

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

**SENATE BILL NO. 2177**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact sections 57-43.1-06.1, 57-43.1-12.1, 57-43.1-14.1, 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, 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, 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, 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, 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, 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 Code, relating to the motor vehicle fuel tax, the special fuel tax, interstate motor carriers tax, and the aviation fuel tax; to amend and reenact sections 57-43.1-01, 57-43.1-02, 57-43.1-04, 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, 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, 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, 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, 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, 57-43.3-02, 57-43.3-03, and 57-43.3-04 of the North Dakota Century Code, relating to the motor vehicle fuel tax, the special fuel tax, and the aviation fuel tax; to repeal sections 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, 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, 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, 57-43.2-16, 57-43.2-17, 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, 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, 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code, relating to obsolete and redundant provisions of the motor vehicle fuel tax, the special fuel tax, importer for use tax, and the aviation fuel tax; and to provide penalties.

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

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

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

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported into this state, who is not an owner of the motor vehicle fuel.
4. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor

vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a ~~dealer or a retailer~~ person importing or purchasing motor vehicle fuel for resale.

4. ~~"Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which motor vehicle fuel is directed for delivery into a storage facility, receptacle, container, or any type of transportation equipment, for purposes of resale or use.
6. "Director" means the director of the department of transportation.
6. ~~"Importer for use" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.~~
7. "Distributor" means a person, other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
9. "Exporter" means a refiner, supplier, or distributor who exports motor vehicle fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
12. "Import" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
13. "Importer" means a refiner, supplier, or distributor who imports motor vehicle fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
14. "Industrial purpose" means:
  - a. A manufacturing, warehousing, or loading dock operation;
  - b. Construction;
  - c. Sand and gravel processing;
  - d. Well drilling, well testing, or well servicing;
  - e. Maintenance of business premises, golf courses, or cemeteries;
  - f. A commercial or contract painting operation;
  - g. Electrical services;

- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

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

- 15. "Interstate motor carrier" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
- 8- 16. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- 9- 17. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
- 40- 18. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.
- 41- ~~"Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.~~
- 42- 19. ~~"Person" means every individual, partnership, society, firm, association, joint stock company, venture, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers estate, business trust, receiver, or any other group or combination acting as a unit.~~
- 20. "Physical inventory reading" means a measurement of motor vehicle fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
- 21. "Position holder" means a person holding an inventory position of motor vehicle fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the

use of storage facilities or terminaling services at a terminal, and a terminal operator who owns motor vehicle fuel in a terminal.

43. 22. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
23. "Rack" means a mechanism used to dispense motor vehicle fuel from a terminal.
24. "Refiner" means a person who produces, manufactures, or refines motor vehicle fuel in this state or a person who produces alcohol or alcohol derivative substances in this state for blending with motor vehicle fuel.
25. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
26. "Retailer" means a person who acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
44. 27. "Sale" means, with respect to motor vehicle fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.
- ~~15. "Wholesale dealer" has the same meaning as "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel to retail dealers.~~
28. "Supplier" means a refiner who distributes motor vehicle fuel from a terminal in this state, or a person who acquires motor vehicle fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires motor vehicle fuel by truck or railcar for storage at and distribution from a terminal in this state.
29. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
30. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
31. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
32. "Wholesale distribution" means the sale of motor vehicle fuel by a supplier or distributor.

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

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

1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The dealer~~ A supplier or distributor shall ~~collect~~ remit the tax imposed by this section ~~from the on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on all sales.~~
3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~ The tax imposed by this section

does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.

4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

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

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

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

**57-43.1-04. Form of claim for refund.** A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the commissioner requires. The original invoices or sales tickets proving the purchase

of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the ~~dealer's or retailer's~~ seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A ~~dealer~~ supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

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

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

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

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

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

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

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

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

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

**57-43.1-12.1. Credit for taxes paid on worthless accounts and refunds.** Taxes paid on motor vehicle fuel represented by accounts found to be worthless, and actually charged off for income

tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

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

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

1. ~~No~~ A person may not engage in business in this state as a dealer in refiner, supplier, distributor, importer, exporter, or terminal operator of motor vehicle fuel unless that person holds an unrevoked license issued by the commissioner authorizing that person to engage in such business.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner and on a form or in a format as required by the commissioner. The information must include:
  - a. The name under which the person intends to transact business in this state.
  - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
  - c. If a partnership, the name and address of each of the persons constituting the partnership.
  - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
  - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
  - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
  - g. If a foreign limited liability company, the limited liability company name, the state and date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
  - h. Any other information the commissioner may require.

