 benefit of the state and shall have a fiduciary duty to remit the amount of taxes  
20 received or collected to the secretary in the manner required pursuant to the  
21 provisions of this Subpart.

22 B. A retail dealer who receives a payment of tax under this Subpart may not  
23 apply the payment of tax to a debt that the person making the payment owes for  
24 compressed natural gas, liquefied natural gas, or liquefied petroleum purchased from  
25 the retail dealer.

26 C. A person required to receive or collect a tax under this Subpart is liable  
27 for and shall pay the tax in the manner provided by this Subpart.

28 §818.110. Returns and payments; discounts; penalties for failure to file

1           A. A licensed retail dealer shall file a quarterly return no later than the  
2           twenty-fifth day of the month following the end of the reporting period. If a licensed  
3           retail dealer files a return and remits the tax due on or before the due date, one  
4           percent of the tax due is allocated to the licensed retail dealer for the expense of  
5           collecting, accounting for, reporting, and timely remitting the taxes collected and for  
6           keeping the records. The licensed retail dealer shall deduct the allocated amount  
7           from the tax due when paying the tax to this state. A licensed retail dealer who has  
8           not made taxable deliveries during the reporting period shall file a return with the  
9           secretary that includes those facts. A return shall be filed with the secretary on forms  
10           provided for that purpose and must contain the total gallons sold and used and other  
11           information required by the secretary.

12           B. A licensed interstate trucker shall file a quarterly return and shall remit  
13           the amount of the tax due by the twenty-fifth day of the month following the end of  
14           the reporting period. If a licensed interstate trucker files a return and remits the tax  
15           due on or before the due date, one-half of one percent of the tax paid on compressed  
16           natural gas, liquefied natural gas, and liquefied petroleum gas used in this state by  
17           the interstate trucker shall be allocated to the interstate trucker for the expense of  
18           accounting for, reporting, and timely remitting the taxes due and for keeping the  
19           records. The licensed interstate trucker shall deduct the allocated amount from the  
20           tax due when paying the tax to Louisiana. If the allocated amount exceeds the  
21           amount of tax due, the interstate trucker may file a refund claim with the secretary.  
22           A return shall be filed with the secretary on forms provided for that purpose and shall  
23           contain the number of miles traveled in this state, the number of miles traveled  
24           outside this state, and other information required by the secretary. An interstate  
25           trucker who is required to file a return and who has not made interstate trips or used  
26           compressed natural gas, liquefied natural gas, or liquefied petroleum gas in motor  
27           vehicles in this state during the reporting period shall file a return with the secretary  
28           that includes those facts.

1           C. A licensed retail dealer may take a credit on a filed return if the retail  
2           dealer paid the taxes imposed by this Subpart on compressed natural gas, liquefied  
3           natural gas, or liquefied petroleum sold on account and the retail dealer determines  
4           that the account is uncollectible and worthless. The credit authorized by this Section  
5           shall only be applicable if the licensed retail dealer writes-off the account as a bad  
6           debt on the retail dealer's accounting books. The return on which the credit shall be  
7           taken shall state, if applicable, the name of the person whose account has been  
8           written-off as a bad debt and any other information required by the secretary. The  
9           amount of the credit may equal, but shall not exceed the amount of taxes paid on the  
10           compressed natural gas, liquefied natural gas, or liquefied petroleum gas attributable  
11           to the written-off account. If, after a credit is taken, the account on which the credit  
12           was based is paid, or if the secretary otherwise determines that the credit was not  
13           authorized, the retail dealer who took the credit shall pay the unpaid taxes plus a  
14           penalty of ten percent of the amount of the unpaid taxes and interest. Interest shall  
15           accrue beginning on the day the return showing the credit was filed and ending on  
16           the date the taxes and penalty are paid.

17           D. The provisions of this Section shall not apply to a sale of compressed  
18           natural gas, liquefied natural gas, or liquefied petroleum gas for which payment is  
19           made through the use and acceptance of a credit card. The credit granted pursuant  
20           to the provisions of this Section shall be taken at the time the account is written-off  
21           as a bad debt but before the tax reporting period prescribes. The secretary may take  
22           action against a person in relation to whom a retail dealer has taken a credit for  
23           collection of the tax owed and for penalty and interest.

24           E. Failure to file any informational report or return within thirty days of the  
25           due date of the report or return shall result in a penalty of one hundred dollars and  
26           may result in a revocation of the license.

27           §818.111 Credit for certain taxes paid; school bus operators

28           A. The owner of any school bus, including school board owned buses, which  
29           transports Louisiana students and which is propelled by an internal combustion

1 engine or motor capable of using liquefied natural gas, liquefied petroleum gas, or  
2 compressed natural gas as fuel shall pay the tax levied on such fuel but shall be  
3 entitled to a credit equal to fifty percent of the taxes paid. The credit provided for  
4 in this Section shall be claimed on a return filed for the period in which a fuel  
5 purchase occurred.

