

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED HOUSE BILL NO. 1462**

Introduced by

Representatives Timm, Dorso

1 A BILL for an Act to create and enact section 57-43.2-38 of the North Dakota Century Code,
2 relating to use of dyed special fuel in a licensed motor vehicle and penalties; to amend and
3 reenact sections 57-43.1-24, 57-43.2-01, and 57-43.2-03 of the North Dakota Century Code,
4 relating to definitions for special fuel tax purposes; to repeal section 57-43.2-02.2 of the North
5 Dakota Century Code, relating to refunds of special fuels taxes; and to provide an effective
6 date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 57-43.1-24 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-43.1-24. Deduction of cost of collecting.** ~~On making payments to the~~
11 ~~commissioner as provided in~~ The person required to remit the tax imposed by this chapter, the
12 ~~dealer shall deduct~~ retain two percent ~~from~~ of the amount of tax due, up to a maximum of three
13 hundred dollars per month, to cover the cost of collecting the tax and transmitting it to the
14 commissioner. This provision does not apply to any tax on excess inventory losses or to
15 additional taxes assessed during an audit.

16 **SECTION 2. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **57-43.2-01. Definitions.** As used in this chapter, unless the context otherwise
19 requires:

20 1. "Agricultural purpose" means the science, art, and business of farming. It includes
21 raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges
22 and universities, custom combining, manure spreading, and stack moving
23 operations. Fuel used for an agricultural purpose includes fuel used in a vehicle,

- 1 engine, or machine, movable or immovable, operated in whole or in part by internal
2 combustion. It does not include fuel used to operate a licensed motor vehicle.
- 3 2. "Commissioner" means the state tax commissioner.
- 4 3. "Consumer" means a user of special fuel including any person purchasing special
5 fuel in this state for use in a licensed motor vehicle; any person importing special
6 fuel into this state or purchasing special fuel in this state for use as heating fuel, or
7 for an agricultural, industrial, or railroad purpose; or any person purchasing special
8 fuel in this state for use in recreational or any other types of motor vehicles. It
9 does not include a dealer or a retailer importing or purchasing special fuel for
10 resale.
- 11 4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale
12 dealer of liquefied petroleum gas.
- 13 5. "Director" means the director of the department of transportation.
- 14 6. "Dyed special fuel" means special fuel to which an indelible dye meeting United
15 States environmental protection agency and internal revenue service regulations
16 has been added before or upon withdrawal at a terminal or refinery rack.
- 17 7. "Heating fuel use" means use of special fuel to heat homes, private and public
18 office buildings, or private and public commercial buildings or use of special fuel in
19 stoves or burners or for any other heating purposes.
- 20 ~~7.~~ 8. "Highway purpose" means any use of special fuel in any motor vehicle in any
21 phase of construction, reconstruction, repair, or maintenance of public roads or
22 highways, but does not include that special fuel used for heating of oils, gravel,
23 bituminous mixture, or in any equipment used in the preparation of any materials to
24 be used on any type of road or highway surfacing.
- 25 ~~8.~~ 9. "Importer for use" means any person importing fuel into this state in the fuel supply
26 tank or tanks of any motor vehicle or combination of vehicles used, designed, or
27 maintained for transportation of persons or property; and having two axles and a
28 gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or
29 having three or more axles regardless of weight; is used in combination when the
30 weight of such combination exceeds twenty-six thousand pounds [1179.3401
31 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or

1 rented, the importer for use means the lessee or renter unless the commissioner
2 has designated the lessor, renter, or some other person as the importer for use.

3 9- 10. "Industrial purpose" means:

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

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

18 ~~10. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special
19 fuel purposes, is used as heating fuel.~~

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

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

26 13. "Person" means every natural person, fiduciary, association, corporation, or limited
27 liability company. Whenever used in any cause prescribing and imposing a fine or
28 imprisonment, or both, the term "person" as applied to an association means and
29 includes the partners or members thereof, as applied to corporations, the officers
30 thereof, and as applied to limited liability companies, the managers thereof.

- 1 14. "Public road or highway" means every way or place generally open to the use of
2 the public as a matter of right, for the purpose of motor vehicle travel,
3 notwithstanding that it may be temporarily closed or subject to restricted travel due
4 to construction, reconstruction, repair, or maintenance.
- 5 15. "Railroad purpose" means the operation of railroad locomotives and the
6 construction, reconstruction, repair, and maintenance of railroads. Fuel used for a
7 railroad purpose includes fuel used to operate a railroad locomotive, and fuel used
8 in a motor vehicle for purposes of construction, reconstruction, repair, and
9 maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 10 16. "Sale" means the transfer of title or possession, exchange, or barter, conditional or
11 otherwise, in any manner or by any means, for a consideration, of special fuels
12 between special fuel dealers or between a special fuel dealer and a retailer or a
13 consumer.
- 14 17. "Special fuel" means all combustible gases and liquids suitable for the generation
15 of power for propulsion of motor vehicles and includes compressed natural gas,
16 kerosene, all gases and liquids which meet the specifications as determined by the
17 state department of health pursuant to the provisions of section 19-10-10, as well
18 as all liquids determined by the state department of health to be heating oil
19 pursuant to the provisions of section 19-10-10, except that it does not include
20 either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as
21 defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
- 22 18. "Special fuel dealer" means any person in the business of handling special fuel
23 who delivers or sells any special fuel to a special fuel user.
- 24 19. "Special fuel wholesaler" means any person who produces, refines, manufactures,
25 blends, or compounds special fuel, or who imports or exports special fuel, other
26 than in the fuel supply tank of a motor vehicle, for distribution to a special fuel
27 dealer for sale and use.
- 28 20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or
29 sells that fuel known as liquefied petroleum gas, commonly called "propane" or
30 "butane", to any retail dealer, or user of liquefied petroleum gas.