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

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

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

**57-43.1-14. Form and contents of application for dealer's license - Fee - Bond or other security letter of credit required.** As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved

letter of credit as security to guarantee the payment of the motor vehicle fuel tax liabilities imposed by this chapter. A refiner, terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. ~~To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the commissioner an application upon a form prescribed and furnished by the commissioner. Such application must contain: The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars.~~
  - a. ~~The name under which the applicant intends to transact business.~~
  - b. ~~If a partnership, the name and address of each of the several persons constituting the firm.~~
  - c. ~~If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers.~~
  - d. ~~If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which the business was established.~~
  - e. ~~If a domestic limited liability company, the limited liability company name, the date of formation, and the names of the governors and managers.~~
  - f. ~~If a foreign limited liability company, the limited liability company name, the state where and the time when formed, the name of the resident agent, the location of each place of business, and the date on which the business was established.~~
  - g. ~~Any other information the commissioner may require. The application must be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, by any authorized officer, if a corporation, and by any authorized manager, if a limited liability company.~~
2. ~~At the time of applying for a license, the applicant shall pay to the commissioner as a license fee the sum of twenty dollars. This fee must be paid into the state treasury and credited to the general fund. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.~~
3. ~~As a condition precedent to the issuance of a license, a dealer shall furnish a bond in an amount set by the commissioner, but not less than one thousand dollars, guaranteeing the payment of the motor vehicle fuel tax collected by the dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a dealer has had a valid license for three or more years, the commissioner may review the records of the dealer and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.~~
4. ~~In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner may prescribe, may be deposited with the commissioner, which securities shall be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to recover any tax, penalties, or interest due. All moneys deposited as security with the commissioner under the provisions of this subsection must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the "motor vehicle fuel tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so~~



~~much of the deposit as is necessary to satisfy the tax, penalty, and interest due. The commissioner, when in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the depositor, shall certify that information to the director of the office of management and budget who shall pay the unused money to the depositor. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the motor vehicle fuel tax, penalties, and interest due.~~

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

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

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

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

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

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

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

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32.

Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

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

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

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

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

**57-43.1-16. Report Monthly report by dealer to commissioner refiner, supplier, distributor, importer, or exporter required.** ~~Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability company, the statement must be signed by the president or treasurer, and if a foreign limited liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner.~~

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the commissioner including:
  - a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported.

- b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
  - c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
  - d. The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
  - e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
  - f. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
  4. ~~The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.~~

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

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

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner and may include:
  - a. A detailed schedule of motor vehicle fuel received into the terminal for or on behalf of the position holder.
  - b. A detailed schedule of motor vehicle fuel removed from the terminal by or on behalf of a position holder.
  - c. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury.

4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, which have the same validity and consequence as the actual signature and written declaration for a paper return.

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

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

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for a license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
2. A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting motor vehicle fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of motor vehicle fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the motor vehicle fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:
  - a. The transporter's name and address.
  - b. The date and time of issuance.
  - c. The diversion ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination as stated on the original bill of lading.
  - f. The original bill of lading number.
  - g. The location diverted to, including the address to which the fuel was diverted and the destination state.

- h. The number of gallons of fuel being diverted.
  - i. The type of fuel being diverted.
  - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
  - b. The date and time of issuance.
  - c. The partial load ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
  - f. The original bill of lading number and, if available, the diversion ticket number.
  - g. The number of gallons off-loaded at each location.
  - h. The type of fuel off-loaded at each location.
  - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

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

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

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of dealers and, not later than three years after the due date of a return, or three years after the return was filed, whichever period expires later, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the dealer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers, and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit shall be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.~~
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a ~~return~~ report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the ~~statement report~~, or six years after the statement report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional

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

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

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

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

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

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

1. ~~If the holder of a license to sell motor vehicle fuel a person fails to file the required report required to be filed, or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the failure delinquency continues, excepting the month within which the report was required to be filed or the tax became due. The commissioner may revoke the license and, if so, the commissioner shall notify the licenseholder promptly by a notice sent by registered or certified mail to the post office address of the licenseholder as it appears in the commissioner's records. However, if the report is filed and the tax paid within ten days after the date it becomes due and if it is established under oath that the delay was due to accident or justifiable oversight, then the commissioner may continue the license in full force and effect. If a person files a false or~~

fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this ~~section~~ subsection.