6 B. The right to claim a credit pursuant to the provisions of this Section shall  
7 not be assignable.

8 C. Claims for refund by school bus owners shall be submitted annually by  
9 the first day of August of each year on forms provided by the secretary and shall list  
10 the taxes paid during the academic school year ending no later than June thirtieth of  
11 the year for which the credit is being filed. The reimbursement provided for in this  
12 Subsection shall be paid from the Parish Transportation Fund allocable to the parish  
13 from which the credit is claimed if the credit is from a public school district in this  
14 state and the fuel was delivered into the fuel supply tank of a school bus operated  
15 exclusively by the district.

16 D. The secretary may promulgate rules and regulations in accordance with  
17 the provisions of the Administrative Procedure Act specifying procedures and  
18 requirements that shall be required in order to file for and receive the credit.

19 §818.112. Refund Claims

20 A. All claims for a refund shall be filed on a form provided by the secretary,  
21 shall be supported by the original invoice issued by the retail dealer, and shall  
22 contain all of the following:

23 (1) The stamped or preprinted name and address of the retail dealer.

24 (2) The name of the purchaser or person who received the delivery of the  
25 fuel.

26 (3) The date of delivery of the fuel or the date the invoice was issued, if  
27 different from the date the fuel was delivered.

28 (4) The number of gasoline or diesel gallon equivalents of compressed  
29 natural gas, liquefied natural gas, or liquefied petroleum gas delivered.

1           (5) The rate and amount of tax, separately stated from the selling price.

2           (6) The type of vehicle or equipment into which the fuel is delivered.

3           B. The purchaser or person who received the delivery of compressed natural  
4 gas, liquefied natural gas, or liquefied petroleum gas shall obtain the original invoice  
5 from the retail dealer not later than the thirtieth day after the date the fuel was  
6 delivered. If the purchase or delivery of fuel is made through an automated method  
7 in which the purchase or delivery is automatically applied to the purchaser or  
8 recipient's account, one invoice may be issued at the time of billing that covers  
9 multiple purchases or deliveries made during a thirty-day billing cycle.

10           C. The secretary shall pay a refund to a person who files a valid refund  
11 claim. After examining the refund claim and before issuing the refund, the secretary  
12 shall deduct from the amount of the refund, the one percent originally deducted by  
13 the retail dealer.

14           D. A person who files a claim for a tax refund on compressed natural gas,  
15 liquefied natural gas, or liquefied petroleum gas used for a purpose for which a tax  
16 refund is not authorized or who files an invoice supporting a refund claim on which  
17 the date, figures, or any material information has been falsified or altered, shall  
18 forfeit his right to the entire amount of the refund claim filed unless the claimant  
19 provides satisfactory proof to the secretary that the incorrect refund claim filed was  
20 due to a clerical or mathematical calculation error.

21           §818.113. Records required to be maintained; inspection by the secretary

22           A. A retail dealer shall keep a record of all of the following:

23           (1) Compressed natural gas, liquefied natural gas, and liquefied petroleum  
24 gas inventories at the first of each month.

25           (2) The amount of natural gas compressed by the retail dealer, the amount  
26 of natural gas liquefied by the retail dealer, and the amount of petroleum gas  
27 liquefied by the retail dealer.

1           (3) All compressed natural gas, liquefied natural gas, and liquefied  
2           petroleum gas purchased or received, showing the name of the seller and the date of  
3           each purchase or receipt.

4           (4) All compressed natural gas, liquefied natural gas, and liquefied  
5           petroleum gas sold and delivered into the fuel supply tank of a motor vehicle,  
6           including the date of each sale.

7           (5) All compressed natural gas, liquefied natural gas, and liquefied  
8           petroleum gas sold but not delivered into the fuel supply tank of a motor vehicle,  
9           including the date of each sale.

10          (6) All compressed natural gas, liquefied natural gas, and liquefied  
11          petroleum gas delivered into the fuel supply tank of a motor vehicle not in  
12          connection with a sale, including the date of each delivery.

13          (7) All compressed natural gas, liquefied natural gas, and liquefied  
14          petroleum gas delivered into the fuel supply tank of a motor vehicle or other  
15          equipment exempt from tax or sold to the operator of a motor vehicle or owner of  
16          equipment exempt from the tax, including the name of the operator of the vehicle or  
17          the owner of the equipment and the date of the delivery or sale.

18          (8) All compressed natural gas, liquefied natural gas, and liquefied  
19          petroleum gas lost by fire, theft, or accident.

20          B. An interstate trucker shall keep a record of the total miles traveled in all  
21          states by all vehicles traveling to or from this state and the total quantity of  
22          compressed natural gas, liquefied natural gas, or liquefied petroleum gas consumed  
23          in those vehicles and the total miles traveled in this state and the total quantity of  
24          compressed natural gas, liquefied natural gas, or liquefied petroleum gas purchased  
25          and delivered into the fuel supply tanks of motor vehicles in this state.

