

SENATE BILL NO. 2177

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact sections 57-43.1-06.1, 57-43.1-12.1, 57-43.1-14.1,
2 57-43.1-14.2, 57-43.1-15.1, 57-43.1-16.1, 57-43.1-16.2, 57-43.1-45, 57-43.1-46, 57-43.1-47,
3 57-43.2-04.2, 57-43.2-04.3, 57-43.2-04.4, 57-43.2-07.1, 57-43.2-07.2, 57-43.2-11.1,
4 57-43.2-11.2, 57-43.2-14.1, 57-43.2-38, 57-43.2-39, 57-43.2-40, 57-43.3-08, 57-43.3-09,
5 57-43.3-10, 57-43.3-11, 57-43.3-12, 57-43.3-13, 57-43.3-14, 57-43.3-15, 57-43.3-16,
6 57-43.3-17, 57-43.3-18, 57-43.3-19, 57-43.3-20, 57-43.3-21, 57-43.3-22, 57-43.3-23,
7 57-43.3-24, 57-43.3-25, 57-43.3-26, 57-43.3-27, and 57-43.3-28 of the North Dakota Century
8 Code, relating to the motor vehicle fuel tax, the special fuel tax, interstate motor carriers tax,
9 and the aviation fuel tax; to amend and reenact sections 57-43.1-01, 57-43.1-02, 57-43.1-04,
10 57-43.1-06, 57-43.1-08, 57-43.1-11, 57-43.1-13, 57-43.1-14, 57-43.1-15, 57-43.1-16,
11 57-43.1-17, 57-43.1-17.1, 57-43.1-21, 57-43.1-24, 57-43.1-25, 57-43.1-26, 57-43.1-27,
12 57-43.1-28, 57-43.1-30, 57-43.1-32, 57-43.2-01, 57-43.2-02, 57-43.2-02.2, 57-43.2-03,
13 57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-08, 57-43.2-09, 57-43.2-10, 57-43.2-11,
14 57-43.2-14, 57-43.2-15, 57-43.2-19, 57-43.2-20, 57-43.2-21, 57-43.2-22, 57-43.3-01,
15 57-43.3-02, 57-43.3-03, and 57-43.3-04 of the North Dakota Century Code, relating to the
16 motor vehicle fuel tax, the special fuel tax, and the aviation fuel tax; to repeal sections
17 57-43.1-18, 57-43.1-20, 57-43.1-22, 57-43.1-23, 57-43.1-31, 57-43.1-33, 57-43.1-34,
18 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-42,
19 57-43.1-42.1, 57-43.1-43, 57-43.2-04, 57-43.2-06, 57-43.2-12, 57-43.2-13, 57-43.2-17,
20 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28,
21 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35, 57-43.2-35.1,
22 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code, relating to obsolete and
23 redundant provisions of the motor vehicle fuel tax, the special fuel tax, importer for use tax, and
24 the aviation fuel tax; and to provide penalties.

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

2 **SECTION 1. AMENDMENT.** Section 57-43.1-01 of the 1997 Supplement to the North
3 Dakota Century Code is amended and reenacted as follows:

4 **57-43.1-01. Definitions.** As used in this chapter, unless the context otherwise
5 requires:

- 6 1. "Agricultural purpose" means the science, art, and business of farming. It includes
7 raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges
8 and universities, custom combining, manure spreading, and stack moving
9 operations. Fuel used for an agricultural purpose includes fuel used in a vehicle,
10 engine, or machine, movable or immovable, operated in whole or in part by internal
11 combustion. It does not include fuel used to operate a licensed motor vehicle.
- 12 2. "Commissioner" means the state tax commissioner.
- 13 3. "Common carrier" or "contract carrier" means a person involved in the movement
14 of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported
15 into this state, who is not an owner of the motor vehicle fuel.
- 16 4. "Consumer" means a user of motor vehicle fuel including any person purchasing
17 motor vehicle fuel in this state for use in a licensed motor vehicle; any person
18 importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this
19 state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or
20 any person purchasing motor vehicle fuel in this state for use in recreational or any
21 other types of motor vehicles. It does not include a ~~dealer or a retailer person~~
22 importing or purchasing motor vehicle fuel for resale.
- 23 ~~4. "Dealer" means any person importing or causing to be imported into this state any~~
24 ~~motor vehicle fuel for operating or propelling motor vehicles for use, distribution or~~
25 ~~sale, in and after the fuel reaches this state and any person producing, refining,~~
26 ~~manufacturing, compounding, or purchasing any motor vehicle fuel in this state for~~
27 ~~use, distribution, or sale in this state.~~
- 28 5. "Destination state" means any state, territory, foreign country, or sovereign nation
29 to which motor vehicle fuel is directed for delivery into a storage facility, receptacle,
30 container, or any type of transportation equipment, for purposes of resale or use.
- 31 6. "Director" means the director of the department of transportation.

- 1 6. ~~"Importer for use" means any person importing motor vehicle fuel into this state in~~
2 ~~the fuel supply tank or tanks of any motor vehicle or combination of vehicles used,~~
3 ~~designed, or maintained for transportation of persons or property and; having two~~
4 ~~axles and a gross weight exceeding twenty six thousand pounds [1179.3401~~
5 ~~kilograms]; or having three or more axles regardless of weight; is used in~~
6 ~~combination when the weight of such combination exceeds twenty six thousand~~
7 ~~pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles~~
8 ~~that are leased or rented, the importer for use means the lessee or renter unless~~
9 ~~the commissioner has designated the lessor, renter, or some other person as the~~
10 ~~importer for use.~~
- 11 7. "Distributor" means a person, other than a retailer, who acquires motor vehicle fuel
12 from a supplier for subsequent wholesale distribution in bulk or transport load by
13 truck, railcar, or in a barrel, drum, or other receptacle.
- 14 8. "Export" means the delivery of motor vehicle fuel across the boundaries of this
15 state from a place of origin in this state by or for a refiner, supplier, or distributor.
- 16 9. "Exporter" means a refiner, supplier, or distributor who exports motor vehicle fuel
17 out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or
18 other receptacle.
- 19 10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume
20 basis.
- 21 11. "Gross volume" means measurement in United States gallons [3.79 liters] without
22 temperature or barometric adjustments.
- 23 12. "Import" means the delivery of motor vehicle fuel across the boundaries of this
24 state from a place of origin outside this state by a refiner, supplier, or distributor.
- 25 13. "Importer" means a refiner, supplier, or distributor who imports motor vehicle fuel
26 into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
27 receptacle.
- 28 14. "Industrial purpose" means:
29 a. A manufacturing, warehousing, or loading dock operation;
30 b. Construction;
31 c. Sand and gravel processing;

- 1 d. Well drilling, well testing, or well servicing;
- 2 e. Maintenance of business premises, golf courses, or cemeteries;
- 3 f. A commercial or contract painting operation;
- 4 g. Electrical services;
- 5 h. A refrigeration unit on a truck;
- 6 i. A power-take-off unit; and
- 7 j. Other similar business activity.

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

12 15. "Interstate motor carrier" means any person importing motor vehicle fuel into this
13 state in the fuel supply tank or tanks of any motor vehicle or combination of
14 vehicles used, designed, or maintained for transportation of persons or property
15 and; having two axles and a gross weight exceeding twenty-six thousand pounds
16 [1179.3401 kilograms]; or having three or more axles regardless of weight; is used
17 in combination when the weight of such combination exceeds twenty-six thousand
18 pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles
19 that are leased or rented, the interstate motor carrier means the lessee or renter
20 unless the director has designated the lessor, renter, or some other person as the
21 interstate motor carrier.

22 ~~8.~~ 16. "Licensed motor vehicle" means any motor vehicle licensed for operation upon
23 public roads or highways, but does not include a vehicle with a permanently
24 mounted manure spreader or stack moving unit.

25 ~~9.~~ 17. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable,
26 operated in whole or in part by internal combustion using one or more of the motor
27 vehicle fuels defined in this chapter, but does not include aircraft.

28 ~~40.~~ 18. "Motor vehicle fuel" means all products commonly or commercially known or sold
29 as gasoline, including casinghead and absorption or natural gasoline, regardless of
30 their classifications or uses, and any liquid which, when subjected to distillation in
31 accordance with the standard method of test for distillation of gasoline, naphtha,

1 kerosene, and similar petroleum products (American society for testing materials
2 designation D-86), shows not less than ten percent distilled (recovered) below
3 three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less
4 than ninety-five percent distilled (recovered) below four hundred sixty-four degrees
5 Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes
6 agriculturally derived alcohol blended with gasoline, used in a pure state, or if
7 blended with another agriculturally derived liquid.

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

12 ~~42.~~ 19. "Person" means every individual, partnership, ~~society~~, firm, association, joint ~~stock~~
13 ~~company~~ venture, corporation, limited liability company, ~~trustee, executor,~~
14 ~~administrator, or guardian. Whenever used in any case prescribing and imposing a~~
15 ~~fine or imprisonment, or both, the term "person" as applied to an association~~
16 ~~includes the partners or members, as applied to corporations, the officers, and as~~
17 ~~applied to limited liability companies, the managers~~ estate, business trust, receiver,
18 or any other group or combination acting as a unit.

19 20. "Physical inventory reading" means a measurement of motor vehicle fuel available
20 for distribution in a terminal, an underground storage tank, an aboveground storage
21 tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other
22 receptacle.

23 21. "Position holder" means a person holding an inventory position of motor vehicle
24 fuel in a terminal as reflected on the records of the terminal operator, a person
25 holding the inventory position when that person has a contractual agreement with
26 the terminal operator for the use of storage facilities or terminaling services at a
27 terminal, and a terminal operator who owns motor vehicle fuel in a terminal.

28 ~~43.~~ 22. "Public road or highway" means every way or place generally open to the use of
29 the public as a matter of right, for the purpose of motor vehicle travel,
30 notwithstanding that it may be temporarily closed or subject to restricted travel due
31 to construction, reconstruction, repair, or maintenance.

- 1 23. "Rack" means a mechanism used to dispense motor vehicle fuel from a terminal.
- 2 24. "Refiner" means a person who produces, manufactures, or refines motor vehicle
3 fuel in this state or a person who produces alcohol or alcohol derivative substances
4 in this state for blending with motor vehicle fuel.
- 5 25. "Retail location" means a site at which motor vehicle fuel is dispensed through a
6 pump from an underground or aboveground storage tank into the supply tank of a
7 motor vehicle.
- 8 26. "Retailer" means a person who acquires motor vehicle fuel from a supplier or
9 distributor for resale to a consumer at a retail location.
- 10 ~~44.~~ 27. "Sale" means, with respect to motor vehicle fuel, the transfer of title or possession,
11 exchange, or barter, conditional or otherwise, in any manner or by any means, for
12 a consideration, of motor vehicle fuel between dealers or between a dealer and a
13 retailer or a consumer.
- 14 ~~45. "Wholesale dealer" has the same meaning as "dealer" with the added qualification~~
15 ~~that it means those selling or delivering motor vehicle fuel to retail dealers.~~
- 16 28. "Supplier" means a refiner who distributes motor vehicle fuel from a terminal in this
17 state, or a person who acquires motor vehicle fuel by pipeline from a state,
18 territory, or possession of the United States or from a foreign country, for storage at
19 and distribution from a terminal or a person who acquires motor vehicle fuel by
20 truck or railcar for storage at and distribution from a terminal in this state.
- 21 29. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal
22 operator, or retailer.
- 23 30. "Terminal" means a motor vehicle fuel storage and distribution facility that is
24 supplied by a refinery or pipeline and from which the motor vehicle fuel may be
25 removed from the rack.
- 26 31. "Terminal operator" means a person who by ownership or contractual agreement is
27 charged with the responsibility for, or physical control over, and operation of a
28 terminal. If a terminal is owned by coventurers, "terminal operator" means the
29 person appointed to exercise the responsibility for, or physical control over, and
30 operation of the terminal.

1 32. "Wholesale distribution" means the sale of motor vehicle fuel by a supplier or
2 distributor.

3 **SECTION 2. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **57-43.1-02. (Effective through December 31, 1999) Tax imposed on motor vehicle**
6 **fuels.**

- 7 1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79
8 liters] is imposed on all motor vehicle fuel sold or used in this state.
- 9 2. ~~The dealer~~ A supplier or distributor shall collect ~~rem~~it the tax imposed by this
10 section ~~from the~~ on motor vehicle fuel used, on the wholesale distribution of motor
11 vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on
12 all sales.
- 13 3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the~~
14 ~~dealer may collect the tax imposed by this chapter, but on sales in the original~~
15 ~~package to persons other than licensed dealers, the dealer is liable for the tax.~~
16 The tax imposed by this section does not apply on a sale by a supplier to another
17 supplier, on a sale by a supplier to a distributor, on a sale by a distributor to
18 another distributor, on an export, or on a sale to an exempt consumer.
- 19 4. The person required to remit the tax imposed by this section shall pass the tax on
20 to the retailer and to the consumer. A retailer who paid the tax to the supplier or
21 distributor shall pass the tax on to the consumer.
- 22 5. The person required to remit the tax imposed by this section shall pay the tax to
23 the commissioner by the twenty-fifth day of the calendar month after the month
24 during which the motor vehicle fuel was sold or used by the person. When the
25 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
26 the due date is the first working day after the Saturday, Sunday, or legal holiday.
27 When payment is made by mail, the payment is timely if the envelope containing
28 the payment is postmarked by the United States postal service or other postal
29 carrier service before midnight of the due date.
- 30 6. The commissioner shall pay over all of the money received during each calendar
31 month to the state treasurer.

1 **(Effective after December 31, 1999) Tax imposed on motor vehicle fuels.**

- 2 1. Except as otherwise provided in this section, a tax of seventeen cents per gallon
3 [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
- 4 2. ~~The dealer~~ A supplier or distributor shall collect ~~rem~~ remit the tax imposed by this
5 section ~~from the~~ on motor vehicle fuel used, on the wholesale distribution of motor
6 vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on
7 all sales.
- 8 3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the~~
9 ~~dealer may collect the tax imposed by this chapter, but on sales in the original~~
10 ~~package to persons other than licensed dealers, the dealer is liable for the tax.~~
11 The tax imposed by this section does not apply on a sale by a supplier to another
12 supplier, on a sale by a supplier to a distributor, on a sale by a distributor to
13 another distributor, on an export, or on a sale to an exempt consumer.
- 14 4. The person required to remit the tax imposed by this section shall pass the tax on
15 to the retailer and to the consumer. A retailer who paid the tax to the supplier or
16 distributor shall pass the tax on to the consumer.
- 17 5. The person required to remit the tax imposed by this section shall pay the tax to
18 the commissioner by the twenty-fifth day of the calendar month after the month
19 during which the motor vehicle fuel was sold or used by the person. When the
20 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
21 the due date is the first working day after the Saturday, Sunday, or legal holiday.
22 When payment is made by mail, the payment is timely if the envelope containing
23 the payment is postmarked by the United States postal service or other postal
24 carrier service before midnight of the due date.
- 25 6. The commissioner shall pay over all of the money received during each calendar
26 month to the state treasurer.

27 **SECTION 3. AMENDMENT.** Section 57-43.1-04 of the 1997 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **57-43.1-04. Form of claim for refund.** A refund claim must be on a form furnished by
30 the commissioner and must have a written declaration by the claimant that it is made under the
31 penalties of perjury. The tax commissioner may prescribe alternative methods for signing,

1 subscribing, or verifying a return filed by electronic means, including telecommunications, that
2 shall have the same validity and consequence as the actual signature and written declaration
3 for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be
4 used by the claimant other than in a licensed motor vehicle, the purpose or type of project for
5 which the motor vehicle fuel was used, and such other information as the commissioner
6 requires. The original invoices or sales tickets proving the purchase of motor vehicle fuel on
7 which the refund is claimed must be attached to the refund claim. The invoices or sales tickets
8 must include the ~~dealer's or retailer's~~ seller's name and address, the date the fuel was
9 purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased,
10 the state tax as a separate item or a statement that the state tax is included in the price, and the
11 name of the claimant. If the original invoices or sales tickets are lost, the claimant may
12 substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the
13 commissioner. A certified history of purchases detailing required information may be accepted
14 by the commissioner in lieu of original sales invoices or sales tickets. A ~~dealer~~ supplier,
15 distributor, or retailer is prohibited from preparing a refund claim for the consumer.

16 **SECTION 4. AMENDMENT.** Section 57-43.1-06 of the 1997 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **57-43.1-06. Refund to prevent taxation by multiple jurisdictions.** Any person to
19 whom ~~special fuel or~~ motor vehicle fuel is sold on which the tax imposed by this chapter ~~or~~
20 ~~chapter 57-43.2~~ has been paid who thereafter removes the fuel from this state for sale or resale
21 in another state or to a state which requires payment of a tax upon the use of the fuel in that
22 state, must be granted a refund of the tax that was paid pursuant to this chapter ~~or chapter~~
23 ~~57-43.2~~. The refund may be granted only upon application to the commissioner in the manner
24 prescribed by the commissioner and must include proof that fuel for sale or resale in another
25 state was reported to the taxing agency of that state, or in the case of a consumer, proof of
26 payment of the tax imposed by the other state. The refund may not be reduced by the one cent
27 per gallon [3.79 liters] tax designated for the township highway aid fund. A claim for refund
28 under this section must be made within one year from the date the fuel was removed to another
29 state for sale, resale, or use in another state.