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

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

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

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

**57-43.1-25. ~~Records of dealer subject~~ Retention of records - Subject to inspection.** ~~The records of all purchases, receipts, sales, distribution, and use of motor vehicle fuel of every dealer, must be retained~~ A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired; of all motor vehicle fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years, ~~and~~. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.

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

**57-43.1-26. Inventory gains - Losses ~~—Deductions allowed to dealer—~~ Remedies.** ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-43.1-16, but the allowance may not exceed one percent of the total received during that month.~~

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same manner as motor vehicle fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.

4. For purposes of this chapter, it is presumed that all motor vehicle fuel received ~~by each dealer~~ above ~~this the~~ one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of ~~each calendar month~~ the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the ~~dealer~~ supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

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

**57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses.**

When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

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

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

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

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

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

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



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

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

1. An interstate motor carrier importing motor vehicle fuel into the state is subject to the motor vehicle fuel tax imposed by this chapter on the number of gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.
2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

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

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

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

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

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

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.1-44. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.1-28.
2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.1-44 and make those records available to the director or the commissioner for examination.

3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

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

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

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a ~~dealer or a retailer person~~ importing or purchasing special fuel for resale.
4. ~~"Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
9. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
- 6- 12. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
- 7- 13. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any

equipment used in the preparation of any materials to be used on any type of road or highway surfacing.

8. ~~"Importer for use" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lesser, renter, or some other person as the importer for use.~~
9. 14. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
15. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
16. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
  - b. Construction;
  - c. Sand and gravel processing;
  - d. Well drilling, well testing, or well servicing;
  - e. Maintenance of business premises, golf courses, or cemeteries;
  - f. A commercial or contract painting operation;
  - g. Electrical services;
  - h. A refrigeration unit on a truck;
  - i. A power-take-off unit; and
  - j. Other similar business activity.
- Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
17. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
40. 18. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.
44. 19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

42. 20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
43. 21. "Person" means every ~~natural person, fiduciary individual, partnership, firm, association, joint venture, corporation, or limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.~~
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
44. 24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
45. 26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
46. 30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, ~~of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.~~
47. 31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
48. ~~"Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.~~

19. ~~"Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.~~
20. ~~"Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.~~
32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

**SECTION 32. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-02. (Effective through December 31, 1999) Tax imposed.**

1. Except as otherwise provided in this chapter, an excise tax of twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on all sales to consumers special fuel used and on direct sales of special fuel to a customer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

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

1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on ~~all sales to consumers~~ special fuel used and on direct sales of special fuel to a consumer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

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

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

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

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

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its

political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.

5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
6. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
7. The ~~dealer shall~~ person required to remit the tax imposed by this section ~~on all sales to a~~ shall pass the tax on to the consumer.
8. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
9. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

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

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

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

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

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

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

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

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

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

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

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner. The commissioner may require a separate license for liquefied petroleum gases.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
  - a. The name under which the person intends to transact business in this state.
  - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
  - c. If a partnership, the name and address of each of the persons constituting the partnership.
  - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
  - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
  - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
  - g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
  - h. Any other information the commissioner may require.

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

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



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

**57-43.2-07. ~~Special fuel wholesaler's or dealer's bond~~ Bond or letter of credit required.**

As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, retailer, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the special fuel taxes imposed by this chapter. A terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. As a condition precedent to the issuance of a license, a wholesaler or dealer shall furnish a bond in an amount set by the commissioner, but not less than five hundred dollars, guaranteeing the payment of the special fuels tax collected by the wholesaler or dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a wholesaler or dealer has had a valid license for three or more years, the commissioner may review the wholesaler's or dealer's records and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars. If the commissioner requires a separate license for liquefied petroleum gases, a separate security is required for that license, and the surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, by the person depositing moneys with the tax commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.
3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the special fuel tax, penalties, and interest due.
5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is

necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

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

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

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

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

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

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

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

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

~~**57-43.2-09. Revocation, cancellation, and surrender of license and bond Revocation of license - Hearing to show cause - Reinstatement.** The commissioner may revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before revoking any license the commissioner shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked. Any time prior to and pending hearing the commissioner may, in the exercise of~~

~~reasonable discretion, suspend the license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer immediately upon the surrender of the license by the holder.~~

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

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

**57-43.2-10. Special fuel wholesaler's or dealer's records Retention of records - Subject to inspection.** ~~For each location where special fuel is sold or delivered to any special fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall prepare and maintain such records as the commissioner may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section must be retained for a minimum period of three years and must be available at all reasonable times for examination by the commissioner. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.~~

