

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1311
(Representatives Grosz, Rennerfeldt, Schmidt)
(Senator Kringstad)

AN ACT to create and enact sections 57-43.2-02.2 and 57-43.2-02.3 of the North Dakota Century Code, relating to special fuels tax refunds and exemptions; to amend and reenact sections 57-43.1-01, 57-43.1-03, 57-43.1-03.1, 57-43.1-04, 57-43.1-05, 57-43.1-06, 57-43.1-07, 57-43.1-11, 57-43.1-17, 57-43.1-20, 57-43.2-01, 57-43.2-02, 57-43.2-03, 57-43.2-04, and 57-43.2-14 of the North Dakota Century Code, relating to motor vehicle fuels and special fuels taxes and administration; to repeal sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code, relating to motor vehicle fuels tax refunds and invoices; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing motor vehicle fuel for resale.
- ~~2.~~ 4. "Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.
- ~~3.~~ 5. "Director" means the director of the department of transportation.
4. 6. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.

7. "Industrial purpose" means:

- a. A manufacturing, warehousing, or loading dock operation;
- b. Construction;
- c. Sand and gravel processing;
- d. Well drilling, well testing, or well servicing;
- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

8. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

9. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.

5- 10. "Motor vehicle fuels" includes fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.

6- "Motor vehicles" means all vehicles, engines, or machines, movable or immovable, which are operated in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this chapter but does not include aircraft.

7- 11. "Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.

8- 12. "Person" includes means every individual, partnership, society, firm, association, joint stock company, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers.

9. 13. "Public road or highway" ~~or "highway"~~ means every way or place generally open to the use of the public as a matter of right, for the purpose of ~~vehicular~~ motor vehicle travel, notwithstanding that it may be temporarily closed ~~for~~ or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
10. ~~"Use" means the consumption of fuel to propel a motor vehicle upon the public highways.~~
14. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.
14. 15. "Wholesale dealer" ~~means~~ has the same meaning as ~~is stated in subsection 2,~~ "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel to retail dealers.

SECTION 2. AMENDMENT. Section 57-43.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for an industrial purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel as defined in ~~section 57-43.1-04 for an industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state~~ purpose on which the motor vehicle fuel tax has been paid, ~~must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund~~ may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund.

SECTION 3. AMENDMENT. Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for an agricultural purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid, ~~must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund~~ may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund provided for in this section must be reduced by four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged four cents per gallon [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for an agricultural purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid, ~~must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund~~ may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund provided for in this section must be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the

commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 4. AMENDMENT. Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the manner in purpose or type of project for which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original ~~invoice or invoices indicating~~ or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the dealer's or retailer's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original ~~invoice or invoices or sales tickets~~ are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A dealer is prohibited from preparing a refund claim for the consumer.

SECTION 5. AMENDMENT. Section 57-43.1-05 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-05. Claim for refund - Limitation on filing. A refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds ~~one thousand~~ four hundred dollars.

No claim for refund may be made or approved unless the amount of the claim is in excess of five dollars.

SECTION 6. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent double taxation —~~Reduction for agricultural fuel tax fund by multiple jurisdictions.~~ Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. The refund may be granted only upon application to the commissioner on forms in the manner prescribed by the commissioner, including and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 may not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section. The refund may not be reduced by the one cent per gallon tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 7. AMENDMENT. Section 57-43.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-07. Commissioner to ~~audit and approve claim~~ investigation of doubtful claims—~~Payment of~~ examine and pay claims. ~~The~~ Within thirty days of the receipt of a claim for a refund of tax, the commissioner, ~~upon the presentation of a sworn claim,~~ shall audit ~~examine~~ the claim for refund and if there are no apparent discrepancies, shall prepare, ~~in duplicate,~~ an abstract showing the claim number and the name, address, and the amount due each claimant. ~~The commissioner shall approve and submit claims for payment within thirty days of receipt in the commissioner's office unless the commissioner is in doubt as to the validity of any claim, in which case the commissioner may withhold approval for a reasonable time for purposes of investigation. The commissioner may authorize any employee or agent of his office to investigate doubtful claims and report the findings to the commissioner who shall then promptly approve or reject the claim as the facts may warrant.~~ All claims approved by the commissioner must be paid by warrant-checks prepared by the office of management and budget. The state treasurer is not required to retain the canceled checks by which any refund may have been paid for a period of more than six years from July first of the fiscal year in which the refund check is issued.

SECTION 8. AMENDMENT. Section 57-43.1-11 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-11. Assignment of refund claims. Any ~~person~~ consumer eligible for a motor vehicle fuel tax refund under this chapter, who has been sold the fuel by a ~~seller~~ dealer on open account with the ~~seller~~ dealer paying the refundable motor vehicle fuel tax, may assign to the ~~seller~~ dealer the claim for the refund to the dealer by attaching ~~the~~ an assignment agreement, on a form prescribed by the commissioner, to the refund claim ~~form to be~~ submitted by the claimant in accordance with section 57-43.1-04. ~~Where~~ If an assignment of claim a refund is made, ~~and the claim is allowed under the provisions of this chapter,~~ the refund check or warrant issued must be made payable to both the claimant and ~~his~~ the assignee.

SECTION 9. AMENDMENT. Section 57-43.1-17 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17. Commissioner to audit statement and assess tax.