30 **SECTION 5.** Section 57-43.1-06.1 of the North Dakota Century Code is created and
31 enacted as follows:

1 **57-43.1-06.1. Refund of tax on tax exempt sales.** When a person purchasing motor
2 vehicle fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of
3 the fuel to an agency of the United States government, the person may apply to the
4 commissioner for a refund of the tax.

5 **SECTION 6. AMENDMENT.** Section 57-43.1-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-43.1-08. Refund to state or political subdivision.** When any construction,
8 reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by the
9 state or any political subdivision in the state and where public funds of the United States, state,
10 or any political subdivision are directly used for the purchasing of motor vehicle fuel to be used
11 in publicly owned vehicles for such construction, reconstruction, or maintenance, such motor
12 vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this chapter and
13 under the same terms and conditions. The refund provided for in this section may not be
14 reduced for deposit to the ~~agriculturally derived~~ agricultural fuel tax fund.

15 **SECTION 7. AMENDMENT.** Section 57-43.1-11 of the 1997 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **57-43.1-11. Assignment of refund claims.** ~~Any~~ A consumer eligible for a motor
18 vehicle fuel tax refund under this chapter, who ~~has been sold~~ purchased the fuel ~~by a dealer on~~
19 ~~open account with the dealer paying the motor vehicle fuel tax,~~ may assign the refund to the
20 ~~dealer~~ seller by attaching an assignment agreement, on a form prescribed by the
21 commissioner, to the refund claim submitted ~~by the claimant~~ in accordance with section
22 57-43.1-04. If an assignment of a refund is made, the refund check or warrant issued ~~must~~
23 shall be made payable to both the claimant and the assignee.

24 **SECTION 8.** Section 57-43.1-12.1 of the North Dakota Century Code is created and
25 enacted as follows:

26 **57-43.1-12.1. Credit for taxes paid on worthless accounts and refunds.** Taxes
27 paid on motor vehicle fuel represented by accounts found to be worthless, and actually charged
28 off for income tax purposes, may be taken as a credit against subsequent taxes due provided
29 the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless
30 account is subsequently collected, the tax must be remitted on the amount collected. If in any

1 case the credit or any part of it cannot be utilized because of a discontinuance of a business or
2 for other valid reason, the amount may be refunded.

3 **SECTION 9. AMENDMENT.** Section 57-43.1-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-43.1-13. ~~Dealer~~ Refiner, supplier, distributor, importer, exporter, and terminal**
6 **operator required to secure license - License fees.**

- 7 1. ~~No~~ A person may not engage in business in this state as a ~~dealer in~~ refiner,
8 supplier, distributor, importer, exporter, or terminal operator of motor vehicle fuel
9 unless that person holds an unrevoked license issued by the commissioner
10 authorizing that person to engage in such business.
- 11 2. The person shall file an application for a license with the commissioner providing
12 such information as required by the commissioner and on a form or in a format as
13 required by the commissioner. The information must include:
- 14 a. The name under which the person intends to transact business in this state.
15 b. The physical location of each place of business to be covered by the license
16 and the mailing address of the location to which forms and correspondence
17 are to be directed.
- 18 c. If a partnership, the name and address of each of the persons constituting the
19 partnership.
- 20 d. If a domestic corporation, the corporate name, the date of incorporation, and
21 the names and addresses of the directors and corporate officers.
- 22 e. If a foreign corporation, the corporate name, the state and the date of
23 incorporation, the name and address of the resident agent, the location of
24 each place of business, and the date on which the business was established.
- 25 f. If a domestic limited liability company, the limited liability company name, the
26 date of formation, and the names and addresses of the governors and
27 managers.
- 28 g. If a foreign limited liability company, the limited liability company name, the
29 state and date of formation, the name and address of the resident agent, the
30 location of each place of business, and the date on which the business was
31 established.

- 1 h. Any other information the commissioner may require.
2 The application must be signed by the taxpayer to be valid and must contain a
3 written declaration that it is made and subscribed under penalties of perjury. For
4 an individual, partnership, or unincorporated association, the application must be
5 signed by the owner. For a corporation, the application must be signed by an
6 authorized officer. For a limited liability company, the application must be signed
7 by an authorized manager.
- 8 3. An applicant for a single or multiple license as a refiner, supplier, distributor,
9 importer, exporter, or terminal operator shall pay to the commissioner a license fee
10 of twenty dollars. The license fee must be paid at the time the application is made.

11 **SECTION 10. AMENDMENT.** Section 57-43.1-14 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-43.1-14. ~~Form and contents of application for dealer's license—Fee—Bond or~~**
14 **~~other security letter of credit required.~~** As a condition precedent to the issuance of a single
15 or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond,
16 or an approved letter of credit as security to guarantee the payment of the motor vehicle fuel tax
17 liabilities imposed by this chapter. A refiner, terminal operator, or an exporter who is not also
18 licensed as a supplier or distributor is exempt from this requirement.

- 19 ~~1. To procure a license as a dealer in motor vehicle fuel, an applicant shall file with~~
20 ~~the commissioner an application upon a form prescribed and furnished by the~~
21 ~~commissioner. Such application must contain: The surety bond, cash bond, or~~
22 ~~letter of credit must be in an amount prescribed by the commissioner but not less~~
23 ~~than one thousand dollars.~~
- 24 ~~a. The name under which the applicant intends to transact business.~~
25 ~~b. If a partnership, the name and address of each of the several persons~~
26 ~~constituting the firm.~~
- 27 ~~c. If a domestic corporation, the corporate name, the date of incorporation, and~~
28 ~~the names of the directors and corporate officers.~~
- 29 ~~d. If a foreign corporation, the corporate name, the state where and the time~~
30 ~~when incorporated, the name of the resident agent, the location of each place~~
31 ~~of business, and the date on which the business was established.~~

- 1 e. ~~If a domestic limited liability company, the limited liability company name, the~~
2 ~~date of formation, and the names of the governors and managers.~~
- 3 f. ~~If a foreign limited liability company, the limited liability company name, the~~
4 ~~state where and the time when formed, the name of the resident agent, the~~
5 ~~location of each place of business, and the date on which the business was~~
6 ~~established.~~
- 7 g. ~~Any other information the commissioner may require. The application must~~
8 ~~be signed and verified by the owner of the business, if an individual,~~
9 ~~partnership, or unincorporated association, by any authorized officer, if a~~
10 ~~corporation, and by any authorized manager, if a limited liability company.~~
- 11 2. ~~At the time of applying for a license, the applicant shall pay to the commissioner as~~
12 ~~a license fee the sum of twenty dollars. This fee must be paid into the state~~
13 ~~treasury and credited to the general fund. The surety bond, cash bond, or letter of~~
14 ~~credit is subject to approval by the commissioner.~~
- 15 3. ~~As a condition precedent to the issuance of a license, a dealer shall furnish a bond~~
16 ~~in an amount set by the commissioner, but not less than one thousand dollars,~~
17 ~~guaranteeing the payment of the motor vehicle fuel tax collected by the dealer.~~
18 ~~The bond is subject to approval by the commissioner and must be in effect for at~~
19 ~~least three years. After a dealer has had a valid license for three or more years,~~
20 ~~the commissioner may review the records of the dealer and waive the bond~~
21 ~~requirement. The bond requirement may be reinstated at the discretion of the~~
22 ~~commissioner. After a single or multiple license has been in effect for five or more~~
23 ~~years, the commissioner may review the person's records and may waive the~~
24 ~~requirement for a security. The requirement for a security may be reinstated at the~~
25 ~~discretion of the commissioner.~~
- 26 4. ~~In lieu of a bond, securities, including letters of credit, approved by the~~
27 ~~commissioner in such amounts as the commissioner may prescribe, may be~~
28 ~~deposited with the commissioner, which securities shall be kept in the custody of~~
29 ~~the commissioner and may be sold by the commissioner at public or private sale,~~
30 ~~without notice to the depositor, if it becomes necessary to recover any tax,~~
31 ~~penalties, or interest due. All moneys deposited as security with the commissioner~~

1 ~~under the provisions of this subsection must be paid by the commissioner to the~~
2 ~~state treasurer and credited by the treasurer into a special fund to be known as the~~
3 ~~"motor vehicle fuel tax security trust fund". If any tax, penalty, or interest imposed~~
4 ~~by this chapter is not paid when due, the commissioner shall certify that information~~
5 ~~to the director of the office of management and budget who shall transmit the~~
6 ~~money to the commissioner who shall apply the money deposited by the person or~~
7 ~~so much of the deposit as is necessary to satisfy the tax, penalty, and interest due.~~
8 ~~The commissioner, when in the commissioner's judgment it is no longer necessary~~
9 ~~to require the deposit to be maintained by the depositor, shall certify that~~
10 ~~information to the director of the office of management and budget who shall pay~~
11 ~~the unused money to the depositor. A surety bond or letter of credit provided as~~
12 ~~security must be kept in the custody of the commissioner and may be used by the~~
13 ~~commissioner, without notice to the principal, if it becomes necessary to cover the~~
14 ~~motor vehicle fuel tax, penalties, and interest due.~~

- 15 5. Money deposited with the commissioner as a cash bond must be made in the form
16 of a cashier's check or bank money order payable to the commissioner. The
17 money order received must be paid by the commissioner to the state treasurer and
18 credited by the treasurer into a special fund known as the motor fuel tax security
19 trust fund. The money deposited may be used by the commissioner, without notice
20 to the depositor, if it becomes necessary to cover tax, penalties, and interest due.
21 If the money deposited is used to cover unpaid liabilities, the commissioner shall
22 certify the information to the director of the office of management and budget. The
23 office of management and budget shall transmit the money to the commissioner
24 who shall apply as much of the money deposited by the person as is necessary to
25 satisfy the liabilities. When in the commissioner's judgment it is no longer
26 necessary to require the deposit to be maintained, the commissioner shall certify
27 the information to the director of the office of management and budget who shall
28 pay the unused money to the depositor.

29 **SECTION 11.** Section 57-43.1-14.1 of the North Dakota Century Code is created and
30 enacted as follows:

1 **57-43.1-14.1. Qualification for exporter license.** As a condition precedent to the
2 issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a
3 valid unrevoked license required by the jurisdiction of import.

4 **SECTION 12.** Section 57-43.1-14.2 of the North Dakota Century Code is created and
5 enacted as follows:

6 **57-43.1-14.2. Qualification for importer license.** As a condition precedent to the
7 issuance of a license to an importer, the importer shall furnish proof that the importer has a
8 valid unrevoked license required by the jurisdiction of export. An importer must also qualify for
9 and apply for a license in this state as a refiner, supplier, or distributor.

10 **SECTION 13. AMENDMENT.** Section 57-43.1-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~**57-43.1-15. License—Contents—Authority conferred**~~ **Application for license -**
13 **Issuance of license - Denial of license.** ~~Upon the filing of an application for a license and~~
14 ~~payment of the fee to engage in business as a dealer in motor vehicle fuel, the commissioner~~
15 ~~shall issue to the applicant a license authorizing the applicant to engage in business in this~~
16 ~~state as a dealer, as defined in section 57-43.1-01, unless the license is revoked by the~~
17 ~~commissioner as provided by law.~~

- 18 1. Upon receipt and approval of an application for a license, the license fee, and the
19 required security, the commissioner shall issue a license which shall be valid until it
20 is suspended, revoked for cause, or otherwise canceled. The license is not
21 transferable.
- 22 2. A multiple license must be issued to a person who applies and qualifies for more
23 than one type of license.
- 24 3. The commissioner may refuse to issue a license to a person who has not provided
25 the required security, who failed to provide the information requested on the
26 application, who previously held a license which was revoked by the commissioner,
27 who is a subterfuge for the real party in interest who previously held a license that
28 was revoked by the commissioner, or upon other sufficient cause being shown.
29 The commissioner shall grant the person the right to a hearing in accordance with
30 the provisions of chapter 28-32. Written notice of the hearing must be served on
31 the person at least ten days prior to the date established for the hearing.

1 **SECTION 14.** Section 57-43.1-15.1 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.1-15.1. Revocation of license - Hearing to show cause - Reinstatement.**

- 4 1. The commissioner may revoke a license for reasonable cause. Before revoking a
5 license, the commissioner shall grant a hearing in accordance with the provisions
6 of chapter 28-32 to allow the person to show cause why the license should not be
7 revoked. Written notice of a hearing must be served on the person at least ten
8 days prior to the date established for the hearing.
- 9 2. Before a new license may be issued to a person who is obligated to remit the tax
10 imposed by this chapter and whose license was revoked, the person shall pay to
11 the commissioner the amount of any delinquent tax, penalties, and interest
12 remaining unpaid and must file with the commissioner a surety bond upon which
13 the person is the principal. The bond must be in an amount determined by the
14 commissioner but not less than one thousand dollars. The bond must be payable
15 to the commissioner and be conditioned upon the timely filing of correct tax reports
16 and timely payment of the full amount of the tax due as required under this chapter.
17 If the person fails to file the required report or to timely pay the full amount of tax
18 due, the commissioner may require an increase in the amount of the surety bond
19 conditioned to secure at all times the payment of any tax due to the state under this
20 chapter.

21 **SECTION 15. AMENDMENT.** Section 57-43.1-16 of the 1997 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **57-43.1-16. Report Monthly report by dealer to commissioner refiner, supplier,**
24 **distributor, importer, or exporter required.** Each dealer in motor vehicle fuel who engages
25 in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later
26 than the twenty fifth day of each calendar month, on the form prescribed, prepared, and
27 furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle
28 fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If
29 the commissioner deems it necessary to ensure the payment of the tax imposed by this
30 chapter, the commissioner may require returns and payment of the tax to be made for periods
31 other than monthly periods. If the dealer is a domestic corporation, the statement must be

1 ~~signed by the president or secretary, and if a foreign corporation, by the resident general agent,~~
2 ~~attorney in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability~~
3 ~~company, the statement must be signed by the president or treasurer, and if a foreign limited~~
4 ~~liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an~~
5 ~~association of individuals, the statement must be made by the managing agent or owner.~~

6 1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with
7 the commissioner no later than the twenty-fifth day of each calendar month
8 covering motor vehicle fuel sold and used during the preceding calendar month.
9 When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or
10 legal holiday, the due date is the first working day after the Saturday, Sunday, or
11 legal holiday. When the report is filed by mail, the report is timely if the envelope
12 containing the report is postmarked by the United States postal service or other
13 postal carrier service before midnight of the due date.

14 2. The report to the commissioner must be on a form prescribed and furnished by the
15 commissioner. The commissioner may require that all or part of the report be
16 submitted in an electronic format approved by the commissioner, provided the
17 person required to file the report is able to use an electronic format. The report
18 must contain the information as required by the commissioner including:

19 a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and
20 exported.

21 b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase
22 the motor vehicle fuel without the tax imposed by this chapter.

23 c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a
24 list of persons who purchased the motor vehicle fuel for resale.

25 d. The total number of gallons of motor vehicle fuel sold and used subject to the
26 tax imposed by this chapter.

27 e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified
28 consumer.

29 f. The number of gallons of motor vehicle fuel in inventory at the beginning of
30 the calendar month, the number of gallons in inventory at the close of the
31 calendar month, and any gains or losses experienced.

- 1 3. The report must be signed by the taxpayer to be valid and must contain a written
2 declaration that it is made and subscribed under penalties of perjury.
- 3 4. The tax commissioner may prescribe alternative methods for signing, subscribing,
4 or verifying a return filed by electronic means, including telecommunications, that
5 shall have the same validity and consequence as the actual signature and written
6 declaration for a paper return. ~~The report must contain a statement of the~~
7 ~~quantities of motor vehicle fuel sold, used, received, and delivered within this state~~
8 ~~from the dealer's place of business. If any motor vehicle fuel has been sold and~~
9 ~~delivered by the dealer to customers in the original package, whether in tank car,~~
10 ~~barrel, or other package, and in the form and condition in which the same was~~
11 ~~imported, the statement must show the amount of motor vehicle fuel so sold and~~
12 ~~delivered, and the names and addresses of the persons to whom it was sold and~~
13 ~~delivered.~~

14 **SECTION 16.** Section 57-43.1-16.1 of the North Dakota Century Code is created and
15 enacted as follows:

16 **57-43.1-16.1. Report by terminal operator required.**

- 17 1. A terminal operator shall file a monthly report with the commissioner no later than
18 the twenty-fifth day of each calendar month covering motor vehicle fuel received
19 into and removed from the terminal during the preceding calendar month. When
20 the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal
21 holiday, the due date is the first working day after the Saturday, Sunday, or legal
22 holiday. When the report is filed by mail, the report is timely if the envelope
23 containing the report is postmarked by the United States postal service or other
24 postal carrier service before midnight of the due date.
- 25 2. The report to the commissioner must be on a form prescribed and furnished by the
26 commissioner or in a format approved by the commissioner. The commissioner
27 may require that all or part of the report be submitted in an electronic format
28 approved by the commissioner, provided the person required to file the report is
29 able to use an electronic format. The report must contain such information as
30 required by the commissioner and may include:

- 1 a. A detailed schedule of motor vehicle fuel received into the terminal for or on
2 behalf of the position holder.
- 3 b. A detailed schedule of motor vehicle fuel removed from the terminal by or on
4 behalf of a position holder.
- 5 c. The number of gallons of motor vehicle fuel in inventory at the beginning of
6 the calendar month and the number of gallons in inventory at the close of the
7 calendar month for each position holder.
- 8 3. The report must be signed by the taxpayer to be valid and must contain a written
9 declaration that it is made under penalties of perjury.
- 10 4. The tax commissioner may prescribe alternative methods for signing, subscribing,
11 or verifying a return filed by electronic means, including telecommunications, which
12 have the same validity and consequence as the actual signature and written
13 declaration for a paper return.