26          C. The records required to be kept pursuant to the provisions of this Section  
27          shall be kept until the fourth anniversary of the date they were created and shall be  
28          open to inspection at all times by the secretary or his designee. In addition to the

1 records specifically required by this Section, a licensee or a person required to hold  
2 a license shall keep any other records required by the secretary.

3 §818.114. Notice of discontinuance, sale, or transfer of business

4 A. Prior to discontinuing any business issued a license pursuant to the  
5 provisions of this Subpart, the licensee shall notify the secretary in writing at least  
6 thirty days prior to the time the discontinuance, sale, or transfer takes effect and shall  
7 surrender the license to the secretary. The notice shall state the effective date of the  
8 discontinuance and, if the licensee has transferred the business or otherwise  
9 relinquished control to another person by sale or otherwise, the date of the sale or  
10 transfer and the name and address of the person to whom the business was  
11 transferred or relinquished. The notice shall also include any other information  
12 required by the secretary.

13 B. If a licensee liable for any tax, interest, or penalty levied in accordance  
14 with this Subpart sells or transfers the business or quits the business, the licensee  
15 shall make a final return and payment within fifteen days after the date of selling,  
16 transferring, or quitting the business. The successor, successors, or assigns, if any,  
17 shall withhold sufficient amounts of the purchase monies to cover the amount of  
18 taxes, interest, and penalties due and unpaid until such time as the former owner shall  
19 produce a receipt from the secretary showing that all taxes, interest, and penalties  
20 have been paid, or a certificate stating that no taxes, interest, or penalties are due. If  
21 the purchaser of a business fails to withhold purchase money, the purchaser shall be  
22 personally liable for the payment of the taxes, interest, and penalties accrued and  
23 unpaid on the account of the operation of the business by any former owner, owners,  
24 or assigns.

25 C. In the case of a licensee who has quit a business but who subsequently  
26 opens another similar business under the same ownership, whether that ownership  
27 is individual, partnership, corporation, or other, that licensee shall be liable for any  
28 tax, interest, or penalty owed by the original business.

29 §818.115. Engaging in business without a license; penalty

1           Any person who engages in or does any business activity for which a license  
2           is required by this Subpart without having first obtained and subsequently retain a  
3           valid license shall be subject to a penalty of ten thousand dollars for a first violation.  
4           For each subsequent violation, the penalty shall be multiplied by the sum of the  
5           current violation plus all prior violations. Penalties prescribed under this Section  
6           shall be assessed, collected, and paid in the same manner as the tax.

7           §818.116. Failure to pay tax or furnish bond; subject to attachment; suit to enjoin  
8           further pursuit of business

9           A. Failure to pay any tax levied in this Subpart or any interest, penalties, or  
10           applicable costs or failure to furnish bond as provided in this Subpart shall ipso facto  
11           and without demand or putting in default, make the tax, penalties, and interest  
12           delinquent and shall be construed as an attempt to avoid the payment of the tax,  
13           penalties, and interest, which shall be sufficient grounds for attachment of the  
14           compressed natural gas, liquefied natural gas, or liquefied petroleum gas, wherever  
15           the same may be located or found, whether the delinquent taxpayer is a resident or  
16           nonresident of this state and whether the compressed natural gas, liquefied natural  
17           gas, or liquefied petroleum gas is in the possession of the delinquent taxpayer or in  
18           the possession of other persons. The compressed natural gas, liquefied natural gas,  
19           or liquefied petroleum gas licensees shall be made responsible for the payment of the  
20           applicable tax levied in this Subpart, together with any interest, penalties, and costs  
21           accruing thereon, and the secretary may attach, seize, or sequester any compressed  
22           natural gas, liquefied natural gas, or liquefied petroleum gas subject to tax under this  
23           Subpart when the tax is not paid when it was due and payable. The procedure  
24           prescribed by law shall be followed except that the secretary shall not be required to  
25           provide a bond.

26           B. When a licensee fails to pay any tax levied under this Subpart, interest,  
27           penalties, or applicable costs or fails to furnish bond as provided in this Subpart, the  
28           secretary may file for a rule on the licensee, by motion in a court of competent  
29           jurisdiction, to show cause as to why the licensee should not be ordered to cease



1 from further pursuit of business as a licensee. The rule shall be heard by the court  
2 not less than two days nor more than ten days, exclusive of holidays, after service of  
3 the rule on the licensee. Furthermore, the rule may be tried out of term and in  
4 chambers, and shall be tried by preference. If the rule is made absolute, the order  
5 rendered by the court shall be considered a judgment in favor of the state prohibiting  
6 the licensee from the further pursuit of the business until the licensee has paid the  
7 delinquent tax, penalties, and interest and, has furnished the bond required by this  
8 Subpart. Every violation of the injunction shall be considered a contempt of court  
9 and shall be punishable in accordance with law.

10 C. When a bond has been furnished by the licensee, the surety on the bond  
11 may be joined in the rule with the licensee and held liable in solido for the amount  
12 of tax, interest, penalties, attorney fees, and costs.