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

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

- ~~1. A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require returns and payments of the tax to be made for other than monthly periods. A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date. The commissioner may require separate reports to be filed covering liquefied petroleum gases.~~
- ~~2. For failure or refusal to keep such records, file returns, and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the~~

~~penalties and interest as provided in this chapter. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner including:~~

- ~~a. A detailed schedule of special fuel refined, purchased, imported, and exported.~~
  - ~~b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.~~
  - ~~c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.~~
  - ~~d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.~~
  - ~~e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.~~
  - ~~f. The number of gallons of special fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.~~
- ~~3. The commissioner, for good cause shown, may waive the penalty for failure to pay the tax due or for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in section 57-43.2-09; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a report filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.~~
  - ~~4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and make such investigations as are deemed necessary in the administration and enforcement of this chapter.~~
  - ~~5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.~~

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

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

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

2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
  - a. A detailed schedule of special fuel received into the terminal for or on behalf of the position holder.
  - b. A detailed schedule of special fuel removed from the terminal by or on behalf of a position holder.
  - c. The number of gallons of special fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

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

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

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
2. A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting special fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of special fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the special fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and

a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.

6. A diversion ticket must include the following information:
  - a. The transporter's name and address.
  - b. The date and time of issuance.
  - c. The diversion ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination as stated on the original bill of lading.
  - f. The original bill of lading number.
  - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
  - h. The number of gallons of fuel being diverted.
  - i. The type of fuel being diverted.
  - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
  - a. The transporter's name and address.
  - b. The date and time of issuance.
  - c. The partial load ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination on the original bill of lading as shown on the diversion ticket, if issued.
  - f. The original bill of lading number and, if available, the diversion ticket number.
  - g. The number of gallons off-loaded at each location.
  - h. The type of fuel off-loaded at each location.
  - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

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

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

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator,~~

retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

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

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

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

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

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

1. ~~If any special fuel dealer refuses or fails to file a return required by this chapter or fails to pay the tax due within the time prescribed by section 57-43.2-12~~ If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the refusal or failure delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
2. ~~If any special fuel user~~ a consumer fails to pay any tax due under this chapter, the commissioner shall impose a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the ~~refusal or failure~~ delinquency continues, not including the month within which the tax became due. The commissioner, for good cause shown, may waive all or part of the penalty or the interest provided by this section subsection. ~~No licensed special fuel dealer may be held liable for taxes due from a special fuel user. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.~~
3. A person is guilty of a class A misdemeanor if:
  - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
  - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

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

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

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

**57-43.2-20. Erroneously or illegally collected taxes.** If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from ~~a special fuel dealer~~ any person, the commissioner may permit that ~~special fuel dealer~~ person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that ~~special fuel dealer~~ person. The refund must be paid ~~to the special fuel dealer~~ from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount which is in excess of ~~ten~~ five dollars. ~~The commissioner is not required to retain the canceled checks by which any refund has been paid for more than six years from July first of the fiscal year in which the refund check is issued.~~

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



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

1. Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct the actual shrinkage of the total gallonage of special fuel received during each calendar month from the statement submitted as required in section 57-43.2-12, but such allowance may not exceed one percent of the total received during the month. Each wholesale dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received during each calendar month from the statement submitted as required in section 57-43.2-12, but this allowance may not exceed two percent of the total received during the month. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one percent of all other special fuel received during the period covered by the inventory reconciliation.
- 2- 4. For the purposes of this chapter, it is presumed that all special fuel received by each dealer over and above the one percent allowance, or the two percent allowance for liquefied petroleum gas, not otherwise accounted for, but not above these allowances, except that gallonage shown as actual inventory based on physical inventory readings at the end of every calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used. The dealer, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

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

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

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

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

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

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

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

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.2-37 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.2-37 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