14 **SECTION 17.** Section 57-43.1-16.2 of the North Dakota Century Code is created and
15 enacted as follows:

16 **57-43.1-16.2. Common or contract carrier - License required - Records required -**
17 **Diverted loads - Commissioner to audit records.**

- 18 1. A common or contract carrier shall obtain a license issued by the commissioner.
19 The application for a license must be made on a form prescribed by the
20 commissioner and contain the information required by the commissioner.
- 21 2. A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or
22 vessel into this state from another state or country shall ensure that a bill of lading
23 indicating North Dakota as the destination state has been issued by the terminal or
24 bulk plant from which the fuel was removed. If a bill of lading issued by the
25 terminal or bulk plant indicates a destination other than North Dakota, the
26 transporter shall issue a diversion ticket indicating North Dakota as the destination
27 state. If a bill of lading was not issued by the terminal or bulk plant, the transporter
28 shall issue a bill of lading for each shipment indicating North Dakota as the
29 destination state. A copy of a diversion ticket and bill of lading prepared by the
30 transporter shall be mailed, faxed, or electronically transmitted to the commissioner
31 before the fuel enters the state.

- 1 3. A common or contract carrier transporting motor vehicle fuel in the state shall
2 provide a copy of the bill of lading accompanying the shipment, along with any drop
3 load tickets and diversion tickets issued for the delivered fuel to the refiner,
4 supplier, distributor, importer, retailer, or consumer to whom delivery of the
5 shipment was made.
- 6 4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly
7 accept delivery of motor vehicle fuel into storage facilities in this state if that
8 delivery is not accompanied by a bill of lading or diversion ticket issued by the
9 terminal operator, bulk plant operator, or transporter, which specifically indicates
10 North Dakota as the destination state of the motor vehicle fuel.
- 11 5. If a common or contract carrier unloads only a portion of a shipment at a location or
12 if the load is loaded at a location other than what is indicated in the bill of lading or
13 diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped
14 at more than one location, the drop load ticket must identify the name and address
15 of all locations and the type of fuel and gallonage dropped. A copy of the ticket
16 must be maintained on board and a copy must accompany the bill of lading that is
17 provided to the refiner, supplier, distributor, importer, retailer, or consumer taking
18 delivery of the fuel.
- 19 6. A diversion ticket must include the following information:
- 20 a. The transporter's name and address.
- 21 b. The date and time of issuance.
- 22 c. The diversion ticket number.
- 23 d. The name and address of the consignee indicated on the original bill of lading.
- 24 e. The destination as stated on the original bill of lading.
- 25 f. The original bill of lading number.
- 26 g. The location diverted to, including the address to which the fuel was diverted
27 and the destination state.
- 28 h. The number of gallons of fuel being diverted.
- 29 i. The type of fuel being diverted.
- 30 j. Any other information required by the commissioner.
- 31 7. A drop load ticket must include the following:

- 1 a. The transporter's name and address.
- 2 b. The date and time of issuance.
- 3 c. The partial load ticket number.
- 4 d. The name and address of the consignee indicated on the original bill of lading.
- 5 e. The destination on the original bill of lading or as shown on the diversion
- 6 ticket, if issued.
- 7 f. The original bill of lading number and, if available, the diversion ticket number.
- 8 g. The number of gallons off-loaded at each location.
- 9 h. The type of fuel off-loaded at each location.
- 10 i. Any other information required by the commissioner.
- 11 8. Except as otherwise provided in this section, the commissioner may audit the
- 12 records of the common or contract carrier, whether or not licensed by the
- 13 commissioner, and may impose such penalties as authorized by this chapter.

14 **SECTION 18. AMENDMENT.** Section 57-43.1-17 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **57-43.1-17. Commissioner to audit statement report and assess tax.**

- 17 1. ~~Except as otherwise provided in this section, the commissioner may proceed to~~
- 18 ~~audit the returns of dealers and, not later than three years after the due date of a~~
- 19 ~~return, or three years after the return was filed, whichever period expires later,~~
- 20 ~~assess additional tax due or issue a tax credit or refund. If any additional tax is~~
- 21 ~~found due or if a tax credit applies, the commissioner shall notify the dealer in~~
- 22 ~~detail of the reason for the increase or decrease. The commissioner, or an~~
- 23 ~~authorized representative, may audit the records, books, and papers, and examine~~
- 24 ~~fuel and any equipment used to store, transport, or dispense fuel, of a refiner,~~
- 25 ~~supplier, distributor, importer, exporter, terminal operator, retailer, or common or~~
- 26 ~~contract carrier. For a person required to file a report, the examination and audit~~
- 27 ~~shall be done no later than three years after the due date of the report or three~~
- 28 ~~years after the report was filed, whichever period expires later. The commissioner~~
- 29 ~~is authorized to make assessments of tax, plus penalty and interest, or to issue~~
- 30 ~~credits or refunds as determined on the basis of the examination and audit.~~

- 1 2. If it is determined upon audit that the tax due was twenty-five percent or more
2 above the amount reported on a ~~return~~ report, the tax may be assessed, or a
3 proceeding in court for the collection of the tax may be begun without such
4 assessment, at any time within six years after the due date of the ~~statement~~ report,
5 or six years after the ~~statement~~ report was filed, whichever period expires later.
- 6 3. Except as otherwise provided in this chapter, the commissioner may audit any
7 consumer's claim for a refund of tax, and, not later than three years after the due
8 date of the claim or three years after the claim was filed, whichever period expires
9 later, assess additional tax or issue an additional refund. If additional tax is found
10 due or if an additional tax refund applies, the commissioner shall notify the claimant
11 in detail of the reason for the increase or decrease. For any claim selected for
12 audit, the claimant shall provide additional verification as required by the
13 commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose
14 entitling the claimant to a refund, and use of the fuel other than in a licensed motor
15 vehicle.
- 16 4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's tax return~~
17 report or in a claim for refund, or if the failure by a ~~dealer~~ person to file a tax ~~return~~
18 report is due to the fraudulent intent or the willful attempt of the ~~dealer~~ person in
19 any manner to evade the tax, the time limitations in this section do not apply, and
20 the tax may be assessed, or a proceeding in court for the collection of the tax may
21 be begun without such assessment, at any time.
- 22 5. If, before the expiration of the time prescribed in this chapter for the assessment of
23 tax, the commissioner and the ~~dealer or the claimant~~ person consent in writing to
24 an extension of time for the assessment of the tax, the tax may be assessed at any
25 time prior to the expiration of the period agreed upon. The period agreed upon
26 may be extended by subsequent agreements in writing made before the expiration
27 of the period previously agreed upon.
- 28 6. A determination of additional tax due issued to a ~~dealer or to a consumer~~ person
29 fixes the tax finally and irrevocably unless the ~~dealer or consumer~~ person against
30 whom it is assessed, within thirty days after the giving of notice of the

1 determination, protests the determination under rules adopted by the commissioner
2 and in the manner provided in chapter 28-32.

3 7. A determination that a claim for a tax credit or refund is disallowed becomes finally
4 and irrevocably fixed unless the ~~dealer or consumer~~ person claiming the refund,
5 within thirty days after the giving of notice of the determination, protests the
6 determination under rules adopted by the commissioner and in the manner
7 provided in chapter 28-32.

8 **SECTION 19. AMENDMENT.** Section 57-43.1-17.1 of the North Dakota Century Code
9 is amended and reenacted as follows:

10 **57-43.1-17.1. Determination if no ~~return made~~ report is filed.** ~~If any motor vehicle~~
11 ~~fuel dealer, whether or not licensed as such,~~ a person fails, neglects, or refuses to file a motor
12 vehicle fuel tax ~~return~~ report when due, the commissioner shall, on the basis of available
13 information, determine the tax liability ~~of the motor vehicle fuel dealer~~ for the period during
14 which no ~~return~~ report was filed, and to the tax thus determined the commissioner shall add the
15 penalty and interest as provided in section 57-43.1-21. An assessment made by the
16 commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any
17 case where the validity of the assessment is in question, the burden is on the person who
18 challenges the assessment to establish by fair preponderance of evidence that it is erroneous
19 or excessive.

20 **SECTION 20. AMENDMENT.** Section 57-43.1-21 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-43.1-21. ~~Failure to file report~~ - Penalty - ~~Revocation of license~~ - ~~Excuse for~~**
23 **~~delay and interest~~ - Violations.**

24 1. ~~If the holder of a license to sell motor vehicle fuel~~ a person fails to file the required
25 ~~report required to be filed,~~ or to pay the full amount of the tax as required by this
26 chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of
27 the tax due, whichever is greater, ~~together~~ with interest at the rate of one percent
28 per month on the tax due, for each calendar month or fraction of a month during
29 which the ~~failure~~ delinquency continues, excepting the month within which the
30 report was required to be filed or the tax became due. ~~The commissioner may~~
31 ~~revoke the license and, if so, the commissioner shall notify the licenseholder~~

1 ~~promptly by a notice sent by registered or certified mail to the post office address~~
2 ~~of the licenseholder as it appears in the commissioner's records. However, if the~~
3 ~~report is filed and the tax paid within ten days after the date it becomes due and if it~~
4 ~~is established under oath that the delay was due to accident or justifiable oversight,~~
5 ~~then the commissioner may continue the license in full force and effect. If a person~~
6 ~~files a false or fraudulent report with intent to evade the tax imposed by this~~
7 ~~chapter, there is imposed a penalty equal to ten percent of the deficiency, with~~
8 ~~interest at the rate of two percent per month on the deficiency, for each calendar~~
9 ~~month or fraction of a month during which the deficiency continues. The~~
10 ~~commissioner, for good cause shown, may waive all or any part of the penalty or~~
11 ~~interest provided by this ~~section~~ subsection.~~

12 2. A person is guilty of a class A misdemeanor if:

- 13 a. The person refuses or knowingly or intentionally fails to make and file any
14 report required by this chapter in the manner or within the time required; or
15 b. The person knowingly or with intent to evade or aid in the evasion of the tax
16 imposed by this chapter makes any false statement or conceals any material
17 fact in any application, record, report, or claim for refund provided for in this
18 chapter.

19 **SECTION 21. AMENDMENT.** Section 57-43.1-24 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-43.1-24. ~~Deduction of cost of collecting Tax collection allowance.~~ On making**
22 ~~payments to the commissioner as provided in this chapter, the dealer~~ The person required to
23 remit the tax imposed by this chapter shall ~~deduct~~ retain two percent ~~from~~ of the amount of tax
24 due to cover the cost of collecting the tax and transmitting it to the commissioner. This
25 provision does not apply to tax on excess inventory losses and does not apply to additional tax
26 assessed during an audit.

27 **SECTION 22. AMENDMENT.** Section 57-43.1-25 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-43.1-25. ~~Records of dealer subject~~ Retention of records - Subject to**
30 **inspection.** ~~The records of all purchases, receipts, sales, distribution, and use of motor vehicle~~
31 ~~fuel of every dealer, must be retained~~ A refiner, supplier, distributor, importer, exporter, terminal

1 operator, and retailer shall maintain and retain records of all motor vehicle fuel refined,
2 purchased, imported, or otherwise acquired; of all motor vehicle fuel exported, sold, distributed,
3 and used; and of all inventory records, for a period of not less than three years, and. Inventory
4 records include physical readings, metered readings of sales, delivery tickets, and delivery
5 readings. The records are open to inspection by the commissioner or by any agent or
6 employee authorized by the commissioner during business hours.

7 **SECTION 23. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-43.1-26. Inventory gains - Losses –Deductions allowed to dealer –Remedies.**

10 ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of~~
11 ~~motor fuel received during each calendar month from the statement submitted as required in~~
12 ~~section 57-43.1-16, but the allowance may not exceed one percent of the total received during~~
13 ~~that month.~~

- 14 1. A supplier or distributor shall take a physical inventory reading of all motor vehicle
15 fuel located in a terminal, underground tank, aboveground tank, railcar, storage
16 tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and
17 shall report the physical readings, inventory gains, and inventory losses to the
18 commissioner in increments not to exceed a twelve-month period. The inventory
19 reconciliation must include motor vehicle fuel at retail locations and motor vehicle
20 fuel stored in a barrel, drum, or other receptacle.
- 21 2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel
22 inventories is subject to the tax imposed by this chapter in the same manner as
23 motor vehicle fuel purchased, imported, or otherwise acquired.
- 24 3. A supplier or distributor who experiences an actual physical inventory loss due to
25 shrinkage or evaporation is responsible for the tax imposed by this chapter on any
26 such loss that is in excess of one percent of the motor vehicle fuel received during
27 the period covered by the inventory reconciliation.
- 28 4. For purposes of this chapter, it is presumed that all motor vehicle fuel received by
29 ~~each dealer~~ above this the one percent allowance, except that gallonage shown as
30 inventory based on physical inventory readings at the end of each calendar month
31 the time period covered by the inventory reconciliation, and other allowances

1 provided in this chapter, has been sold, delivered, or used, and the ~~dealer~~ supplier
2 or distributor is liable for the amount of the motor vehicle fuel tax on each gallon
3 [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor
4 vehicle fuel refined at a refinery in this state and placed in storage at the refinery,
5 and motor vehicle fuel brought into the state by pipeline and placed in storage at a
6 pipeline terminal, is not deemed received until it is withdrawn from the refinery or
7 terminal storage for sale or use in this state, or for shipment or delivery to
8 destinations in this state.

9 5. The commissioner may allow a tax credit to a supplier or distributor for actual
10 inventory losses due to a casualty loss, based on proof of the loss as required by
11 the commissioner.

12 **SECTION 24. AMENDMENT.** Section 57-43.1-27 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for**
15 **losses.** When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to
16 a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one
17 percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear
18 on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in
19 consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the
20 tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier
21 or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor
22 vehicle fuels under the provisions of this section, in addition to other deductions allowed, from
23 the amount of tax due.

24 **SECTION 25. AMENDMENT.** Section 57-43.1-28 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-43.1-28. Allocation of fuel tax Transfer, deposit, and distribution of funds.** ~~The~~
27 ~~state treasurer shall credit to the highway tax distribution fund the motor fuel tax, including~~
28 ~~interest received on the tax, collected under the provisions of this chapter. Taxes, license fees,~~
29 ~~penalties, and interest collected under the provisions of this chapter must be transferred to the~~
30 ~~state treasurer who shall deposit the moneys collected to the highway tax distribution fund.~~ The
31 highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

1 **SECTION 26. AMENDMENT.** Section 57-43.1-30 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-43.1-30. Administration - Assistance authorized - Rules.** The commissioner
4 shall ~~administer~~ enforce the provisions of this chapter. The commissioner may employ ~~such~~
5 assistance and conduct investigations as may be necessary for the efficient administration and
6 enforcement of this chapter and may ~~make~~ adopt and enforce reasonable rules relating to the
7 administration and enforcement of this chapter.

8 **SECTION 27. AMENDMENT.** Section 57-43.1-32 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-43.1-32. Erroneously or illegally collected taxes.** If any taxes, penalties, or
11 interest imposed by this chapter have been erroneously or illegally collected from any person,
12 the commissioner may permit that person to take credit against a subsequent tax return for the
13 amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall
14 present a voucher to the office of management and budget for payment of the amount
15 erroneously or illegally collected and a warrant-check must be prepared by that office drawn on
16 the state treasurer payable to that person. The refund must be paid to the person from
17 undistributed funds received from the tax imposed by this chapter and any credit or refund may
18 not be approved or paid unless it is an amount which is in excess of ~~ten~~ five dollars.

19 **SECTION 28.** Section 57-43.1-45 of the North Dakota Century Code is created and
20 enacted as follows:

21 **57-43.1-45. Motor vehicle fuel tax for interstate motor carriers - Computation -**
22 **Credits - Refunds.**

- 23 1. An interstate motor carrier importing motor vehicle fuel into the state is subject to
24 the motor vehicle fuel tax imposed by this chapter on the number of gallons [liters]
25 of fuel used in the state to propel licensed motor vehicles upon the public roads or
26 highways in the state.
- 27 2. The amount of fuel used in interstate fleet operations by a motor carrier is
28 determined by using a factor, the numerator of which is the total miles [kilometers]
29 operated in this state and the denominator of which is the total miles [kilometers]
30 operated both within and without this state applied to the total of that fuel used both
31 within and without this state.

- 1 3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and
2 in the manner prescribed by a cooperative agreement authorized by section
3 57-43.1-44.

4 **SECTION 29.** Section 57-43.1-46 of the North Dakota Century Code is created and
5 enacted as follows:

6 **57-43.1-46. Interstate motor carrier required to obtain license - Display -**
7 **Revocation or cancellation of license - Occasional trip permits in lieu of license.**

- 8 1. An interstate motor carrier shall apply to the director for a license subject to the
9 requirements of a cooperative agreement authorized by section 57-43.1-44 and is
10 required to display the license in a manner prescribed under the terms of the
11 agreement.
- 12 2. The license issued to an interstate motor carrier is not a franchise or irrevocable
13 and it may not be assigned or transferred.
- 14 3. The director shall issue a license to an interstate motor carrier based on the terms
15 of the cooperative agreement authorized by section 57-43.1-44 and the license
16 shall be in force until it is suspended, revoked, surrendered, or expires pursuant to
17 the terms of the agreement.
- 18 4. An interstate motor carrier who makes only occasional trips into or through this
19 state may elect to secure occasional trip permits in lieu of the license required by
20 this section. The term "occasional" means no more than one trip into or through
21 the state in any seventy-two-hour period. The commissioner, director, or an agent
22 of the commissioner or director shall issue an occasional trip permit for a fee of
23 fifteen dollars per trip pursuant to regulations and procedures prescribed by the
24 commissioner or director.