1 **SECTION 3. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **57-43.2-03. Special excise tax levied.**

4 1. Except as otherwise provided in this chapter, a special excise tax of two percent is
5 imposed on all sales of special fuels; which are exempted from the tax imposed
6 under section 57-43.2-02.

7 ~~2. The special excise tax applies to all special fuels taxed under section 57-43.2-02~~
8 ~~for which taxes are later refunded to any consumer.~~

9 ~~3.~~ A consumer importing special fuel into this state, for a purpose for which the
10 special fuel is taxable under this section, is liable for the tax. The commissioner
11 shall collect the tax from the consumer importing the fuel.

12 ~~4.~~ 3. If any fuel subject to tax by this section was subject to tax in any other state or its
13 political subdivisions, the tax in this section applies but at a rate measured by the
14 difference between the rate imposed in this section and the rate imposed by the
15 other state or its political subdivisions. If the tax imposed by the other state or its
16 political subdivisions is the same or greater than the tax imposed by this section,
17 no tax is due.

18 ~~5.~~ 4. An invoice, sales ticket, or other sales document issued or created covering a sale
19 taxable under this section must identify the consumer to whom the sale was made,
20 specify the purpose for which the special fuel was sold, and specify whether the
21 fuel was dyed for tax exemption purposes.

22 ~~6.~~ 5. The dealer shall remit the tax imposed by this section on all sales to a consumer.

23 **SECTION 4.** Section 57-43.2-38 of the North Dakota Century Code is created and
24 enacted as follows:

25 **57-43.2-38. Dyed special fuel - Administrative fees - Inspections.**

26 1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the
27 tax imposed by section 57-43.2-03 and, unless otherwise provided in this section,
28 may not be used in the fuel supply tank of a licensed motor vehicle. The owner or
29 operator of a licensed motor vehicle found to contain dyed special fuel in the fuel
30 supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to

- 1 be determined based on the capacity of the fuel supply tank of the licensed vehicle
2 involved and is subject to administrative fees as follows:
- 3 a. A two hundred fifty dollar fee for the first violation.
4 b. A five hundred dollar fee for a second violation occurring within three years of
5 a previous violation.
6 c. A one thousand dollar fee for a third violation occurring within three years of
7 two previous violations.
8 d. A five thousand dollar fee for the fourth and subsequent violations occurring
9 within three years of three or more previous violations.
- 10 2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be
11 considered dyed if the fuel contains traces of the dye in an amount sufficient to be
12 found in violation of federal laws and rules.
- 13 3. For purposes of enforcing the provisions of this section, the highway patrol, by
14 agreement with the commissioner, may:
- 15 a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of
16 fuel from the fuel supply tank of the vehicle in a manner and in a quantity
17 sufficient to determine whether the fuel is a special fuel and to determine the
18 dye content of the fuel.
- 19 b. Physically inspect, examine, or otherwise search any tank, reservoir, or other
20 container that can or may be used for the production, storage, or
21 transportation of any type of fuel for coloration, markers, and shipping papers.
22 Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping
23 papers by the highway patrol is subject to a civil penalty of not more than one
24 thousand dollars per occurrence.
- 25 4. The highway patrol may issue a citation covering any violation of this section, and
26 the person receiving a citation has the right to a hearing before the tax
27 commissioner in the manner provided in chapter 28-32 if, within thirty days after
28 receiving a citation, the person requests a hearing.
- 29 5. This section does not apply to:
- 30 a. A person who purchased dyed special fuel in another state or Canadian
31 province and imported that fuel into the state in the supply tank of a licensed

1 motor vehicle provided the state or Canadian province where the fuel was
2 purchased does not prohibit its use in that vehicle.

3 b. A state or local government using dyed special fuel in licensed vehicles for
4 purposes of construction, reconstruction, repair, or maintenance of public
5 roads or highways.

6 6. All administrative fees or civil penalties under this section may be completely or
7 partially waived by the tax commissioner for good cause shown, and any fees or
8 penalties not waived must be collected by the tax commissioner and transferred to
9 the state treasurer and deposited in the state highway fund.

10 **SECTION 5. REPEAL.** Section 57-43.2-02.2 of the 1997 Supplement to the North
11 Dakota Century Code is repealed.

12 **SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
13 December 31, 1999.