13 §818.117. Power to stop and investigate vehicles; fines, collection, and enforcement

14 A. The secretary, his authorized designee, any weights and standards police  
15 officer, or any motor carrier safety police officer shall be empowered to stop any  
16 commercial motor vehicle which appears to be operating with compressed natural  
17 gas, liquefied natural gas, or liquefied petroleum gas for the purpose of examining  
18 the invoices and other investigative purposes reasonably necessary to determine  
19 whether the taxes imposed by this Subpart have been paid or whether the vehicle is  
20 being operated in compliance with the provisions of this Subpart.

21 B. If, after examination or investigation, it is determined that the tax imposed  
22 by this Subpart has not been paid with respect to the compressed natural gas,  
23 liquefied natural gas, or liquefied petroleum gas being used in the vehicle, the  
24 secretary, his authorized designee, weights and standards police officer, or the motor  
25 carrier safety police officer may assess the tax due together with the applicable  
26 penalty provided in this Subpart, to the owner or driver of the vehicle.

27 C. The secretary, his authorized designee, weights and standards police  
28 officer, or motor carrier safety police officer may impound any vehicle found to be  
29 operating in violation of this Subpart or any vehicle for which inspection has been

1 refused until such time as an inspection has been completed or any tax, interest,  
2 penalties, and other charges assessed as provided in this Subpart have been paid.

3 §818.118. Authorization to search; seizure of equipment for evidence

4 A. The secretary may search and examine any warehouse, boat, store,  
5 storeroom, automobile, truck, conveyance, vehicle, or any and all places of storage,  
6 or any and all means of transportation, where there is probable cause to believe the  
7 terms of this Subpart have been, or are being violated.

8 B. Any automobile, truck, boat, conveyance, vehicle, or other means of  
9 transportation caught or detected transporting compressed natural gas, liquefied  
10 natural gas, or liquefied petroleum gas on which the tax levied pursuant to this  
11 Subpart has not been paid shall be prohibited and the means used in the  
12 transportation of the compressed natural gas, liquefied natural gas, or liquefied  
13 petroleum shall be subject to seizure by the collection and forfeiture and sale as  
14 provided in this Subpart.

15 §818.119. Inspection of records, storage facilities; penalty

16 A. The secretary may examine the books, records, and other documents of  
17 all companies, agencies, or firms operating in this state, whether these companies,  
18 agencies, or firms conduct their business by rail, water, or otherwise, in order to  
19 determine licensees that are importing or otherwise shipping compressed natural gas,  
20 liquefied natural gas, or liquefied petroleum which are liable for tax under this Part.  
21 The examination by the secretary authorized by this Section shall be conducted  
22 during reasonable business hours of the licensee.

23 B. Any person who refuses to permit an inspection of records or storage  
24 facilities or refuses to permit an audit shall be subject to a penalty of five thousand  
25 dollars in addition to any other penalty imposed in accordance with provisions of this  
26 Subtitle.

27 §818.120. Unlawful importing, transportation, delivery, storage, or sale of  
28 compressed natural gas, liquefied natural gas, or liquefied petroleum; sale to  
29 enforce assessment

1           A. Upon the discovery of any compressed natural gas, liquefied natural gas,  
2           or liquefied petroleum gas illegally imported into or illegally transported, delivered,  
3           stored, or sold in this state, the secretary shall order the tank or other storage  
4           receptacle in which the compressed natural gas, liquefied natural gas, or liquefied  
5           petroleum gas is located to be seized and locked or sealed until the tax, interest, and  
6           penalties levied or imposed in accordance with the provisions of this Subpart are  
7           assessed and paid.

8           B. If the tax is not paid within thirty days of the assessment, the secretary  
9           may, in addition to other remedies authorized in this Subpart, sell the compressed  
10           natural gas, liquefied natural gas, or liquefied petroleum gas and use the proceeds of  
11           the sale to satisfy the assessment due. Any funds collected from the sale that exceed  
12           the assessment and costs of the sale shall be returned to the owner of the compressed  
13           natural gas, liquefied natural gas, or liquefied petroleum gas.

14           C. All compressed natural gas, liquefied natural gas, or liquefied petroleum  
15           gas, and any property, tangible or intangible, found on the person or in any vehicle  
16           that the person is using, including the vehicle itself, to aid in the transportation or  
17           sale of illegally transported, delivered, stored, sold, imported, or acquired  
18           compressed natural gas, liquefied natural gas, or liquefied petroleum gas, and any  
19           property found in the immediate vicinity of any place where the illegally transported,  
20           delivered, stored, sold, imported, or acquired compressed natural gas, liquefied  
21           natural gas, or liquefied petroleum gas is located, including motor vehicles, tanks,  
22           and other storage devices, used to aid in the illegal transportation or sale of  
23           compressed natural gas, liquefied natural gas, or liquefied petroleum gas shall be  
24           subject to seizure, forfeiture, and sale by the secretary in the manner provided for in  
25           this Subpart.