25 **SECTION 30.** Section 57-43.1-47 of the North Dakota Century Code is created and
26 enacted as follows:

27 **57-43.1-47. Interstate motor carrier tax reports - Payments - Audits -**
28 **Assessments.**

- 29 1. An interstate motor carrier shall file a tax report with the director and remit to the
30 director any taxes, penalties, and interest due at the time and in the manner
31 prescribed by the terms of a cooperative agreement authorized by section

- 1 57-43.1-44. All moneys collected and received under this section must be
2 transmitted monthly by the director to the state treasurer to be transferred and
3 credited in the same manner as provided in section 57-43.1-28.
- 4 2. An interstate motor carrier shall obtain, create, maintain, and retain records as
5 required by the terms of a cooperative agreement authorized by section 57-43.1-44
6 and make those records available to the director or the commissioner for
7 examination.
- 8 3. The director or commissioner shall audit the records of an interstate motor carrier
9 at the times and in the manner prescribed by a cooperative agreement authorized
10 by section 57-43.1-44.

11 **SECTION 31. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **57-43.2-01. Definitions.** As used in this chapter, unless the context otherwise
14 requires:

- 15 1. "Agricultural purpose" means the science, art, and business of farming. It includes
16 raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges
17 and universities, custom combining, manure spreading, and stack moving
18 operations. Fuel used for an agricultural purpose includes fuel used in a vehicle,
19 engine, or machine, movable or immovable, operated in whole or in part by internal
20 combustion. It does not include fuel used to operate a licensed motor vehicle.
- 21 2. "Commissioner" means the state tax commissioner.
- 22 3. "Common carrier" or "contract carrier" means a person involved in the movement
23 of special fuel from a terminal or movement of special fuel imported into this state,
24 who is not an owner of the special fuel.
- 25 4. "Consumer" means a user of special fuel including any person purchasing special
26 fuel in this state for use in a licensed motor vehicle; any person importing special
27 fuel into this state or purchasing special fuel in this state for use as heating fuel, or
28 for an agricultural, industrial, or railroad purpose; or any person purchasing special
29 fuel in this state for use in recreational or any other types of motor vehicles. It does
30 not include a ~~dealer or a retailer~~ person importing or purchasing special fuel for
31 resale.

- 1 4. ~~"Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale~~
2 ~~dealer of liquefied petroleum gas.~~
- 3 5. "Destination state" means any state, territory, foreign country, or sovereign nation
4 to which special fuel is directed for delivery into a storage facility, receptacle,
5 container, or any other type of transportation equipment, for the purposes of resale
6 or use.
- 7 6. "Director" means the director of the department of transportation.
- 8 7. "Distributor" means a person, other than a retailer, who acquires special fuel from a
9 refiner or supplier for subsequent wholesale distribution in bulk or transport load by
10 truck, railcar, or in a barrel, drum, or other receptacle.
- 11 8. "Export" means the delivery of special fuel across the boundaries of this state from
12 a place of origin in this state by or for a refiner, supplier, or distributor.
- 13 9. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of
14 this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
15 receptacle.
- 16 10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume
17 basis.
- 18 11. "Gross volume" means measurement in United States gallons [3.79 liters] without
19 temperature or barometric adjustments.
- 20 6. 12. "Heating fuel use" means use of special fuel to heat homes, private and public
21 office buildings, or private and public commercial buildings or use of special fuel in
22 stoves or burners or for any other heating purposes.
- 23 7. 13. "Highway purpose" means any use of special fuel in any motor vehicle in any
24 phase of construction, reconstruction, repair, or maintenance of public roads or
25 highways, but does not include that special fuel used for heating of oils, gravel,
26 bituminous mixture, or in any equipment used in the preparation of any materials to
27 be used on any type of road or highway surfacing.
- 28 8. ~~"Importer for use" means any person importing special fuel into this state in the fuel~~
29 ~~supply tank or tanks of any motor vehicle or combination of vehicles used,~~
30 ~~designed, or maintained for transportation of persons or property; and having two~~
31 ~~axles and a gross weight exceeding twenty six thousand pounds [1179.3401~~

1 kilograms]; or having three or more axles regardless of weight; is used in
2 combination when the weight of such combination exceeds twenty six thousand
3 pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles
4 that are leased or rented, the importer for use means the lessee or renter unless
5 the commissioner has designated the lessor, renter, or some other person as the
6 importer for use.

7 9- 14. "Import" means the delivery of special fuel across the boundaries of this state from
8 a place of origin outside this state by a refiner, supplier, or distributor.

9 15. "Importer" means a refiner, supplier, or distributor who imports special fuel into this
10 state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
11 receptacle.

12 16. "Industrial purpose" means:

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

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

27 17. "Interstate motor carrier" means any person importing special fuel into this state in
28 the fuel supply tank or tanks of any motor vehicle or combination of vehicles used,
29 designed, or maintained for transportation of persons or property; and having two
30 axles and a gross weight exceeding twenty-six thousand pounds [1179.3401
31 kilograms]; or having three or more axles regardless of weight; is used in

- 1 combination when the weight of such combination exceeds twenty-six thousand
2 pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles
3 that are leased or rented, the interstate motor carrier means the lessee or renter
4 unless the director has designated the lessor, renter, or some other person as the
5 interstate motor carrier.
- 6 40. 18. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special
7 fuel purposes, is used as heating fuel.
- 8 44. 19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon
9 public roads or highways, but does not include a vehicle with a permanently
10 mounted manure spreader or stack moving unit.
- 11 42. 20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable,
12 operated in whole or in part by internal combustion using one or more of the
13 special fuels defined in this chapter but does not include aircraft.
- 14 43. 21. "Person" means every ~~natural person, fiduciary~~ individual, partnership, firm,
15 association, joint venture, corporation, or limited liability company, estate, business
16 trust, receiver, or any other group or combination acting as a unit. Whenever used
17 in any cause prescribing and imposing a fine or imprisonment, or both, the term
18 "person" as applied to an association means and includes the partners or members
19 thereof, as applied to corporations, the officers thereof, and as applied to limited
20 liability companies, the managers thereof.
- 21 22. "Physical inventory reading" means a measurement of special fuel available for
22 distribution in a terminal, an underground storage tank, an aboveground storage
23 tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other
24 receptacle.
- 25 23. "Position holder" means a person holding an inventory position of special fuel in a
26 terminal as reflected on the records of the terminal operator, a person holding the
27 inventory position when that person has a contractual agreement with the terminal
28 operator for the use of storage facilities or terminaling services at a terminal, and a
29 terminal operator who owns special fuel in a terminal.
- 30 44. 24. "Public road or highway" means every way or place generally open to the use of
31 the public as a matter of right, for the purpose of motor vehicle travel,

1 notwithstanding that it may be temporarily closed or subject to restricted travel due
2 to construction, reconstruction, repair, or maintenance.

3 25. "Rack" means a mechanism used to dispense special fuel from a terminal.

4 45: 26. "Railroad purpose" means the operation of railroad locomotives and the
5 construction, reconstruction, repair, and maintenance of railroads. Fuel used for a
6 railroad purpose includes fuel used to operate a railroad locomotive, and fuel used
7 in a motor vehicle for purposes of construction, reconstruction, repair, and
8 maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

9 27. "Refiner" means a person who produces, manufactures, or refines special fuels in
10 this state.

11 28. "Retail location" means a site at which special fuel is dispensed through a pump
12 from an underground or aboveground storage unit into the supply tank of a motor
13 vehicle.

14 29. "Retailer" means a person who acquires special fuel from a supplier or distributor
15 for resale to a consumer at a retail location.

16 46: 30. "Sale" means, with respect to special fuel, the transfer of title or possession,
17 exchange, or barter, conditional or otherwise, in any manner or by any means, for
18 a consideration, ~~of special fuels between special fuel dealers or between a special~~
19 ~~fuel dealer and a retailer or a consumer.~~

20 47: 31. "Special fuel" means all combustible gases and liquids suitable for the generation
21 of power for propulsion of motor vehicles and includes compressed natural gas,
22 kerosene, liquefied petroleum gases, all gases and liquids which meet the
23 specifications as determined by the state department of health pursuant to the
24 provisions of section 19-10-10, as well as all liquids determined by the state
25 department of health to be heating oil pursuant to the provisions of section
26 19-10-10, except that it does not include either motor vehicle fuels as defined in
27 section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as
28 defined by section 19-16.1-02.

29 48: ~~"Special fuel dealer" means any person in the business of handling special fuel~~
30 ~~who delivers or sells any special fuel to a special fuel user.~~

1 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other
2 special fuel.

3 2. ~~The dealer~~ A supplier or distributor shall remit the tax imposed by this section on
4 ~~all sales to consumers~~ special fuel used, on the wholesale distribution of special
5 fuel to a retailer, and on direct sales of special fuel to a customer.

6 3. ~~The dealer may make sales of special fuel to another dealer free of the tax~~
7 ~~imposed by this chapter.~~ The tax imposed by this section does not apply on sales
8 by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale
9 by a distributor to another distributor, on an export, or on a sale to an exempt
10 consumer.

11 4. The person required to remit the tax imposed by this section shall pass the tax on
12 to the retailer and to the customer. A retailer who paid the tax to the supplier or
13 distributor shall pass the tax on to the consumer.

14 5. The person required to remit the tax imposed by this section shall pay the tax to
15 the commissioner by the twenty-fifth day of the calendar month after the month
16 during which the special fuel was sold or used by the person. When the
17 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
18 the due date is the first working day after the Saturday, Sunday, or legal holiday.
19 When payment is made by mail, the payment is timely if the envelope containing
20 the payment is postmarked by the United States postal service or other postal
21 carrier service before midnight of the due date.

22 6. The commissioner shall pay over all of the money received during each calendar
23 month to the state treasurer.

24 **(Effective after December 31, 1999) Tax imposed.**

25 1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per
26 gallon [3.79 liters] is imposed on the sale or delivery of all special fuel ~~to any~~
27 ~~consumer~~ sold or used in this state. For the purpose of determining the tax upon
28 compressed natural gas under this section, one hundred twenty cubic feet [3.40
29 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other
30 special fuel.

- 1 2. ~~The dealer~~ A supplier or distributor shall remit the tax imposed by this section on
2 all sales to consumers special fuel used, on the wholesale distribution of special
3 fuel to a retailer, and on direct sales of special fuel to a consumer.
- 4 3. ~~The dealer may make sales of special fuel to another dealer free of the tax~~
5 ~~imposed by this chapter.~~ The tax imposed by this section does not apply on sales
6 by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale
7 by a distributor to another distributor, on an export, or on a sale to an exempt
8 consumer.
- 9 4. The person required to remit the tax imposed by this section shall pass the tax on
10 to the retailer and to the customer. A retailer who paid the tax to the supplier or
11 distributor shall pass the tax on to the consumer.
- 12 5. The person required to remit the tax imposed by this section shall pay the tax to
13 the commissioner by the twenty-fifth day of the calendar month after the month
14 during which the special fuel was sold or used by the person. When the
15 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
16 the due date is the first working day after the Saturday, Sunday, or legal holiday.
17 When payment is made by mail, the payment is timely if the envelope containing
18 the payment is postmarked by the United States postal service or other postal
19 carrier service before midnight of the due date.
- 20 6. The commissioner shall pay over all of the money received during each calendar
21 month to the state treasurer.

22 **SECTION 33. AMENDMENT.** Section 57-43.2-02.2 of the 1997 Supplement to the
23 North Dakota Century Code is amended and reenacted as follows:

24 **57-43.2-02.2. Refund of tax for special fuel used for heating ~~and~~ or for an**
25 **agricultural, industrial, or railroad purpose.** ~~Any~~ A consumer who purchases or uses any
26 special fuel for heating or for an agricultural, industrial, or railroad purpose, except special fuel
27 used to operate a licensed motor vehicle, on which the special fuel tax imposed by
28 section 57-43.2-02 has been paid, may file a claim with the commissioner for a refund pursuant
29 to chapter 57-43.1. The tax imposed by section 57-43.2-03 must be deducted from the refund.

30 **SECTION 34. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

1 **57-43.2-03. Special excise tax levied.**

- 2 1. Except as otherwise provided in this chapter, a special excise tax of two percent is
3 imposed on all sales of special fuels, which are exempted from the tax imposed
4 under section 57-43.2-02.
- 5 2. The special excise tax applies to all special fuels taxed under section 57-43.2-02
6 for which taxes are later refunded to any consumer.
- 7 3. A consumer importing special fuel into this state, for a purpose for which the
8 special fuel is taxable under this section, is liable for the tax. The commissioner
9 shall collect the tax from the consumer importing the fuel.
- 10 4. If any fuel subject to tax by this section was subject to tax in any other state or its
11 political subdivisions, the tax in this section applies but at a rate measured by the
12 difference between the rate imposed in this section and the rate imposed by the
13 other state or its political subdivisions. If the tax imposed by the other state or its
14 political subdivisions is the same or greater than the tax imposed by this section,
15 no tax is due.
- 16 5. An invoice, sales ticket, or other sales document issued or created covering a sale
17 taxable under this section must identify the consumer to whom the sale was made,
18 specify the purpose for which the special fuel was sold, and specify whether the
19 fuel was dyed for tax exemption purposes.
- 20 6. The tax imposed by this section does not apply on a sale by a supplier to another
21 supplier, a sale by a supplier to a distributor, a sale by a distributor to another
22 distributor, an export, or a sale to an exempt consumer.
- 23 7. The dealer shall person required to remit the tax imposed by this section on all
24 sales to a shall pass the tax on to the retailer and to the consumer.
- 25 8. The person required to remit the tax imposed by this section shall pay the tax to
26 the commissioner by the twenty-fifth day of the calendar month after the month
27 during which the special fuel was sold or used by the person. When the
28 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
29 the due date is the first working day after the Saturday, Sunday, or legal holiday.
30 When payment is made by mail, the payment is timely if the envelope containing

1 the payment is postmarked by the United States postal service or other postal
2 carrier service before midnight of the due date.

3 9. The commissioner shall pay over all of the money received during each calendar
4 month to the state treasurer.

5 **SECTION 35. AMENDMENT.** Section 57-43.2-04.1 of the North Dakota Century Code
6 is amended and reenacted as follows:

7 **57-43.2-04.1. ~~Deduction of cost of collecting and remitting Tax collection~~**
8 **allowance.** ~~On making payments to the commissioner as provided in this chapter, the dealer~~
9 The person required to remit the tax imposed by this chapter shall deduct one percent from the
10 amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of
11 collecting the tax and remitting it to the commissioner. This provision does not apply to tax on
12 excess inventory losses and does not apply to additional tax assessed during an audit.

13 **SECTION 36.** Section 57-43.2-04.2 of the North Dakota Century Code is created and
14 enacted as follows:

15 **57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions.** Any person to
16 whom special fuel is sold on which the tax imposed by this chapter has been paid who
17 thereafter removes the fuel from this state for sale or resale in another state or to a state that
18 requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the
19 tax that was paid pursuant to this chapter. The refund may be granted only upon application to
20 the commissioner in the manner prescribed by the commissioner and must include proof that
21 fuel for sale or resale in another state was reported to the taxing agency of that state, or in the
22 case of a consumer, proof of payment of the tax imposed by the other state. The refund may
23 not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway
24 aid fund. A claim for refund under this section must be made within one year from the date the
25 fuel was removed to another state for sale, resale, or use in another state.

26 **SECTION 37.** Section 57-43.2-04.3 of the North Dakota Century Code is created and
27 enacted as follows:

28 **57-43.2-04.3. Refund of tax on tax exempt sales.** When a person purchasing special
29 fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel
30 to an agency of the United States government, the person may apply to the commissioner for a
31 refund of the tax.

1 **SECTION 38.** Section 57-43.2-04.4 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.2-04.4. Credit for taxes paid on worthless accounts and refunds.** Taxes
4 paid on special fuels represented by accounts found to be worthless, and actually charged off
5 for income tax purposes, may be taken as a credit against subsequent taxes due provided the
6 accounts charged off included the cost of the fuel as well as the taxes due. If the worthless
7 account is subsequently collected, the tax must be remitted on the amount collected. If in any
8 case the credit or any part of it cannot be utilized because of a discontinuance of a business or
9 for other valid reason, the amount may be refunded.

10 **SECTION 39. AMENDMENT.** Section 57-43.2-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~**57-43.2-05. Special fuel wholesaler's or dealer's license required Refiner,**~~
13 ~~**supplier, distributor, importer, exporter, and terminal operator required to secure license**~~
14 ~~**- License fees.** No person may act as a special fuel wholesaler or dealer in this state unless~~
15 ~~that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by~~
16 ~~the commissioner. Application for a special fuel wholesaler's or dealer's license must be made~~
17 ~~to the commissioner. The application must be filed upon a form prepared and furnished by the~~
18 ~~commissioner and must contain such information as the commissioner requires.~~

19 1. A person may not engage in business in this state as a refiner, supplier, distributor,
20 importer, exporter, or terminal operator of special fuel unless that person holds an
21 unrevoked license issued by the commissioner. The commissioner may require a
22 separate license for liquefied petroleum gases.