1. Except as otherwise provided in this section, the commissioner may proceed to audit the ~~statements~~ returns of dealers and, not later than three years after the due date of a ~~statement~~ return, or three years after the ~~statement~~ return was filed, whichever period expires later, assess ~~the~~ additional tax ~~and, if due or issue a tax credit or refund.~~ If any additional tax is found due ~~or if a tax credit applies,~~ the commissioner shall notify the dealer in detail of the reason for the increase or decrease.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the statement, or six years after the statement was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If false or fraudulent information is given in a ~~statement~~ dealer's tax return or in a claim for refund, or if the failure by a dealer to file a ~~statement~~ tax return is due to the fraudulent

intent or the willful attempt of the dealer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.

4. 5. If, before the expiration of the time prescribed in ~~subsections 1 and 2~~ this chapter for the assessment of tax, the commissioner and the dealer or the claimant consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period ~~so~~ agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a dealer or to a consumer fixes the tax finally and irrevocably unless the dealer or consumer against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the dealer or consumer claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 10. AMENDMENT. Section 57-43.1-20 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-20. Tax chargeable to consumer. Every dealer required to ~~collect~~ remit the motor vehicle fuel tax imposed by this chapter shall ~~charge and collect the tax on all motor vehicle fuel sold by that dealer, except as provided in section 57-43.1-18,~~ pass the tax on to the consumer as a part of the selling price of the fuel.

SECTION 11. AMENDMENT. Section 57-43.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
2. 5. "Director" means the director of the department of transportation.
3. "Farm to market roads" means any road within the county which is not on the North Dakota state highway system and which qualifies for federal aid matching funds.
6. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.

4. ~~"Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel notwithstanding that it may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction.~~
5. 7. ~~"Highway purposes purpose" means any use of special fuels fuel in any motor vehicle or in any phase of construction, reconstruction, repair, or maintenance of farm-to-market roads as defined in subsection 3 and of public roads or highways as defined in subsection 4, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.~~
6. 8. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
9. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.
- Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
10. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.
11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
7. 12. ~~"Motor vehicle" means any a vehicle propelled by an internal combustion engine and licensed for operation or operated upon the highways, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.~~
8. 13. ~~"Person" includes~~ means every natural person, fiduciary, association, corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or

imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
9. 16. "Sale" means the receipt, delivery, or transfer of title to or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels by a between special fuel dealer to dealers or between a special fuel user dealer and a retailer or a consumer.
40. 17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01 or antifreeze as defined by section 19-16.1-02.
44. 18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
12. "Special fuel user" means any person receiving or purchasing special fuel and includes fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government but does not include a special fuels dealer purchasing or receiving special fuel for resale.
43. 19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
14. "Use" means the consumption of fuel to propel a motor vehicle upon the public highways.
45. 20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

SECTION 12. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed ~~Exemptions.~~

1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

- ~~2. The tax attaches at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. The dealer shall remit the tax imposed by this section on all sales to consumers.~~
- ~~3. Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

SECTION 13. Section 57-43.2-02.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-02.2. Refund of tax for fuel used for heating and for an agricultural, industrial, or railroad purpose. Any consumer who purchases or uses any special fuel for heating or for an agricultural, industrial, or railroad purpose, except special fuel used to operate a licensed motor vehicle, on which the special fuel tax imposed by section 57-43.2-02 has been paid, may file a claim with the commissioner for a refund pursuant to chapter 57-43.1.

SECTION 14. Section 57-43.2-02.3 of the North Dakota Century Code is created and enacted as follows:

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
2. Special fuel, other than diesel fuel, sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

SECTION 15. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Tax Special excise tax levied. A

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales.
2. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel

~~for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government or any consumer.~~

3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
6. The dealer shall remit the tax imposed by this section on all sales to a consumer.

SECTION 16. AMENDMENT. Section 57-43.2-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-04. ~~Collection and payment of tax~~ Tax chargeable to consumer. ~~The tax imposed by section 57-43.2-03 attaches at the time of sale of any special fuel by a special fuel dealer to a special fuel user. The tax imposed by section 57-43.2-03 on special fuels imported for use in this state attaches when the fuel is used in this state. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. If the tax imposed by section 57-43.2-02 was paid by a special fuels user and the special fuel was used for an exempt purpose, the tax must be refunded by the tax commissioner and the tax imposed by section 57-43.2-03 must be deducted from the refund. The tax imposed by section 57-43.2-03 on special fuels imported for use in the state by a special fuels user will be collected directly by the tax commissioner. Every dealer required to remit the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 shall pass the tax on to the consumer.~~

SECTION 17. AMENDMENT. Section 57-43.2-14 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-14. Commissioner to audit returns and assess tax.

1. Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and ~~purchase records of special fuel users and~~, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, ~~or three years after purchase by a special fuel user~~, assess the additional tax and, if due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as

required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.

4. If false or fraudulent information is given in ~~the~~ a dealer's tax return or in a consumer's claim for refund, or if the failure by a dealer to file a tax return is due to the fraudulent intent or the willful attempt of the ~~taxpayer~~ dealer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
4. 5. If before the expiration of the time prescribed in ~~subsections 1 and 2~~ this chapter for the assessment of tax, the commissioner and the ~~taxpayer~~ dealer or claimant consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period ~~so~~ agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a dealer or to a consumer fixes the tax finally and irrevocably unless the dealer or consumer against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the dealer or consumer claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 18. REPEAL. Sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code are repealed.

SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after March 31, 1997.

SECTION 20. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1311 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 96 Nays 0 Absent 1

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 4

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State