26           §818.121. Procedure for forfeiture and sale

27           A. The secretary may, in a summary proceeding or by an action against the  
28           owner or operator of any automobile, truck, boat, conveyance, vehicle, or other  
29           means of transportation used in the transportation, of any compressed natural gas,

1        liquefied natural gas, or liquefied petroleum on which a tax is levied by this Subpart,  
2        and on which the tax has not been paid in the manner therein provided, to demand  
3        the forfeiture and sale of the automobile, truck, boat, conveyance, vehicle, or other  
4        means of transportation used in the illegal transportation.

5                B. In all cases where it is made to appear by affidavit, that the residence of  
6        the owner of the automobile, truck, boat, conveyance, vehicle, or other means of  
7        transportation is out of state or is unknown to the secretary, the court having  
8        jurisdiction of the proceeding shall appoint an attorney to represent the absent owner,  
9        against whom the rule shall be tried contradictorily within ten days after the filing  
10       of the rule. The affidavit may be made by the secretary, one of his assistants, or the  
11       attorney representing the secretary, if it is not convenient to obtain the affidavit from  
12       the secretary. The attorney appointed to represent the absent owner may waive  
13       service and citation of the petition or rule, but shall not waive time or any legal  
14       defense.

15                C. If it is established during the trial that the automobile, truck, boat,  
16       conveyance, vehicle, or other means of transportation was used to transport  
17       compressed natural gas, liquefied natural gas, or liquefied petroleum on which the  
18       tax had not been paid, then the court shall order the forfeiture of the automobile,  
19       truck, boat, conveyance, vehicle, or other means of transportation. The court shall  
20       also order the sale of the vessel subject to forfeiture after ten days notice by  
21       advertisement in the official parish paper where the seizure was made. The sale shall  
22       be made by the civil sheriff of the parish of Orleans, or by the sheriff of the parish  
23       in which the seizure is made, at public auction at the courthouse to the highest bidder  
24       for cash and without appraisal. It is the intent and purpose of this Section to afford  
25       the owner of the automobile, truck, boat, conveyance, vehicle, or other means of  
26       transportation a fair opportunity for a court hearing and that the forfeiture and sale  
27       of the automobile, truck, boat, conveyance, vehicle, or other means of transportation  
28       shall operate as a penalty for the violation of this Subpart by illegal transportation.

1        The payment of the tax due at the moment of the seizure or thereafter shall not  
2        prevent, abate, discontinue, or defeat the forfeiture and sale of the seized property.

3                D. All funds collected from the seized and forfeited property shall be paid  
4        into the state treasury and credited to the same fund or funds that would have  
5        received credit for the tax on the product illegally transported.

6                E. The court shall fix the fee of the attorney representing the owner when  
7        appointed by the court, at a nominal sum not to exceed ten percent. The attorney  
8        fees shall be taxed as costs and shall be paid out of the proceeds of the sale of the  
9        property.

10        §818.122. Commission of prohibited acts; misdemeanors; felonies; penalties

11                A. Any person who commits any of the following offenses is guilty of a  
12        misdemeanor, and upon conviction, shall be fined not less than one thousand dollars  
13        nor more than five thousand dollars or imprisoned not more than two years, or both:

14                        (1) Fails to maintain any record required by this Subpart.

15                        (2) Makes a tax-free sale or delivery of compressed natural gas, liquefied  
16        natural gas, or liquefied petroleum gas into the fuel supply tank of a motor vehicle.

17                        (3) Makes a false statement in a license application, return, invoice,  
18        statement, or any other document required under this Subpart.

19                        (4) Makes a false statement in an application for a refund.

20                        (5) Fails to make a required disclosure of the correct amount of compressed  
21        natural gas, liquefied natural gas, or liquefied petroleum gas sold or used in this  
22        state.

23                        (6) Fails to file a new, replacement, larger, or additional surety bond as  
24        required under this Subpart.

25                        (7) Interferes with or refuses to permit seizures authorized by this Subpart.

26                        (8) Operates a liquefied gas-propelled motor vehicle that is required to be  
27        licensed in this state, including a motor vehicle equipped with dual carburetion, and  
28        does not display a multi-state fuels tax agreement decal.

1           (9) Refuses to permit the secretary or his designee or the Louisiana Liquefied  
2           Gas Commission or his designee to measure or gauge the contents of or take samples  
3           from a storage tank or container on premises where compressed natural gas, liquefied  
4           natural gas, or liquefied petroleum gas is produced, processed, stored, sold,  
5           delivered, or used.

6           (10) Transports compressed natural gas, liquefied natural gas, or liquefied  
7           petroleum gas under a false cargo manifest or shipping document, or transports  
8           compressed natural gas, liquefied natural gas, or liquefied petroleum gas to a  
9           location without delivering a shipping document relating to that shipment.