23 2. The person shall file an application for a license with the commissioner providing
24 such information as required by the commissioner, and on a form or in a format as
25 required by the commissioner. The information must include:

26 a. The name under which the person intends to transact business in this state.

27 b. The physical location of each place of business to be covered by the license
28 and the mailing address of the location to which forms and correspondence
29 are to be directed.

30 c. If a partnership, the name and address of each of the persons constituting the
31 partnership.

- 1 d. If a domestic corporation, the corporate name, the date of incorporation, and
2 the names and addresses of the directors and corporate officers.
- 3 e. If a foreign corporation, the corporate name, the state and the date of
4 incorporation, the name and address of the resident agent, the location of
5 each place of business, and the date on which the business was established.
- 6 f. If a domestic limited liability company, the limited liability company name, the
7 date of formation, and the names and addresses of the governors and
8 managers.
- 9 g. If a foreign limited liability company, the limited liability company name, the
10 state and the date of formation, the name and address of the resident agent,
11 the location of each place of business, and the date on which the business
12 was established.
- 13 h. Any other information the commissioner may require.

14 The application must be signed by the taxpayer to be valid and must contain a
15 written declaration that it is made and subscribed under penalties of perjury. For
16 an individual, partnership, or unincorporated association, the application must be
17 signed by the owner. For a corporation, the application must be signed by an
18 authorized officer. For a limited liability company, the application must be signed
19 by an authorized manager.

- 20 3. An applicant for a single or multiple license as a refiner, supplier, distributor,
21 importer, exporter, or terminal operator shall pay to the commissioner a license fee
22 of twenty dollars. The license fee must be paid at the time the application is made.

23 **SECTION 40. AMENDMENT.** Section 57-43.2-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-43.2-07. ~~Special fuel wholesaler's or dealer's bond~~ Bond or letter of credit**
26 **required.** As a condition precedent to the issuance of a single or multiple license, a supplier,
27 distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit
28 as security to guarantee the payment of the special fuel taxes imposed by this chapter. A
29 terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt
30 from this requirement.

- 1 1. ~~As a condition precedent to the issuance of a license, a wholesaler or dealer shall~~
2 ~~furnish a bond in an amount set by the commissioner, but not less than five~~
3 ~~hundred dollars, guaranteeing the payment of the special fuels tax collected by the~~
4 ~~wholesaler or dealer. The bond is subject to approval by the commissioner and~~
5 ~~must be in effect for at least three years. After a wholesaler or dealer has had a~~
6 ~~valid license for three or more years, the commissioner may review the~~
7 ~~wholesaler's or dealer's records and waive the bond requirement. The bond~~
8 ~~requirement may be reinstated at the discretion of the commissioner. The surety~~
9 ~~bond, cash bond, or letter of credit must be in an amount prescribed by the~~
10 ~~commissioner but not less than one thousand dollars. If the commissioner requires~~
11 ~~a separate license for liquefied petroleum gases, a separate security is required for~~
12 ~~that license, and the surety bond, cash bond, or letter of credit must be in an~~
13 ~~amount prescribed by the commissioner but not less than five hundred dollars.~~
- 14 2. ~~In lieu of a bond, securities, including letters of credit, approved by the~~
15 ~~commissioner in such amounts as the commissioner prescribes, may be deposited~~
16 ~~with the commissioner, which securities must be kept in the custody of the~~
17 ~~commissioner and may be sold at public or private sale, without notice to the~~
18 ~~depositor, if it becomes necessary in order to recover any tax, penalties, or interest~~
19 ~~due. The commissioner shall pay all moneys deposited as security with the~~
20 ~~commissioner under the provisions of this subsection to the state treasurer who~~
21 ~~shall credit them into a special fund to be known as the "special fuels tax security~~
22 ~~trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when~~
23 ~~due, by the person depositing moneys with the tax commissioner as security for~~
24 ~~the payment of tax, penalty, or interest imposed by this chapter, the commissioner~~
25 ~~shall certify that information to the director of the office of management and budget.~~
26 ~~The office of management and budget shall transmit the money to the~~
27 ~~commissioner who shall apply as much of the money deposited by the person as is~~
28 ~~necessary to satisfy the tax, penalty, and interest due. When in the~~
29 ~~commissioner's judgment it is no longer necessary to require the deposit to be~~
30 ~~maintained by the person, the commissioner shall certify that information to the~~
31 ~~director of the office of management and budget who shall pay the unused money~~

1 ~~to the person.~~ The surety bond, cash bond, or letter of credit is subject to approval
2 by the commissioner.

3 3. After a single or multiple license has been in effect for five or more years, the
4 commissioner may review the person's records and may waive the requirement for
5 a security. The requirement for a security may be reinstated at the discretion of the
6 commissioner.

7 4. A surety bond or letter of credit provided as security must be kept in the custody of
8 the commissioner and may be used by the commissioner, without notice to the
9 principal, if it becomes necessary to cover the special fuel tax, penalties, and
10 interest due.

11 5. Money deposited with the commissioner as a cash bond must be made in the form
12 of a cashier's check or bank money order payable to the commissioner. The
13 money order received must be paid by the commissioner to the state treasurer and
14 credited by the treasurer into a special fund to be known as the motor fuel tax
15 security trust fund. The money deposited may be used by the commissioner,
16 without notice to the depositor, if it becomes necessary to cover tax, penalties, and
17 interest due. If the money deposited is used to cover unpaid liabilities, the
18 commissioner shall certify the information to the director of the office of
19 management and budget. The office of management and budget shall transmit the
20 money to the commissioner who shall apply as much of the money deposited by
21 the person as is necessary to satisfy the liabilities. When in the commissioner's
22 judgment it is no longer necessary to require the deposit to be maintained, the
23 commissioner shall certify the information to the director of the office of
24 management and budget who shall pay the unused money to the depositor.

25 **SECTION 41.** Section 57-43.2-07.1 of the North Dakota Century Code is created and
26 enacted as follows:

27 **57-43.2-07.1. Qualification for exporter license.** As a condition precedent to the
28 issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a
29 valid unrevoked license required by the jurisdiction of import.

30 **SECTION 42.** Section 57-43.2-07.2 of the North Dakota Century Code is created and
31 enacted as follows:

1 **57-43.2-07.2. Qualification for importer license.** As a condition precedent to the
2 issuance of a license to an importer, the importer shall furnish proof that the importer has a
3 valid unrevoked license required by the jurisdiction of export. An importer must also qualify for
4 and apply for a license in this state as a refiner, supplier, or distributor.

5 **SECTION 43. AMENDMENT.** Section 57-43.2-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-43.2-08. Issuance of licenses—Fees Application for license - Issuance of**
8 **license - Denial of license.** ~~Upon receipt of the application and bond in proper form and upon~~
9 ~~the payment by the applicant of a special fuel wholesaler's or dealer's license fee of ten dollars,~~
10 ~~the commissioner shall issue to the applicant a license to act as a special fuel wholesaler or~~
11 ~~dealer. The commissioner may refuse to issue a special fuel wholesaler's or dealer's license to~~
12 ~~any person who formerly held such a license but which was revoked prior to the time of filing~~
13 ~~the application, or who is a subterfuge for the real party of interest whose license prior to the~~
14 ~~time of filing of the application has been revoked, or upon other sufficient cause being shown.~~
15 ~~Before such refusal the commissioner shall grant the applicant a hearing and give the applicant~~
16 ~~at least ten days' written notice of the time and place of hearing. Each special fuel wholesaler's~~
17 ~~or dealer's license is valid until suspended or revoked for cause or otherwise canceled. No~~
18 ~~special fuel wholesaler's or dealer's license is transferable.~~

- 19 1. Upon receipt and approval of an application for a license, the license fee, and the
20 required security, the commissioner shall issue a license which is valid until it is
21 suspended, revoked for cause, or otherwise canceled. The license is not
22 transferable.
- 23 2. A multiple license must be issued to a person who applies and qualifies for more
24 than one type of license.
- 25 3. The commissioner may refuse to issue a license to a person who has not provided
26 the required security, who failed to provide the information requested on the
27 application, who previously held a license which was revoked by the commissioner,
28 who is a subterfuge for the real party in interest who previously held a license that
29 was revoked by the commissioner, or upon other sufficient cause being shown.
30 The commissioner shall grant the person the right to a hearing in accordance with

1 the provisions of chapter 28-32. Written notice of the hearing must be served on
2 the person at least ten days prior to the date established for the hearing.

3 **SECTION 44. AMENDMENT.** Section 57-43.2-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-43.2-09. ~~Revocation, cancellation, and surrender of license and bond~~**

6 **Revocation of license - Hearing to show cause - Reinstatement.** ~~The commissioner may~~
7 ~~revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before~~
8 ~~revoking any license the commissioner shall notify the licensee to show cause within fifteen~~
9 ~~days of the date of the notice why such license should not be revoked. Any time prior to and~~
10 ~~pending hearing the commissioner may, in the exercise of reasonable discretion, suspend the~~
11 ~~license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer~~
12 ~~immediately upon the surrender of the license by the holder.~~

13 1. The commissioner may revoke a license for reasonable cause. Before revoking a
14 license, the commissioner shall grant a hearing in accordance with the provisions
15 of chapter 28-32 to allow the person to show cause why the license should not be
16 revoked. Written notice of a hearing must be served on the person at least ten
17 days prior to the date established for the hearing.

18 2. Before a new license may be issued to a person who is obligated to remit the tax
19 imposed by this chapter and whose license was revoked, the person shall pay to
20 the commissioner the amount of any delinquent tax, penalties, and interest
21 remaining unpaid and must file with the commissioner a surety bond upon which
22 the person is the principal. The bond must be in an amount determined by the
23 commissioner but not less than one thousand dollars. The bond must be payable
24 to the commissioner and be conditioned upon the timely filing of required tax
25 reports and the timely payment of the full amount of the tax due as required under
26 this chapter. If the person fails to file the required report or to timely pay the full
27 amount of the tax due, the commissioner may require an increase in the amount of
28 the surety bond conditioned to secure at all times the payment of any tax due to
29 the state under this chapter.

30 **SECTION 45. AMENDMENT.** Section 57-43.2-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-43.2-10. ~~Special fuel wholesaler's or dealer's records~~ Retention of records -**

2 **Subject to inspection.** For each location where special fuel is sold or delivered to any special
3 fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall
4 prepare and maintain such records as the commissioner may reasonably require with respect to
5 all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other
6 dispositions of special fuel. The records required under this section must be retained for a
7 minimum period of three years and must be available at all reasonable times for examination by
8 the commissioner. A refiner, supplier, distributor, importer, exporter, terminal operator, and
9 retailer shall maintain and retain records of all special fuel refined, purchased, imported, or
10 otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory
11 records, for a period of not less than three years. Inventory records include physical readings,
12 metered readings of sales, delivery tickets, and delivery readings. The records are open to
13 inspection by the commissioner or by any agent or employee authorized by the commissioner
14 during business hours.

15 **SECTION 46. AMENDMENT.** Section 57-43.2-11 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-43.2-11. ~~Records and returns—Penalties and interest—Powers of~~**
18 **commissioner Report by refiner, supplier, distributor, importer, or exporter required.**

- 19 1. ~~A special fuel dealer shall keep such records and make such monthly returns and~~
20 ~~payments of the tax to the commissioner, in the manner, at the time, and pursuant~~
21 ~~to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The~~
22 ~~commissioner may require returns and payments of the tax to be made for other~~
23 ~~than monthly periods. A refiner, supplier, distributor, importer, or exporter shall file~~
24 ~~a monthly report with the commissioner no later than the twenty-fifth day of each~~
25 ~~calendar month covering special fuel sold and used during the preceding calendar~~
26 ~~month. When the twenty-fifth day of the calendar month falls on a Saturday,~~
27 ~~Sunday, or legal holiday, the due date is the first working day after the Saturday,~~
28 ~~Sunday, or legal holiday. When the report is filed by mail, the report is timely if the~~
29 ~~envelope containing the report is postmarked by the United States postal service or~~
30 ~~other postal carrier service before midnight of the due date. The commissioner~~
31 ~~may require separate reports to be filed covering liquefied petroleum gases.~~

- 1 2. ~~For failure or refusal to keep such records, file returns, and make payments of the~~
2 ~~tax to the commissioner as provided in this chapter, a special fuel dealer is subject~~
3 ~~to the penalties and interest as provided in this chapter. The report to the~~
4 ~~commissioner must be on a form prescribed and furnished by the commissioner.~~
5 ~~The commissioner may require that all or part of the report be submitted in an~~
6 ~~electronic format approved by the commissioner, provided the person required to~~
7 ~~file the report is able to use an electronic format. The report must contain such~~
8 ~~information as required by the commissioner including:~~
9 a. ~~A detailed schedule of special fuel refined, purchased, imported, and~~
10 ~~exported.~~
11 b. ~~A detailed schedule of special fuel sold to a person eligible to purchase the~~
12 ~~special fuel without the tax imposed by this chapter.~~
13 c. ~~A detailed schedule of special fuel sold tax-paid to a person for resale,~~
14 ~~including a list of persons who purchased the special fuel for resale.~~
15 d. ~~The total number of gallons of special fuel sold and used subject to tax~~
16 ~~imposed by this chapter.~~
17 e. ~~The number of gallons of special fuel sold tax-exempt to a qualified consumer.~~
18 f. ~~The number of gallons of special fuel in inventory at the beginning of the~~
19 ~~calendar month, the number of gallons in inventory at the close of the~~
20 ~~calendar month, and any gains or losses experienced.~~
21 3. ~~The commissioner, for good cause shown, may waive the penalty for failure to pay~~
22 ~~the tax due or for failure or refusal to file a return within the time required by this~~
23 ~~chapter or grant a reasonable extension of time for filing such a return. The~~
24 ~~commissioner may revoke the license of any special fuel dealer under the~~
25 ~~conditions and after notice as provided in section 57-43.2-09; assess deficiencies~~
26 ~~in the tax; determine the tax when returns are not filed as required by this chapter;~~
27 ~~and permit credit for or authorize refund of erroneously or illegally collected taxes,~~
28 ~~penalties, or interest imposed by this chapter from undistributed funds received~~
29 ~~under this chapter, all in the manner and to the same extent as provided in~~
30 ~~sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20. The report must be~~
31 ~~signed by the taxpayer to be valid and must contain a written declaration that it is~~

1 made and subscribed under penalties of perjury. The tax commissioner may
2 prescribe alternative methods for signing, subscribing, or verifying a report filed by
3 electronic means, including telecommunications, that shall have the same validity
4 and consequence as the actual signature and written declaration for a paper
5 return.

6 ~~4. The commissioner shall enforce the provisions of this chapter and may prescribe,~~
7 ~~adopt, and enforce reasonable rules relating to the administration and enforcement~~
8 ~~of this chapter, and may examine the records of special fuel wholesalers or dealers~~
9 ~~and special fuel users and make such investigations as are deemed necessary in~~
10 ~~the administration and enforcement of this chapter.~~

11 ~~5. The commissioner shall audit the returns and make necessary assessments~~
12 ~~pursuant to the procedures and limitations provided for in section 57-43.2-14.~~

13 **SECTION 47.** Section 57-43.2-11.1 of the North Dakota Century Code is created and
14 enacted as follows:

15 **57-43.2-11.1. Report by terminal operator required.**

16 1. A terminal operator shall file a monthly report with the commissioner no later than
17 the twenty-fifth day of each calendar month covering special fuel received into and
18 removed from the terminal during the preceding calendar month. When the
19 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
20 the due date is the first working day after the Saturday, Sunday, or legal holiday.
21 When the report is filed by mail, the report is timely if the envelope containing the
22 report is postmarked by the United States postal service or other postal carrier
23 service before midnight of the due date.

24 2. The report to the commissioner must be on a form prescribed and furnished by the
25 commissioner or in a format approved by the commissioner. The commissioner
26 may require that all or part of the report be submitted in an electronic format
27 approved by the commissioner, provided the terminal operator is able to file the
28 report in an electronic format. The report must contain such information as
29 required by the commissioner and may include:

30 a. A detailed schedule of special fuel received into the terminal for or on behalf
31 of the position holder.

- 1 b. A detailed schedule of special fuel removed from the terminal by or on behalf
2 of a position holder.
- 3 c. The number of gallons of special fuel in inventory at the beginning of the
4 calendar month and the number of gallons in inventory at the close of the
5 calendar month for each position holder.
- 6 3. The report must be signed by the taxpayer to be valid and must contain a written
7 declaration that it is made under penalties of perjury. The tax commissioner may
8 prescribe alternative methods for signing, subscribing, or verifying a return filed by
9 electronic means, including telecommunications, that shall have the same validity
10 and consequence as the actual signature and written declaration for a paper
11 return.

12 **SECTION 48.** Section 57-43.2-11.2 of the North Dakota Century Code is created and
13 enacted as follows:

14 **57-43.2-11.2. Common or contract carrier - License required - Records required -**
15 **Diverted loads - Commissioner to audit records.**

- 16 1. A common or contract carrier shall obtain a license issued by the commissioner.
17 The application for license must be made on a form prescribed by the
18 commissioner and contain the information required by the commissioner.
- 19 2. A common or contract carrier transporting special fuel in a vehicle, railcar, or
20 vessel into this state from another state or country shall ensure that a bill of lading
21 indicating North Dakota as the destination state has been issued by the terminal or
22 bulk plant from which the fuel was removed. If a bill of lading issued by the
23 terminal or bulk plant indicates a destination other than North Dakota, the
24 transporter shall issue a diversion ticket indicating North Dakota as the destination
25 state. If a bill of lading was not issued by the terminal or bulk plant, the transporter
26 shall issue a bill of lading for each shipment indicating North Dakota as the
27 destination state. A copy of a diversion ticket and bill of lading prepared by the
28 transporter shall be mailed, faxed, or electronically transmitted to the commissioner
29 before the fuel enters the state.
- 30 3. A common or contract carrier transporting special fuel in the state shall provide a
31 copy of the bill of lading accompanying the shipment, along with any drop load

1 tickets and diversion tickets issued for the delivered fuel to the refiner, supplier,
2 distributor, importer, retailer, or consumer to whom delivery of the shipment was
3 made.

4 4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly
5 accept delivery of special fuel into storage facilities in this state if that delivery is
6 not accompanied by a bill of lading or diversion ticket issued by the terminal
7 operator, bulk plant operator, or transporter, which specifically indicates North
8 Dakota as the destination state of the special fuel.

9 5. If a common or contract carrier unloads only a portion of a shipment at a location or
10 if the load is loaded at a location other than what is indicated in the bill of lading or
11 diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped
12 at more than one location, the drop load ticket must identify the name and address
13 of all locations and the type of fuel and gallonage dropped. A copy of the ticket
14 must be maintained on board and a copy must accompany the bill of lading that is
15 provided to the refiner, supplier, distributor, importer, retailer, or consumer taking
16 delivery of the fuel.

17 6. A diversion ticket must include the following information:

18 a. The transporter's name and address.

19 b. The date and time of issuance.

20 c. The diversion ticket number.

21 d. The name and address of the consignee indicated on the original bill of lading.

22 e. The destination as stated on the original bill of lading.

23 f. The original bill of lading number.

24 g. The location diverted to, including the address to which the fuel was diverted
25 and the destination state.

26 h. The number of gallons of fuel being diverted.

27 i. The type of fuel being diverted.

28 j. Any other information required by the commissioner.

29 7. A drop load ticket must include the following:

30 a. The transporter's name and address.

31 b. The date and time of issuance.

- 1 c. The partial load ticket number.
- 2 d. The name and address of the consignee indicated on the original bill of lading.
- 3 e. The destination on the original bill of lading as shown on the diversion ticket, if
- 4 issued.
- 5 f. The original bill of lading number and, if available, the diversion ticket number.
- 6 g. The number of gallons off-loaded at each location.
- 7 h. The type of fuel off-loaded at each location.
- 8 i. Any other information required by the commissioner.
- 9 8. Except as otherwise provided in this section, the commissioner may audit the
- 10 records of the common or contract carrier, whether or not licensed by the
- 11 commissioner, and may impose such penalties as authorized by this chapter.

12 **SECTION 49. AMENDMENT.** Section 57-43.2-14 of the 1997 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

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

- 15 1. ~~Except as otherwise provided in this section, the commissioner may proceed to~~
- 16 ~~audit the returns of special fuel dealers and, not later than three years after the due~~
- 17 ~~date of the return, or three years after the return was filed, whichever period~~
- 18 ~~expires later, assess additional tax due or issue a tax credit or refund. If any~~
- 19 ~~additional tax is found due or if a tax credit applies, the commissioner shall notify~~
- 20 ~~the taxpayer in detail of the reason for the increase or decrease. The~~
- 21 commissioner, or an authorized representative, may audit the records, books, and
- 22 papers and examine fuel and any equipment used to store, transport, or dispense
- 23 fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer,
- 24 or common or contract carrier. For a person required to file a report, the
- 25 examination and audit must be done no later than three years after the due date of
- 26 the report or three years after the report was filed, whichever period expires later.
- 27 The commissioner is authorized to make assessments of tax, plus penalty and
- 28 interest, or to issue credits or refunds as determined on the basis of the
- 29 examination and audit.
- 30 2. If it is determined upon audit that the tax due was twenty-five percent or more
- 31 above the amount reported on a ~~return~~ report, the tax may be assessed, or a

- 1 proceeding in court for the collection of the tax may be begun without such
2 assessment, at any time within six years after the due date of the return, or six
3 years after the return was filed, whichever period expires later.
- 4 3. Except as otherwise provided in this chapter, the commissioner may audit any
5 consumer's claim for refund and, not later than three years after the due date of a
6 claim or three years after the claim was filed, whichever period expires later,
7 assess additional tax or issue an additional refund. If additional tax is found due or
8 if an additional tax refund applies, the commissioner shall notify the claimant in
9 detail of the reason for the increase or decrease. For any claim selected for audit,
10 the claimant shall provide additional verification as required by the commissioner of
11 fuel purchases, payment of the tax, use of the fuel for a purpose entitling the
12 claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
- 13 4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's tax return~~
14 report or in a ~~consumer's~~ claim for refund, or if the failure by a ~~dealer~~ person to file
15 a tax ~~return~~ report is due to the fraudulent intent or the willful attempt of the ~~dealer~~
16 person in any manner to evade the tax, the time limitations in this section do not
17 apply, and the tax may be assessed, or a proceeding in court for the collection of
18 the tax may be begun without the assessment, at any time.
- 19 5. If before the expiration of the time prescribed in this chapter for the assessment of
20 tax, the commissioner and the ~~dealer or claimant~~ person consent in writing to an
21 extension of time for the assessment of the tax, the tax may be assessed at any
22 time prior to the expiration of the period agreed upon. The period agreed upon
23 may be extended by subsequent agreements in writing made before the expiration
24 of the period previously agreed upon.
- 25 6. A determination of additional tax due issued to a ~~dealer or to a consumer~~ person
26 fixes the tax finally and irrevocably unless the ~~dealer or consumer~~ person against
27 whom it is assessed, within thirty days after the giving of notice of the
28 determination, protests the determination under rules adopted by the commissioner
29 and in the manner provided in chapter 28-32.
- 30 7. A determination that a claim for a tax credit or refund is disallowed becomes finally
31 and irrevocably fixed unless the ~~dealer or consumer~~ person claiming the refund,

1 within thirty days after the giving of notice of the determination, protests the
2 determination under rules adopted by the commissioner and in the manner
3 provided in chapter 28-32.

4 **SECTION 50.** Section 57-43.2-14.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **57-43.2-14.1. Determination if no report is filed.** If a person fails, neglects, or
7 refuses to file a special fuel tax report when due, the commissioner shall, on the basis of
8 available information, determine the tax liability for the period during which no report was filed,
9 and to the tax thus determined the commissioner shall add the penalty and interest as provided
10 in section 57-43.2-15. An assessment made by the commissioner under this section or section
11 57-43.2-14 is presumed to be correct, and in any case where the validity of the assessment is
12 in question, the burden is on the person who challenges the assessment to establish by fair
13 preponderance of evidence that it is erroneous or excessive.

14 **SECTION 51. AMENDMENT.** Section 57-43.2-15 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 ~~**57-43.2-15. Refusal or failure to file return or pay tax when due—Deficiencies—**~~
17 **Penalties Penalty and interest - Violations.**

18 1. If any special fuel dealer refuses or fails to file a return required by this chapter or
19 fails to pay the tax due within the time prescribed by section 57-43.2-12 If a person
20 fails to file the required report or to pay the full amount of the tax as required by this
21 chapter, there is imposed a penalty of five dollars or a sum equal to five percent of
22 the tax due, whichever is greater, together with interest at the rate of one percent
23 per month on the tax due, for each calendar month or fraction of a month during
24 which the ~~refusal or failure~~ delinquency continues, excepting the month within
25 which the tax became due. If a person files a false or fraudulent report with intent
26 to evade the tax imposed by this chapter, there is imposed a penalty equal to ten
27 percent of the deficiency, with interest at the rate of two percent per month on the
28 deficiency, for each calendar month or fraction of a month during which the
29 deficiency continues.

30 2. If any special fuel user a consumer fails to pay any tax due under this chapter, the
31 commissioner shall impose a penalty of five dollars or a sum equal to five percent

1 of the tax due, whichever is greater, together with interest at the rate of one
2 percent per month on the tax due, for each calendar month or fraction of a month
3 during which the ~~refusal or failure~~ delinquency continues, not including the month
4 within which the tax became due. The commissioner, for good cause shown, may
5 waive all or part of the penalty or the interest provided by this section subsection.
6 ~~No licensed special fuel dealer may be held liable for taxes due from a special fuel~~
7 ~~user.~~ No refiner, supplier, distributor, importer, exporter, or retailer may be held
8 liable for taxes due directly from a consumer.

- 9 3. A person is guilty of a class A misdemeanor if:
- 10 a. The person refuses or knowingly or intentionally fails to make and file any
11 report required by this chapter in the manner or within the time required; or
 - 12 b. The person knowingly or with intent to evade or aid in the evasion of the tax
13 imposed by this chapter makes any false statement or conceals any material
14 fact in any application, record, report, or claim for refund provided for in this
15 chapter.

16 **SECTION 52. AMENDMENT.** Section 57-43.2-19 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-43.2-19. Distribution Transfer, deposit, and distribution of funds.** All taxes,
19 license fees, penalties, and interest collected under this chapter must be ~~promptly~~
20 the state treasurer who shall deposit ~~such~~ moneys in a highway tax distribution fund ~~which~~.
21 The highway tax distribution fund must be distributed in the manner as prescribed by law
22 section 54-27-19.

23 **SECTION 53. AMENDMENT.** Section 57-43.2-20 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-43.2-20. Erroneously or illegally collected taxes.** If any taxes, penalties, or
26 interest imposed by this chapter have been erroneously or illegally collected from ~~a special fuel~~
27 ~~dealer~~ any person, the commissioner may permit that ~~special fuel dealer~~ person to take credit
28 against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the
29 alternative, the commissioner shall present a voucher to the office of management and budget
30 for payment of the amount erroneously or illegally collected and a warrant-check must be
31 prepared by that office drawn on the state treasurer payable to that ~~special fuel dealer~~ person.

1 The refund must be paid to the special fuel dealer from undistributed funds received from the
2 tax imposed by this chapter and any such refund may not be approved or paid unless it is in an
3 amount which is in excess of ten five dollars. ~~The commissioner is not required to retain the~~
4 ~~canceled checks by which any refund has been paid for more than six years from July first of~~
5 ~~the fiscal year in which the refund check is issued.~~

6 **SECTION 54. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-43.2-21. Inventory gains - Losses - Deductions allowed to dealer - Remedies.**

- 9 1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct~~
10 ~~the actual shrinkage of the total gallonage of special fuel received during each~~
11 ~~calendar month from the statement submitted as required in section 57-43.2-12,~~
12 ~~but such allowance may not exceed one percent of the total received during the~~
13 ~~month. Each wholesale dealer of liquefied petroleum gas may deduct the actual~~
14 ~~shrinkage of the total gallonage received during each calendar month from the~~
15 ~~statement submitted as required in section 57-43.2-12, but this allowance may not~~
16 ~~exceed two percent of the total received during the month. A supplier or distributor~~
17 ~~shall take a physical inventory reading of all special fuel located in a terminal,~~
18 ~~underground tank, aboveground tank, railcar, storage tank of a truck, and the~~
19 ~~storage tank of a bulk delivery truck on a regular basis and shall report the physical~~
20 ~~readings, inventory gains, and inventory losses to the commissioner in increments~~
21 ~~not to exceed a twelve-month period. The inventory reconciliation must include~~
22 ~~special fuel at retail locations and special fuel stored in a barrel, drum, or other~~
23 ~~receptacle.~~
- 24 2. When sold or used by a supplier or distributor, a gain in special fuel inventories is
25 subject to the tax imposed by this chapter in the same manner as special fuel
26 purchased, imported, or otherwise acquired.
- 27 3. A supplier or distributor who experiences an actual physical inventory loss due to
28 shrinkage or evaporation is responsible for the tax imposed by this chapter on any
29 loss in excess of two percent of liquefied petroleum gases and one percent of all
30 other special fuel received during the period covered by the inventory
31 reconciliation.

1 ~~2.~~ 4. For the purposes of this chapter, it is presumed that all special fuel received by
2 each dealer over and above the one percent allowance, or the two percent
3 allowance for liquefied petroleum gas, not otherwise accounted for, but not above
4 these allowances, except that gallonage shown as actual inventory based on
5 physical inventory readings at the end of every calendar month the time period
6 covered by the inventory reconciliation, and other allowances provided in this
7 chapter, has been sold, delivered, or used. ~~The dealer, and the supplier or~~
8 distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters]
9 of special fuel not accounted for. For purposes of this chapter, special fuel refined
10 at a refinery in this state and placed in storage at the refinery, and special fuel
11 brought into the state by pipeline and placed in storage at a pipeline terminal, is not
12 deemed received until it is withdrawn from the refinery or terminal storage for sale
13 or use in this state, or for shipment or delivery to destinations in this state.

14 5. The commissioner may allow a tax credit to a supplier or distributor for actual
15 inventory losses due to casualty loss subject to the discretion of the commissioner
16 and based on proof of the loss as required by the commissioner.

17 **SECTION 55. AMENDMENT.** Section 57-43.2-22 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-43.2-22. Rules-- Administration - Assistance authorized - Rules.** The
20 commissioner shall enforce the provisions of this chapter. The commissioner may employ
21 assistance and conduct investigations as may be necessary for the administration and
22 enforcement of this chapter and may ~~prescribe~~, adopt, and enforce reasonable rules relating to
23 the administration and enforcement of this chapter ~~for special fuel wholesalers or dealers and~~
24 ~~special fuel users. The commissioner may audit and examine the records of special fuel~~
25 ~~wholesalers or dealers and special fuel users and make other investigations as the~~
26 ~~commissioner deems necessary in the administration and enforcement of this chapter. If upon~~
27 ~~audit, examination, or investigation the commissioner finds additional taxes are due, the~~
28 ~~commissioner may assess the additional taxes, and the penalty and interest must be added as~~
29 ~~provided in section 57-43.2-15.~~

30 **SECTION 56.** Section 57-43.2-38 of the North Dakota Century Code is created and
31 enacted as follows:

1 **57-43.2-38. Special fuel tax for interstate motor carriers - Computation - Credits -**
2 **Refunds.**

- 3 1. An interstate motor carrier importing special fuel into this state is subject to the
4 special fuel tax imposed by section 57-43.2-02 on the number of gallons [liters] of
5 fuel used in the state to propel licensed motor vehicles upon the public roads or
6 highways in the state.
- 7 2. The amount of fuel used in interstate fleet operations by a motor carrier is
8 determined by using a factor, the numerator of which is the total miles [kilometers]
9 operated in this state and the denominator of which is the total miles [kilometers]
10 operated both within and without this state applied to the total of that fuel used both
11 within and without this state.
- 12 3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and
13 in the manner prescribed by a cooperative agreement authorized by section
14 57-43.2-37.

15 **SECTION 57.** Section 57-43.2-39 of the North Dakota Century Code is created and
16 enacted as follows:

17 **57-43.2-39. Interstate motor carrier required to obtain license - Display -**
18 **Revocation or cancellation of license - Occasional trip permits in lieu of license.**

- 19 1. An interstate motor carrier shall apply to the director for a license subject to the
20 requirements of a cooperative agreement authorized by section 57-43.2-37 and is
21 required to display the license in a manner prescribed under the terms of the
22 agreement.
- 23 2. The license issued to an interstate motor carrier is not a franchise or irrevocable
24 and it may not be assigned or transferred.
- 25 3. The director shall issue a license to an interstate motor carrier based on the terms
26 of the cooperative agreement authorized by section 57-43.2-37 and the license
27 shall be in force until it is suspended, revoked, surrendered, or expires pursuant to
28 the terms of the agreement.
- 29 4. An interstate motor carrier who makes only occasional trips into or through this
30 state may elect to secure occasional trip permits in lieu of the license required by
31 this section. The term "occasional" means no more than one trip into or through

1 the state in any seventy-two-hour period. The commissioner, director, or an agent
2 of the commissioner or director shall issue an occasional trip permit for a fee of
3 fifteen dollars per trip pursuant to regulations and procedures prescribed by the
4 commissioner or director.

5 **SECTION 58.** Section 57-43.2-40 of the North Dakota Century Code is created and
6 enacted as follows:

7 **57-43.2-40. Interstate motor carrier tax reports - Payments - Audits -**
8 **Assessments.**

- 9 1. An interstate motor carrier shall file a tax report with the director and remit to the
10 director any taxes, penalties, and interest due at the time and in the manner
11 prescribed by the terms of a cooperative agreement authorized by section
12 57-43.2-37. All moneys collected and received under this section must be
13 transmitted monthly by the director to the state treasurer to be transferred and
14 credited in the same manner as provided in section 57-43.2-19.
- 15 2. An interstate motor carrier shall obtain, create, maintain, and retain records as
16 required by the terms of a cooperative agreement authorized by section 57-43.2-37
17 and make those records available to the director or the commissioner for
18 examination.
- 19 3. The director or commissioner shall audit the records of an interstate motor carrier
20 at the times and in the manner prescribed by a cooperative agreement authorized
21 by section 57-43.2-37.