10           B. Any person who commits any of the following offenses with the intent  
11           either to evade or circumvent the tax levied by this Subpart or to assist any other  
12           person in efforts to evade or circumvent the tax levied by this Subpart shall be guilty  
13           of a felony, and upon conviction, shall be fined not less than five thousand dollars  
14           nor more than an amount commensurate to the amount of tax combined with interest  
15           and penalties lost to the state due to the illegal actions or imprisoned with or without  
16           hard labor for not less than two nor more than ten years, or both:

17           (1) Alters, manipulates, replaces, or in any other manner tampers or  
18           interferes with, or causes to be altered, manipulated, replaced, tampered, or  
19           interfered with, a totalizer attached to compressed natural gas, liquefied natural gas,  
20           or liquefied petroleum gas to measure the dispensing of compressed natural gas,  
21           liquefied natural gas, or liquefied petroleum gas.

22           (2) Fails to pay compressed natural gas, liquefied natural gas, or liquefied  
23           petroleum gas taxes and diverts the tax proceeds for other purposes.

24           (3) As a licensee or the agent or representative of a licensee, converts or  
25           attempts to convert compressed natural gas, liquefied natural gas, or liquefied  
26           petroleum gas tax proceeds for the use of the licensee or the licensee's agent or  
27           representative with the intent to defraud the state.

28           (4) Collects compressed natural gas, liquefied natural gas, or liquefied  
29           petroleum gas taxes when not authorized or licensed by the secretary to do so.

1           (5) Makes a sale or delivery of compressed natural gas, liquefied natural gas,  
2           or liquefied petroleum gas on which the person knows the tax is required to be  
3           collected, if at the time the sale is made the person does not hold a valid retail  
4           dealer's license.

5           (6) Imports compressed natural gas, liquefied natural gas, or liquefied  
6           petroleum gas into this state in contravention of this Subpart.

7           (7) Conspires with any person or persons to engage in an act, plan, or  
8           scheme to defraud this state of compressed natural gas, liquefied natural gas, or  
9           liquefied petroleum gas tax proceeds.

10          (8) Conceals compressed natural gas, liquefied natural gas, or liquefied  
11          petroleum gas with the intent of engaging in any conduct prohibited by this Subpart.

12          (9) Refuses to make sales of compressed natural gas, liquefied natural gas,  
13          or liquefied petroleum on the volume-corrected basis prescribed by this Subpart.

14          (10) Fails to remit any tax levied pursuant to this Subpart to the secretary,  
15          if the person has added or represented that the tax was added to the sales price of the  
16          compressed natural gas, liquefied natural gas, or liquefied petroleum gas and has  
17          collected the amount of the tax.

18                   C. Each offense shall be subject to a separate penalty.

19           Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor  
20 and subsequently approved by the legislature, this Act shall become effective on July 1,  
21 2015, or on the day following such approval by the legislature, whichever is later.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 736 Original

2015 Regular Session

Ortego

**Abstract:** Provides relative to the state excise tax levied on special fuels and provides for the administration and collection of the tax.

Present law provides for the levy of a tax of 16¢ per gallon on all special fuels including compressed natural gas, liquefied natural gas, and liquefied petroleum gas (hereinafter "special fuel") sold, used, or consumed in the state for the operation of motor vehicles licensed or required to be licensed for highway use. Present law levies an additional tax of

4¢ dedicated to the Transportation Infrastructure Model for Economic Development (TIMED) Program.

Present law requires owners and operators of motor vehicles with a gross weight of 10,000 pounds or less to pay the tax levied pursuant to present law for special fuels in accordance with an annual flat rate equal to 80% of \$150, based on a 16¢ per gallon special fuels tax rate or a variable rate of 80% of the current special fuels tax rate. The owner or operator of a motor vehicle having a gross weight of more than 10,000 pounds shall pay the special fuels tax by paying the rate of 80% of the special fuels tax rate in effect on the fuel used. The aggregate annual tax paid for these vehicles shall not be less than 80% of \$150 based on a 16¢ per gallon special fuels tax per motor vehicle. Present law provides for a schedule for determining the amount of special fuel used the previous year based on the gross weight of the vehicle and the miles per gallon

Proposed law changes present law in that, beginning Jan. 1, 2016, the tax levied on special fuels shall not be collected pursuant to the annual decal but rather the amount of the tax shall be converted from a tax levied per gallon on such special fuel to a tax levied per gallon but based on the special fuel's energy content as follows:

- (1) Diesel gallon equivalent for liquefied natural gas (LNG) shall be equal to 6.060 pounds of LNG and shall be the unit of measurement of the tax levied pursuant to the provisions of proposed law.
- (2) Diesel gallon equivalent for liquefied petroleum gas (LPG) shall be equal to 4.2 pounds of LPG and shall be the unit of measurement of the tax levied pursuant to proposed law.
- (3) Gasoline gallon equivalent for compressed natural gas (CNG) shall be equal to 5.660 pounds of CNG and shall be the unit of measurement of the tax levied pursuant to proposed law.

Present law requires owners of school buses propelled by a special fuel that are used to transport La. students to pay one-half of the annual flat rate. Further authorizes a credit for the owner of any school bus which operates on special fuel which transports La students to pay the tax levied on the fuel. School bus owners shall be entitled to a credit equal to 50% of the taxes paid. The credit shall be claimed on a return filed for the period in which a fuel purchase occurred.