22 **SECTION 59. AMENDMENT.** Section 57-43.3-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-43.3-01. Definitions.** As used in this chapter unless the context otherwise requires:

- 25 1. "Aviation fuel" means aviation gasoline, kerosene, jet ~~motor~~ fuel, and other motor
26 fuel used by aircraft.
- 27 2. "Commission" means the North Dakota aeronautics commission.
- 28 3. "Commissioner" means the North Dakota tax commissioner.
- 29 4. ~~"Dealer" means aviation fuel dealer.~~ "Common carrier" or "contract carrier" means
30 a person involved in the movement of aviation fuel from a terminal or movement of
31 aviation fuel imported into this state, who is not an owner of the aviation fuel.

- 1 5. ~~"User" means aviation fuel user.~~ "Consumer" means a user of aviation fuel. It
2 does not include a supplier, distributor, importer, exporter, or retailer acquiring the
3 fuel for resale.
- 4 6. "Distributor" means a person, other than a retailer, who acquires aviation fuel from
5 a supplier for subsequent wholesale distribution in bulk or transport load by truck,
6 railcar, or in a barrel, drum, or other receptacle.
- 7 7. "Export" means the delivery of aviation fuel across the boundaries of this state from
8 a place of origin in this state by or for a refiner, supplier, or distributor.
- 9 8. "Exporter" means a refiner, supplier, or distributor who exports aviation fuel out of
10 this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
11 receptacle.
- 12 9. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume
13 basis.
- 14 10. "Gross volume" means measurement in United States gallons [3.79 liters] without
15 temperature or barometric adjustments.
- 16 11. "Import" means the delivery of aviation fuel across the boundaries of this state from
17 a place of origin outside this state by a refiner, supplier, or distributor.
- 18 12. "Importer" means a refiner, supplier, or distributor who imports aviation fuel into
19 this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
20 receptacle.
- 21 13. "Person" means every individual, partnership, firm, joint venture, corporation,
22 limited liability company, estate, business trust, receiver, or any group or
23 combination acting as a unit.
- 24 14. "Physical inventory reading" means a measurement of aviation fuel available for
25 distribution in a terminal, an underground storage tank, an aboveground storage
26 tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other
27 receptacle.
- 28 15. "Position holder" means a person holding an inventory position of aviation fuel in a
29 terminal as reflected on the records of the terminal operator; a person holding the
30 inventory position when that person has a contractual agreement with the terminal

- 1 operator for the use of storage facilities or terminaling services at a terminal; and a
2 terminal operator who owns aviation fuel in a terminal.
- 3 16. "Rack" means a mechanism used to dispense aviation fuel from a terminal.
- 4 17. "Refiner" means a person who produces, manufactures, or refines aviation fuel in
5 this state for resale to a consumer.
- 6 18. "Retail location" means a site at which aviation fuel is dispensed through a pump
7 from an underground or aboveground storage unit into the supply tank of an
8 aircraft.
- 9 19. "Retailer" means a person who acquires aviation fuel from a supplier or distributor
10 for resale to a consumer at a retail location, and does not include a consumer
11 selling aviation fuel to another consumer.
- 12 20. "Sale" means, with respect to aviation fuel, the transfer of title or possession,
13 exchange, or barter, conditional or otherwise, in any manner or by any means, for
14 a consideration.
- 15 21. "Supplier" means a refiner who distributes aviation fuel from a terminal in this state,
16 or any person who acquires aviation fuel by pipeline from a state, territory, or
17 possession of the United States or from a foreign country, for storage at and
18 distribution from a terminal, or a person who acquires aviation fuel by truck or
19 railcar for storage at and distribution from a terminal in this state.
- 20 22. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal
21 operator, or retailer.
- 22 23. "Terminal" means an aviation fuel storage and distribution facility that is supplied
23 by a refinery or pipeline and from which the aviation fuel may be removed from the
24 rack.
- 25 24. "Terminal operator" means a person who by ownership or contractual agreement is
26 charged with the responsibility for, or physical control over, and operation of a
27 terminal. If a terminal is owned by coventurers, "terminal operator" means the
28 person appointed to exercise the responsibility for, or physical control over, and
29 operation of the terminal.
- 30 25. "Wholesale distribution" means the sale of aviation fuel by a supplier or distributor.

1 **SECTION 60. AMENDMENT.** Section 57-43.3-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~**57-43.3-02. Imposition and collection of tax**~~ **Tax imposed on aviation fuel.** An
4 ~~excise tax of eight cents per gallon [3.79 liters] is hereby imposed on the sale or delivery of~~
5 ~~aviation fuel by a dealer to a user. The dealer shall collect the tax from the user and pay the tax~~
6 ~~to the commissioner.~~

- 7 1. Except as otherwise provided in this chapter, a tax of eight cents per gallon [3.79
8 liters] is imposed on all aviation fuel sold or used in this state.
- 9 2. A supplier or distributor shall remit the tax imposed by this section on aviation fuel
10 used, on the wholesale distribution of aviation fuel to a retailer, and on direct sales
11 of aviation fuel to a customer.
- 12 3. The tax imposed by this section does not apply on a sale by a supplier to another
13 supplier, a sale by a supplier to a distributor, a sale by a distributor to another
14 distributor, an export, or a sale to an exempt consumer.
- 15 4. The person required to remit the tax imposed by this section shall pass the tax on
16 to the retailer and to the customer. A retailer who paid the tax to the supplier or
17 distributor shall pass the tax on to the consumer.
- 18 5. The person required to remit the tax imposed by this section shall pay the tax to
19 the commissioner by the twenty-fifth day of the calendar month after the month
20 during which the aviation fuel was sold or used by the person. When the
21 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
22 the due date is the first working day after the Saturday, Sunday, or legal holiday.
23 When payment is made by mail, the payment is timely if the envelope containing
24 the payment is postmarked by the United States postal service or other postal
25 carrier service before midnight of the due date.
- 26 6. The commissioner shall pay over all of the money received during each calendar
27 month to the state treasurer.

28 **SECTION 61. AMENDMENT.** Section 57-43.3-03 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 ~~**57-43.3-03. Refund of tax.** Any user must be reimbursed the tax levied by section~~
31 ~~57-43.3-02 pursuant to the provisions of chapter 57-43-1.~~

- 1 1. A consumer who paid the tax imposed by section 57-43.3-02 may file a claim for a
2 refund with the commissioner pursuant to the refund provisions in chapter 57-43.1.
3 The tax imposed by section 57-43.3-04 must be deducted from the refund.
- 4 2. Any person to whom aviation fuel is sold on which the tax imposed by this chapter
5 has been paid who thereafter removes the fuel from this state for sale or resale in
6 another state or to a state that requires payment of a tax upon the use of the fuel in
7 that state must be granted a refund of the tax that was paid pursuant to this
8 chapter. The refund may be granted only upon application to the commissioner in
9 the manner prescribed by the commissioner and must include proof that fuel for
10 sale or resale in another state was reported to the taxing agency of that state, or in
11 the case of a consumer, proof of payment of the tax imposed by the other state. A
12 claim for refund under this section must be made within one year from the date the
13 fuel was removed to another state for sale, resale, or use in another state.
- 14 3. When a person purchasing aviation fuel for resale purposes pays the tax imposed
15 by this chapter and later makes a sale of the fuel to an agency of the United States
16 government, the person may apply to the commissioner for a refund of the tax.

17 **SECTION 62. AMENDMENT.** Section 57-43.3-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-43.3-04. ~~Separate and additional tax imposed~~ Special excise tax levied.** ~~In~~
20 ~~addition to any other tax imposed in this chapter, there is hereby imposed a special excise tax~~
21 ~~of four percent on the sale of aviation fuel on which a tax is levied by section 57-43.3-02 and~~
22 ~~which is refunded under the provisions of section 57-43.3-03.~~ Except as otherwise provided in
23 this chapter, a special excise tax of four percent of the cost of the fuel, exclusive of state or
24 federal taxes levied, is imposed on each consumer who claims and receives a refund of the tax
25 imposed by section 57-43.3-02.

26 **SECTION 63.** Section 57-43.3-08 of the North Dakota Century Code is created and
27 enacted as follows:

28 **57-43.3-08. Refiner, supplier, distributor, importer, exporter, and terminal operator**
29 **required to secure license - License fees.**

- 1 1. A person may not engage in business in this state as a refiner, supplier, distributor,
2 importer, exporter, or terminal operator of aviation fuel unless that person holds an
3 unrevoked license issued by the commissioner.
- 4 2. The person shall file an application for a license with the commissioner providing
5 such information as required by the commissioner, and on a form or in a format as
6 required by the commissioner. The information must include:
- 7 a. The name under which the person intends to transact business in this state.
8 b. The physical location of each place of business to be covered by the license
9 and the mailing address of the location to which forms and correspondence
10 are to be directed.
- 11 c. If a partnership, the name and address of each of the persons constituting the
12 partnership.
- 13 d. If a domestic corporation, the corporate name, the date of incorporation, and
14 the names and addresses of the directors and corporate officers.
- 15 e. If a foreign corporation, the corporate name, the state and the date of
16 incorporation, the name and address of the resident agent, the location of
17 each place of business, and the date on which the business was established.
- 18 f. If a domestic limited liability company, the limited liability company name, the
19 date of formation, and the names and addresses of the governors and
20 managers.
- 21 g. If a foreign limited liability company, the limited liability company name, the
22 state and the date of formation, the name and address of the resident agent,
23 the location of each place of business, and the date on which the business
24 was established.
- 25 h. Any other information the commissioner may require.
- 26 The application must be signed by the taxpayer to be valid and must contain a
27 written declaration that it is made and subscribed under penalties of perjury. For
28 an individual, partnership, or unincorporated association, the application must be
29 signed by the owner. For a corporation, the application must be signed by an
30 authorized officer. For a limited liability company, the application must be signed
31 by an authorized manager.

1 3. An applicant for a single or multiple license as a refiner, supplier, distributor,
2 importer, exporter, terminal operator, or retailer shall pay to the commissioner a
3 license fee of twenty dollars. The license fee must be paid at the time the
4 application is made.

5 **SECTION 64.** Section 57-43.3-09 of the North Dakota Century Code is created and
6 enacted as follows:

7 **57-43.3-09. Bond or letter of credit required.** As a condition precedent to the
8 issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety
9 bond, a cash bond, or an approved letter of credit as security to guarantee the payment of
10 aviation fuel tax. A refiner, terminal operator, or an exporter who is not also licensed as a
11 supplier or distributor is exempt from this requirement.

12 1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by
13 the commissioner but not less than five hundred dollars.

14 2. The surety bond, cash bond, or letter of credit is subject to approval by the
15 commissioner.

16 3. After a single or multiple license has been in effect for five or more years, the
17 commissioner may review the person's records and may waive the requirement for
18 a security. The requirement for a security may be reinstated at the discretion of the
19 commissioner.

20 4. A surety bond or letter of credit provided as security must be kept in the custody of
21 the commissioner and may be used by the commissioner, without notice to the
22 principal, if it becomes necessary to cover the aviation fuel tax, penalties, and
23 interest due.

24 5. Money deposited with the commissioner as a cash bond must be made in the form
25 of a cashier's check or bank money order payable to the commissioner. The
26 money order received must be paid by the commissioner to the state treasurer and
27 credited by the treasurer into a special fund to be known as the motor fuel tax
28 security trust fund. The money deposited may be used by the commissioner,
29 without notice to the depositor, if it becomes necessary to cover tax, penalties, and
30 interest due. If the money deposited is used to cover unpaid liabilities, the
31 commissioner shall certify the information to the director of the office of

1 management and budget. The office of management and budget shall transmit the
2 money to the commissioner who shall apply as much of the money deposited by
3 the person as is necessary to satisfy the liabilities. When in the commissioner's
4 judgment it is no longer necessary to require the deposit to be maintained, the
5 commissioner shall certify the information to the director of the office of
6 management and budget who shall pay the unused money to the depositor.

7 **SECTION 65.** Section 57-43.3-10 of the North Dakota Century Code is created and
8 enacted as follows:

9 **57-43.3-10. Qualification for exporter license.** As a condition precedent to the
10 issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a
11 valid unrevoked license required by the jurisdiction of import.

12 **SECTION 66.** Section 57-43.3-11 of the North Dakota Century Code is created and
13 enacted as follows:

14 **57-43.3-11. Qualification for importer license.** As a condition precedent to the
15 issuance of a license to an importer, the importer shall furnish proof that the importer has a
16 valid unrevoked license required by the jurisdiction of export. An importer must also qualify for
17 and apply for a license in this state as a refiner, supplier, or distributor.

18 **SECTION 67.** Section 57-43.3-12 of the North Dakota Century Code is created and
19 enacted as follows:

20 **57-43.3-12. Application for license - Issuance of license - Denial of license.**

- 21 1. Upon receipt and approval of an application for a license, the license fee, and the
22 required security, the commissioner shall issue a license which is valid until it is
23 suspended, revoked for cause, or otherwise canceled. The license is not
24 transferable.
- 25 2. A multiple license must be issued to a person who applies and qualifies for more
26 than one type of license.
- 27 3. The commissioner may refuse to issue a license to a person who has not provided
28 the required security, who failed to provide the information requested on the
29 application, who previously held a license which was revoked by the commissioner,
30 who is a subterfuge for the real party in interest who previously held a license that
31 was revoked by the commissioner, or upon other sufficient cause being shown.

1 The commissioner shall grant the person the right to a hearing in accordance with
2 the provisions of chapter 28-32. Written notice of the hearing must be served on
3 the person at least ten days prior to the date established for the hearing.

4 **SECTION 68.** Section 57-43.3-13 of the North Dakota Century Code is created and
5 enacted as follows:

6 **57-43.3-13. Revocation of license - Hearing to show cause - Reinstatement.**

- 7 1. The commissioner may revoke a license for reasonable cause. Before revoking a
8 license, the commissioner shall grant a hearing in accordance with the provisions
9 of chapter 28-32 to allow the person to show cause why the license should not be
10 revoked. Written notice of the hearing must be served on the person at least ten
11 days prior to the date established for the hearing.
- 12 2. Before a new license may be issued to a person who is obligated to remit the tax
13 imposed by this chapter and whose license was revoked, the person shall pay to
14 the commissioner the amount of any delinquent tax, penalties, and interest
15 remaining unpaid and must file with the commissioner a surety bond upon which
16 the person is the principal. The bond must be in an amount determined by the
17 commissioner but not less than one thousand dollars. The bond must be payable
18 to the commissioner and be conditioned upon the timely filing of required reports
19 and the timely payment of the full amount of the tax due as required under this
20 chapter. If the person fails to file the required report or to timely pay the full
21 amount of the tax due, the commissioner may require an increase in the amount of
22 the surety bond conditioned to secure at all times the payment of any tax due to
23 the state under this chapter.

24 **SECTION 69.** Section 57-43.3-14 of the North Dakota Century Code is created and
25 enacted as follows:

26 **57-43.3-14. Monthly report by refiner, supplier, distributor, importer, or exporter**
27 **required.**

- 28 1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with
29 the commissioner no later than the twenty-fifth day of each calendar month
30 covering aviation fuel sold and used during the preceding calendar month. When
31 the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal

- 1 holiday, the due date is the first working day after the Saturday, Sunday, or legal
2 holiday. When the report is filed by mail, the report is timely if the envelope
3 containing the report is postmarked by the United States postal service or other
4 postal carrier service before midnight of the due date.
- 5 2. The report to the commissioner must be on a form prescribed and furnished by the
6 commissioner. The commissioner may require that all or part of the report be
7 submitted in an electronic format approved by the commissioner, provided the
8 person required to file the report is able to file the report using an electronic format.
9 The report must contain such information as required by the commissioner
10 including:
- 11 a. A detailed schedule of aviation fuel refined, purchased, imported, and
12 exported.
- 13 b. A detailed schedule of aviation fuel sold to a person eligible to purchase the
14 aviation fuel without the tax imposed by this chapter.
- 15 c. A detailed schedule of the number of gallons of aviation fuel sold to a person
16 with the tax imposed by this chapter, including a person who purchased the
17 aviation fuel for resale.
- 18 d. The total number of gallons of aviation fuel sold and used subject to the tax
19 imposed by this chapter.
- 20 e. The number of gallons of aviation fuel sold tax exempt to a qualified
21 consumer.
- 22 f. The number of gallons of aviation fuel in inventory at the beginning of the
23 calendar month, the number of gallons in inventory at the close of the
24 calendar month, and any gains or losses experienced.
- 25 3. The report must be signed by the taxpayer to be valid and must contain a written
26 declaration that it is made and subscribed under penalties of perjury.
- 27 4. The tax commissioner may prescribe alternative methods for signing, subscribing,
28 or verifying a return filed by electronic means, including telecommunications, that
29 shall have the same validity and consequence as the actual signature and written
30 declaration for a paper return.

1 **SECTION 70.** Section 57-43.3-15 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.3-15. Report by terminal operator required.**

- 4 1. A terminal operator shall file a monthly report with the commissioner no later than
5 the twenty-fifth day of each calendar month covering aviation fuel received into and
6 removed from the terminal during the preceding calendar month. When the
7 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
8 the due date is the first working day after the Saturday, Sunday, or legal holiday.
9 When the report is filed by mail, the report is timely if the envelope containing the
10 report is postmarked by the United States postal service or other postal carrier
11 service before midnight of the due date.
- 12 2. The report to the commissioner must be on a form prescribed and furnished by the
13 commissioner, or in a format approved by the commissioner. The commissioner
14 may require that all or part of the report be submitted in an electronic format
15 approved by the commissioner, provided the terminal operator is able to file the
16 report in an electronic format. The report must contain such information as
17 required by the commissioner and may include:
- 18 a. A detailed schedule of aviation fuel received into the terminal for or on behalf
19 of the position holder.
- 20 b. A detailed schedule of aviation fuel removed from the terminal by or on behalf
21 of a position holder.
- 22 c. The number of gallons of aviation fuel in inventory at the beginning of the
23 calendar month and the number of gallons in inventory at the close of the
24 calendar month for each position holder.
- 25 3. The report must be signed by the taxpayer to be valid and must contain a written
26 declaration that it is made under penalties of perjury. The tax commissioner may
27 prescribe alternative methods for signing, subscribing, or verifying a return filed by
28 electronic means, including telecommunications, that shall have the same validity
29 and consequence as the actual signature and written declaration for a paper
30 return.

1 **SECTION 71.** Section 57-43.3-16 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.3-16. Common or contract carrier - License required - Records required -**
4 **Diverted loads - Commissioner to audit records.**

- 5 1. A common or contract carrier shall obtain a license issued by the commissioner.
6 The application for license must be made on a form prescribed by the
7 commissioner and shall contain the information required by the commissioner.
8 2. A common or contract carrier transporting aviation fuel in a vehicle, railcar, or
9 vessel into this state from another state or country shall ensure that a bill of lading
10 indicating North Dakota as the destination state has been issued by the terminal or
11 bulk plant from which the fuel was removed. If a bill of lading issued by the
12 terminal or bulk plant indicates a destination other than North Dakota, the
13 transporter shall issue a diversion ticket indicating North Dakota as the destination
14 state. If a bill of lading was not issued by the terminal or bulk plant, the transporter
15 shall issue a bill of lading for each shipment indicating North Dakota as the
16 destination state. A copy of a diversion ticket and bill of lading prepared by the
17 transporter shall be mailed, faxed, or electronically transmitted to the commissioner
18 before the fuel enters the state.
19 3. A common or contract carrier transporting aviation fuel in the state shall provide a
20 copy of the bill of lading accompanying the shipment, along with any drop load
21 tickets and diversion tickets issued for the delivered fuel to the refiner, supplier,
22 distributor, importer, retailer, or consumer to whom delivery of the shipment was
23 made.
24 4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly
25 accept delivery of aviation fuel into storage facilities in this state if that delivery is
26 not accompanied by a bill of lading or diversion ticket issued by the terminal
27 operator, bulk plant operator, or transporter, which specifically indicates North
28 Dakota as the destination state of the aviation fuel.
29 5. If a common or contract carrier unloads only a portion of a shipment at a location or
30 if the load is loaded at a location other than what is indicated in the bill of lading or
31 diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped

1 at more than one location, the drop load ticket must identify the name and address
2 of all locations and the type of fuel and gallonage dropped. A copy of the ticket
3 must be maintained on board and a copy must accompany the bill of lading that is
4 provided to the refiner, supplier, distributor, importer, retailer, or consumer taking
5 delivery of the fuel.

6 6. A diversion ticket must include the following information:

- 7 a. The transporter's name and address.
8 b. The date and time of issuance.
9 c. The diversion ticket number.
10 d. The name and address of the consignee indicated on the original bill of lading.
11 e. The destination as stated on the original bill of lading.
12 f. The original bill of lading number.
13 g. The location diverted to, including the address to which the fuel was diverted
14 and the destination state.
15 h. The number of gallons of fuel being diverted.
16 i. The type of fuel being diverted.
17 j. Any other information required by the commissioner.

18 7. A drop load ticket must include the following:

- 19 a. The transporter's name and address.
20 b. The date and time of issuance.
21 c. The partial load ticket number.
22 d. The name and address of the consignee indicated on the original bill of lading.
23 e. The destination on the original bill of lading or as shown on the diversion
24 ticket, if issued.
25 f. The original bill of lading number and, if available, the diversion ticket number.
26 g. The number of gallons off-loaded at each location.
27 h. The type of fuel off-loaded at each location.
28 i. Any other information required by the commissioner.

29 8. Except as otherwise provided in this section, the commissioner may audit the
30 records of the common or contract carrier, whether or not licensed by the
31 commissioner, and may impose such penalties as authorized by this chapter.

1 **SECTION 72.** Section 57-43.3-17 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.3-17. Credit for taxes paid on worthless accounts and refunds.** Taxes paid
4 on aviation fuel represented by accounts found to be worthless, and actually charged off for
5 income tax purposes, may be taken as a credit against subsequent taxes due provided the
6 accounts charged off included the cost of the fuel as well as the taxes due. If the worthless
7 account is subsequently collected, the tax must be remitted on the account collected. If in any
8 case the credit, or any part of it, cannot be utilized by the supplier or distributor because of a
9 discontinuance of a business or other valid reason, the amount may be refunded.

10 **SECTION 73.** Section 57-43.3-18 of the North Dakota Century Code is created and
11 enacted as follows:

12 **57-43.3-18. Commissioner to audit reports and assess tax.**

- 13 1. The commissioner, or an authorized representative, may audit the records, books,
14 and papers and examine fuel and any equipment used to store, transport, or
15 dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal
16 operator, retailer, or common or contract carrier. For a person required to file a
17 report, the examination and audit must be done no later than three years after the
18 due date of the report or three years after the report was filed, whichever period
19 expires later. The commissioner is authorized to make assessments of tax, plus
20 penalty and interest, or to issue credits or refunds as determined on the basis of
21 the examination and audit.
- 22 2. If it is determined upon audit that the tax due was twenty-five percent or more
23 above the amount reported on a report, the tax may be assessed, or a proceeding
24 in court for the collection of the tax may be begun without such assessment, at any
25 time within six years after the due date of the report, or six years after the report
26 was filed, whichever period expires later.
- 27 3. Except as otherwise provided in this chapter, the commissioner may audit any
28 consumer's claim for refund and, not later than three years after the due date of a
29 claim or three years after the claim was filed, whichever period expires later,
30 assess additional tax or issue an additional refund. If additional tax is found due or
31 if an additional tax refund applies, the commissioner shall notify the claimant in

1 detail of the reason for the increase or decrease. For any claim selected for audit,
2 the claimant shall provide additional verification as required by the commissioner of
3 fuel purchases, payment of the tax, and use of the fuel.

4 4. If a person gives false or fraudulent information in a report or in a claim for refund,
5 or if the failure by a person to file a tax report is due to the fraudulent intent or the
6 willful attempt of the person in any manner to evade the tax, the time limitations in
7 this section do not apply, and the tax may be assessed or a proceeding in court for
8 the collection of the tax may be begun without the assessment, at any time.

9 5. If before the expiration of the time prescribed in this chapter for the assessment of
10 tax, the commissioner and the person consent in writing to an extension of time for
11 the assessment of the tax, the tax may be assessed at any time prior to the
12 expiration of the period agreed upon. The period agreed upon may be extended
13 by subsequent agreements in writing made before the expiration of the period
14 previously agreed upon.

15 6. A determination of additional tax due issued to a person fixes the tax finally and
16 irrevocably unless the person against whom it is assessed, within thirty days after
17 the giving of notice of the determination, protests the determination under rules
18 adopted by the commissioner and in the manner provided in chapter 28-32.

19 7. A determination that a claim for a tax credit or refund is disallowed becomes finally
20 and irrevocably fixed unless the person claiming the refund, within thirty days after
21 the giving of notice of the determination, protests the determination under rules
22 adopted by the commissioner and in the manner provided in chapter 28-32.

23 **SECTION 74.** Section 57-43.3-19 of the North Dakota Century Code is created and
24 enacted as follows:

25 **57-43.3-19. Determination if no report filed.** If a person fails, neglects, or refuses to
26 file an aviation fuel tax report when due, the commissioner shall, on the basis of available
27 information, determine the tax liability for the period during which no report was filed, and to the
28 tax thus determined the commissioner shall add the penalty and interest as provided in section
29 57-43.3-23. An assessment made by the commissioner under this section or section
30 57-43.3-18 is presumed to be correct, and in any case where the validity of the assessment is

1 in question, the burden is on the person who challenges the assessment to establish by fair
2 preponderance of the evidence that it is erroneous or excessive.

3 **SECTION 75.** Section 57-43.3-20 of the North Dakota Century Code is created and
4 enacted as follows:

5 **57-43.3-20. Corporate officer liability.** If a corporation holding a license issued under
6 this chapter fails for any reason to file the required returns or to pay the tax due, any of its
7 officers having control or supervision of, or charged with the responsibility for making, such
8 returns and payments is personally liable for the failure. The dissolution of a corporation does
9 not discharge an officer's liability for a prior failure of the corporation to make a return or remit
10 the tax due. The sum due for such a liability may be assessed and collected under the
11 provisions of this chapter for the assessment and collection of other liabilities.

12 **SECTION 76.** Section 57-43.3-21 of the North Dakota Century Code is created and
13 enacted as follows:

14 **57-43.3-21. Governor and manager liability.** If a limited liability company holding a
15 license issued under this chapter fails for any reason to file the required returns or to pay the
16 taxes due under this chapter, the governor or manager, jointly or severally, charged with the
17 responsibility of supervising the preparation of such returns and payments, is personally liable
18 for such failure. The dissolution of a limited liability company does not discharge a governor's
19 or manager's liability for a prior failure of the limited liability company to file a return or remit the
20 tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the
21 provisions of this chapter.

22 **SECTION 77.** Section 57-43.3-22 of the North Dakota Century Code is created and
23 enacted as follows:

24 **57-43.3-22. Lien of tax - Collection - Action authorized.**

25 1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay
26 the tax, the amount, including any interest, penalty, or addition to the tax, with the
27 costs that may accrue in addition to the tax, is a lien in favor of the state of North
28 Dakota upon all property and rights to property, whether real or personal,
29 belonging to the taxpayer, and in the case of property in which a deceased
30 taxpayer held an interest as joint tenant or otherwise with right of survivorship at
31 the time of death, the lien continues as a lien against the property in the hands of

- 1 the survivors to the extent of the deceased taxpayer's interest therein, which
2 interest is determined by dividing the value of the entire property at the time of the
3 taxpayer's death by the number of joint tenants or persons interested therein.
- 4 2. The lien attaches at the time the tax becomes due and payable and continues until
5 the liability for the amount is satisfied. For the purposes of this section, the words
6 "due" and "due and payable" mean the first instant at which the tax becomes due.
- 7 3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any
8 interest in, or lien on, any property situated in the state, prior to the commissioner
9 filing in the central index system maintained by the secretary of state a notice of
10 the lien provided for in this section, takes free of, or has priority over, the lien.
- 11 4. The commissioner shall index in the central index system the following data:
- 12 a. The name of the taxpayer.
- 13 b. The tax identification number or social security number of the taxpayer.
- 14 c. The name "state of North Dakota" as claimant.
- 15 d. The date and time the notice of lien was indexed.
- 16 e. The amount of the lien.
- 17 The notice of lien is effective as of eight a.m. next following the indexing of the
18 notice. Any notice of lien filed by the commissioner with a register of deeds may
19 be indexed in the central index system without changing its original priority as to
20 property in the county where the lien was filed.
- 21 5. The commissioner is exempt from the payment of the filing fees as otherwise
22 provided by law for the filing of a lien or the satisfaction of a lien.
- 23 6. Upon payment of the tax as to which the commissioner has indexed notice in the
24 central index system, the commissioner shall index a satisfaction of the lien in the
25 central index system.
- 26 7. Upon the request of the commissioner, the attorney general shall bring an action at
27 law or in equity, as the facts may justify, without bond to enforce payment of any
28 taxes and any penalties, or to foreclose the lien in the manner provided for
29 mortgages on real or personal property, and in the action the attorney general shall
30 have the assistance of the state's attorney of the county in which the action is
31 pending.

1 8. The foregoing remedies of the state are cumulative and no action taken by the
2 commissioner or attorney general may be construed to be an election on the part
3 of the state or any of its officers to pursue any remedy hereunder to the exclusion
4 of any other remedy provided by law.

5 **SECTION 78.** Section 57-43.3-23 of the North Dakota Century Code is created and
6 enacted as follows:

7 **57-43.3-23. Penalty and interest - Violations.**

8 1. If a person fails to file the required report or to pay the full amount of the tax as
9 required by this chapter, there is imposed a penalty of five dollars, or a sum equal
10 to five percent of the tax due, whichever is greater, with interest at the rate of one
11 percent per month on the tax due, for each calendar month or fraction of a month
12 during which the delinquency continues, excepting the month within which the
13 report was required to be filed or the tax became due. If a person files a false or
14 fraudulent report with the intent to evade the tax imposed by this chapter, there is
15 imposed a penalty equal to ten percent of the deficiency, with interest at the rate of
16 two percent per month on the deficiency, for each calendar month or fraction of a
17 month during which the deficiency continues. The commissioner, for good cause
18 shown, may waive all or any part of the penalty or interest provided by this
19 subsection.

20 2. A person is guilty of a class A misdemeanor if:
21 a. The person refuses or knowingly or intentionally fails to make and file any
22 report required by this chapter in the manner or within the time required; or
23 b. The person knowingly or with intent to evade or aid in the evasion of the tax
24 imposed by this chapter makes any false statement or conceals any material
25 fact in any application, record, report, or claim for refund provided for in this
26 chapter.

27 **SECTION 79.** Section 57-43.3-24 of the North Dakota Century Code is created and
28 enacted as follows:

29 **57-43.3-24. Tax collection allowance.** The person required to remit the tax imposed
30 by this chapter shall deduct one percent of the amount of tax due, up to a maximum of three

1 hundred dollars per month, to cover the cost of collecting the tax and transmitting it to the
2 commissioner.

3 **SECTION 80.** Section 57-43.3-25 of the North Dakota Century Code is created and
4 enacted as follows:

5 **57-43.3-25. Retention of records - Subject to inspection.** A refiner, supplier,
6 distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of
7 all aviation fuel refined, purchased, imported, or otherwise acquired; all aviation fuel exported,
8 sold, distributed, and used; and all inventory records, for a period of not less than three years.
9 Inventory records include physical readings, metered readings of sales, delivery tickets, and
10 delivery readings. The records are open to inspection during business hours by the
11 commissioner or by any agent or employee authorized by the commissioner.

12 **SECTION 81.** Section 57-43.3-26 of the North Dakota Century Code is created and
13 enacted as follows:

14 **57-43.3-26. Inventory gains - Losses.**

- 15 1. A supplier or distributor shall take a physical inventory reading of all aviation fuel
16 located in a terminal, underground tank, aboveground tank, railcar, storage tank of
17 a truck, and the storage tank of a bulk delivery truck on a regular basis, and shall
18 report the physical readings, inventory gains, and inventory losses to the
19 commissioner in increments not to exceed a twelve-month period. The inventory
20 reconciliation must include aviation fuel at retail locations and aviation fuel stored in
21 a barrel, drum, or other receptacle. The supplier or distributor with retail locations
22 is exempt from the provisions of subsection 2.
- 23 2. When sold or used by a supplier or distributor, a gain in aviation fuel inventories is
24 subject to the tax imposed by this chapter in the same manner as aviation fuel
25 purchased, imported, or otherwise acquired.
- 26 3. A supplier or distributor is not responsible for the tax imposed by section
27 57-43.3-02 on any actual loss due to shrinkage or evaporation.
- 28 4. The commissioner may allow a tax credit to a supplier or distributor for actual
29 inventory losses due to casualty loss, subject to the discretion of the commissioner
30 and based on proof of the loss as required by the commissioner.

1 **SECTION 82.** Section 57-43.3-27 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-43.3-27. Administration - Assistance authorized - Rules.** The commissioner
4 shall enforce the provisions of this chapter. The commissioner may employ assistance and
5 conduct investigations as may be necessary for the administration and enforcement of this
6 chapter and may make and enforce reasonable rules relating to the administration and
7 enforcement of this chapter.

8 **SECTION 83.** Section 57-43.3-28 of the North Dakota Century Code is created and
9 enacted as follows:

10 **57-43.3-28. Erroneously or illegally collected taxes.** If any taxes, penalties, or
11 interest imposed by this chapter have been erroneously or illegally collected from any person,
12 the commissioner may permit that person to take credit against the tax on a subsequent report
13 for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner
14 shall present a voucher to the office of management and budget for payment of the amount
15 erroneously or illegally collected and a warrant-check must be prepared by that office drawn on
16 the state treasurer payable to that person. The refund must be paid from undistributed funds
17 received from the tax imposed by this chapter and any such refund may not be approved or
18 paid unless it is in an amount that is in excess of five dollars.

19 **SECTION 84. REPEAL.** Sections 57-43.1-18, 57-43.1-22, 57-43.1-23, 57-43.1-31,
20 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39,
21 57-43.1-40, 57-43.1-42, 57-43.1-42.1, 57-43.1-43, 57-43.2-06, 57-43.2-13, 57-43.2-17,
22 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28,
23 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35.1, 57-43.2-36, and
24 57-43.3-05 of the North Dakota Century Code and sections 57-43.1-20, 57-43.2-04, 57-43.2-12,
25 and 57-43.2-35 of the 1997 Supplement to the North Dakota Century Code are repealed.