Proposed law retains present law.

Proposed law provides that the person or entity possessing a special fuels license shall be considered a retail dealer for purposes of imposition of the tax levied on special fuels and shall be the party liable for the tax. The retail dealer shall add the tax to the selling price of the fuel so that the tax is paid by the ultimate consumer or purchaser of the fuel. The tax shall become part of the sales price of the special fuel and shall be considered a debt of the purchaser to the retail dealer. If unpaid, the tax shall be recoverable in the same manner as the original sales price. The retail dealer shall provide an invoice or receipt to the purchaser that states the rate and amount of tax added to the selling price or that indicates that no tax was added to the selling price.

Proposed law provides that the special fuels tax is imposed on the delivery of special fuels into the fuel supply tank of a motor vehicle by a special fuel fleet user or other retail dealer not in connection with a sale of the special fuel. The special fuel fleet user or other retail dealer shall be the liable party for the tax. The retail dealer shall add the tax to the selling price of the fuel so that the tax is paid by the ultimate consumer or purchaser of the fuel. The tax shall become part of the sales price and shall be considered a debt of the purchaser to the retail dealer. If unpaid, the tax shall be recoverable in the same manner as the original sales price. The retail dealer shall provide an invoice or receipt to the purchaser that states



the rate and amount of tax added to the selling price or indicates that no tax was added to the selling price.

Present law requires persons who install or alter special fuel carburetion equipment to file a written report, on forms prescribed by the secretary, not later than 15 days after the installation or alteration of the equipment. Failure to file the report shall subject the person to a penalty of \$100. The penalty shall be multiplied by the number of vehicles on which installation or alterations were performed.

Proposed law repeals present law.

Proposed law provides that all special fuel sold by a special fuels dealer and delivered into the fuel supply tank of a motor vehicle is presumed to be subject to tax, and the retail dealer is liable for the tax unless the retail dealer maintains adequate records to establish that the fuel was exempt from tax. Further provides that all special fuel delivered into the fuel supply tank of a motor vehicle by a special fuel fleet user or other special fuels retail dealer not in connection with a sale is presumed to be subject to tax, and the special fuel fleet user or other retail dealer is liable for the tax unless the special fuel fleet user or other retail dealer maintains adequate records to establish that the fuel was exempt from the tax.

Present law requires persons who operate a motor vehicle powered by a special fuel on the highways of this state to apply for permission to operate on the highways of this state. The application shall be on a form prescribed by the secretary. When the applicant pays the annual flat rate for the tax, the secretary shall issue the applicant a decal which signifies that the special fuel tax has been paid. Present law requires the secretary to provide for a procedure for the annual payment of the tax and issuance of the decal. Failure to obtain an annual decal shall result in a penalty to be assessed of \$50 for a first violation and a penalty of \$100 for each subsequent violation.

Proposed law repeals present law as it relates to issuance of an annual decal.

Proposed law prohibits a person from selling or delivering special fuel into the fuel supply tank of a motor vehicle and on which tax is imposed unless the person holds a special fuel retail dealer's license. Proposed law provides for requirements for the application for a special fuel retail dealer's license including the form provided by the secretary and the amount of the bond required to be provided. A special fuel retail dealer's license is not transferable and shall remain in effect until surrendered, canceled, or revoked. The license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder.

Proposed law provides that a special fuel retail dealer's license shall be permanent and valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required by the secretary, or until the license is surrendered by the license holder or canceled by the secretary. Proposed law requires the secretary to cancel a license if the license holder has not reported a delivery of special fuel during the previous nine months.

Proposed law requires the secretary to maintain a record of all persons to whom a license has been issued and all persons holding a current license by license category.

Proposed law provides for an interstate trucker's license which authorizes a person who commercially operates certain motor vehicles fueled by special fuel to report and pay the tax and take a credit or claim a refund as provided in proposed law. Further provides for requirements and limitations for interstate trucker's licenses.

Proposed law provides for general requirements regarding license applications, form requirements, and bond requirements. Upon approval of the bond required pursuant to proposed law, the secretary is required to issue the appropriate license or licenses to an

applicant. Proposed law includes specific conditions in which the secretary may refuse to issue a license to the applicant or any principal of the applicant, such as if a license or registration issued by another state was revoked, denied, or canceled for cause or if a federal certificate of registry was revoked, and if the applicant or any principal of the applicant has been convicted of any offense involving fraud or misrepresentation or has been convicted of any other offense that indicates that the applicant or any principal of the applicant may not comply with proposed law.

Proposed law prohibits the secretary from issuing a license if an applicant or anyone connected with the applicant's business has been convicted of a felony.

Proposed law authorizes the secretary to revoke a license after sending written notice by certified mail to the licensee's last known address for certain specific reasons including the licensee filing a false return, report of data, or the failure, refusal, or neglect of the licensee to file a return or report.

Proposed law prohibits the secretary from granting a license or requires the secretary to suspend a license previously granted for a period of at least 30 days, or until such time as the applicant supplies the secretary with evidence to the contrary, where there is prima facie evidence, at the discretion of the secretary, that the applicant is not a person of good moral character, or has violated the provisions of proposed law. The period of suspension shall not exceed 90 calendar days from the date of suspension, unless at the end of the 90 day period, the secretary determines that the reason for the suspension has not been resolved.

Proposed law provides for the cancellation, revocation, or surrender of a license in specific circumstances.

Proposed law requires license applicants to file surety bonds executed in favor of the secretary when the secretary approves an application. The amount of the bond varies depending on the license the applicant is applying for. The secretary is authorized to waive the surety bond requirements when a licensee agrees to maintain assets in La. of a net value of not less than one and one-fourth times the amount of the bond which would otherwise be required or when a licensee has not been delinquent in remitting taxes accrued or accruing during the three-year period immediately preceding the filing of an application for waiver of the bond.

Proposed law requires a person who receives or collects special fuel taxes to hold the amount received or collected in trust for the benefit of the state and shall have a fiduciary duty to remit the amount of taxes received or collected to the secretary. A retail dealer who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for special fuel purchased from the retail dealer.

Proposed law requires a licensed retail dealer and a licensed interstate trucker to file a quarterly return no later than the 25<sup>th</sup> day of the month following the end of the reporting period. If a licensed retail dealer files a return and remits the tax due on or before the due date, 1% of the tax due is allocated to the licensed retail dealer for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and for keeping the records.

Proposed law provides generally for claims for refunds of special fuel taxes paid on forms provided by the secretary and documentation which must accompany claims for refund.

Proposed law requires retail dealers and interstate truckers to maintain certain records until the fourth anniversary of the date they were created. Records shall be open to inspection at all times by the secretary.

Proposed law requires a licensee to notify the secretary in writing at least 30 days prior to the discontinuance, sale, or transfer of a business and to surrender the license to the secretary. Provides for information which shall be included in the notice of discontinuance. If a licensee liable for any tax, interest, or penalty sells or transfers the business or quits the business, the licensee shall make a final return and payment within 15 days after the date of selling, transferring, or quitting the business. The successor or assigns, if any, shall withhold sufficient amounts of the purchase monies to cover the amount of taxes, interest, and penalties due and unpaid until such time as the former owner shall produce a receipt from the secretary showing that all taxes, interest, and penalties have been paid, or a certificate stating that no taxes, interest, or penalties are due.

Proposed law prohibits a person from engaging in any business activity for which a license is required without first obtaining and subsequently retaining a valid license. Failure to obtain a valid license shall result in the levy of a penalty of \$10,000 for a first violation. For each subsequent violation, the penalty shall be multiplied by the sum of the current violation plus all prior violations.

Proposed law provides for remedies for the Dept. of Revenue to enforce collection and remittance of the special fuels tax, interest, penalties, or applicable costs or failure to furnish bond. Further authorizes the secretary and other law enforcement officers to stop any commercial motor vehicle which appears to be operating with special fuels for the purpose of examining the invoices to determine whether the taxes imposed by present law have been paid. If it is determined that the tax has not been paid, the secretary or law enforcement officer may assess the tax due together with the applicable penalty to the owner or driver of the vehicle. Proposed law authorizes the impoundment of any vehicle found to be operating in violation of proposed law or any vehicle for which inspection has been refused until an inspection has been completed or any tax, interest, penalties, and other charges have been paid.

Proposed law authorizes the secretary to search and examine any warehouse, boat, store, storeroom, vehicle, or any and all means of transportation, where there is probable cause to believe proposed law is being violated. The secretary may examine the books and records of companies or firms operating in this state in order to determine licensees that are importing or otherwise shipping special fuel which is subject to the tax. Failure of a person to allow an inspection of records or storage facilities or refuses to permit an audit shall result in a penalty of \$5,000 in addition to any other penalty imposed by law.

Proposed law provides for the seizure of special fuel when it is discovered that special fuel is illegally imported into or illegally transported, delivered, stored, or sold in this state until the tax, interest, and penalties levied or imposed are assessed and paid. Proposed law further authorizes the secretary to take action in a summary proceeding against the owner of any automobile or truck used in the illegal transportation of special fuels to demand the forfeiture and sale of the automobile or truck used in the illegal transportation. All funds collected from the seized and forfeited property shall be paid into the state treasury. Requires the court to fix attorney fees representing the owner when appointed by the court at a rate not to exceed 10%.

Proposed law provides for a listing of offenses that constitute a misdemeanor, and upon conviction, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than two years, or both. Proposed law provides for a listing of offenses which, if committed with the intent of evading tax, and upon conviction, shall be fined not less than \$5,000 nor more than an amount commensurate to the amount of tax combined with interest and penalties lost to the state due to the illegal actions or imprisoned with or without hard labor for not less than two nor more than 10 years, or both.

Effective July 1, 2015.

(Amends R.S. 3:4684 and R.S. 47:818.2(18), (43), (44), (54), and (63), and 818.101 through 818.104; Adds R.S. 47:818.105 through 818.122)