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

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

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

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

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

1. "Aviation fuel" means aviation gasoline, kerosene, jet ~~motor~~ fuel, and other motor fuel used by aircraft.
2. "Commission" means the North Dakota aeronautics commission.
3. "Commissioner" means the North Dakota tax commissioner.
4. ~~"Dealer" means aviation fuel dealer.~~ "Common carrier" or "contract carrier" means a person involved in the movement of aviation fuel from a terminal or movement of aviation fuel imported into this state, who is not an owner of the aviation fuel.
5. ~~"User" means aviation fuel user.~~ "Consumer" means a user of aviation fuel. It does not include a supplier, distributor, importer, exporter, or retailer acquiring the fuel for resale.
6. "Distributor" means a person, other than a retailer, who acquires aviation fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
7. "Export" means the delivery of aviation fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
8. "Exporter" means a refiner, supplier, or distributor who exports aviation fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
10. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
11. "Import" means the delivery of aviation fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
12. "Importer" means a refiner, supplier, or distributor who imports aviation fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
13. "Person" means every individual, partnership, firm, joint venture, corporation, limited liability company, estate, business trust, receiver, or any group or combination acting as a unit.
14. "Physical inventory reading" means a measurement of aviation fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
15. "Position holder" means a person holding an inventory position of aviation fuel in a terminal as reflected on the records of the terminal operator; a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal; and a terminal operator who owns aviation fuel in a terminal.
16. "Rack" means a mechanism used to dispense aviation fuel from a terminal.
17. "Refiner" means a person who produces, manufactures, or refines aviation fuel in this state for resale to a consumer.
18. "Retail location" means a site at which aviation fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of an aircraft.

19. "Retailer" means a person who acquires aviation fuel from a supplier or distributor for resale to a consumer at a retail location, and does not include a consumer selling aviation fuel to another consumer.
20. "Sale" means, with respect to aviation fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
21. "Supplier" means a refiner who distributes aviation fuel from a terminal in this state, or any person who acquires aviation fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires aviation fuel by truck or railcar for storage at and distribution from a terminal in this state.
22. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
23. "Terminal" means an aviation fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the aviation fuel may be removed from the rack.
24. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
25. "Wholesale distribution" means the sale of aviation fuel by a supplier or distributor.

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

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

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

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

**57-43.3-03. Refund of tax.** ~~Any user must be reimbursed the tax levied by section 57-43.3-02 pursuant to the provisions of chapter 57-43.1.~~

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

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

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

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

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

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, or terminal operator of aviation fuel unless that person holds an unrevoked license issued by the commissioner.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
  - a. The name under which the person intends to transact business in this state.
  - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
  - c. If a partnership, the name and address of each of the persons constituting the partnership.
  - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
  - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.

- f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

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

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

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

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

1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.
3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the aviation fuel tax, penalties, and interest due.
5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

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

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

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

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

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

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

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

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

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

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

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

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

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering aviation fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to file the report using an electronic format. The report must contain such information as required by the commissioner including:
  - a. A detailed schedule of aviation fuel refined, purchased, imported, and exported.
  - b. A detailed schedule of aviation fuel sold to a person eligible to purchase the aviation fuel without the tax imposed by this chapter.
  - c. A detailed schedule of the number of gallons of aviation fuel sold to a person with the tax imposed by this chapter, including a person who purchased the aviation fuel for resale.
  - d. The total number of gallons of aviation fuel sold and used subject to the tax imposed by this chapter.
  - e. The number of gallons of aviation fuel sold tax exempt to a qualified consumer.
  - f. The number of gallons of aviation fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
4. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

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

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

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



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

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

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

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form prescribed by the commissioner and shall contain the information required by the commissioner.
2. A common or contract carrier transporting aviation fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting aviation fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of aviation fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the aviation fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:
  - a. The transporter's name and address.
  - b. The date and time of issuance.

- c. The diversion ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination as stated on the original bill of lading.
  - f. The original bill of lading number.
  - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
  - h. The number of gallons of fuel being diverted.
  - i. The type of fuel being diverted.
  - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
  - b. The date and time of issuance.
  - c. The partial load ticket number.
  - d. The name and address of the consignee indicated on the original bill of lading.
  - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
  - f. The original bill of lading number and, if available, the diversion ticket number.
  - g. The number of gallons off-loaded at each location.
  - h. The type of fuel off-loaded at each location.
  - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

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

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

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

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

- 1. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the

report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, and use of the fuel.
4. If a person gives false or fraudulent information in a report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

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

**57-43.3-19. Determination if no report filed.** If a person fails, neglects, or refuses to file an aviation fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.3-23. An assessment made by the commissioner under this section or section 57-43.3-18 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of the evidence that it is erroneous or excessive.

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

**57-43.3-20. Corporate officer liability.** If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a

liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

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

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

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

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

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central index system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central index system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "state of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central index system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the filing of a lien or the satisfaction of a lien.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central index system, the commissioner shall index a satisfaction of the lien in the central index system.

7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property, and in the action the attorney general shall have the assistance of the state's attorney of the county in which the action is pending.
8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

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

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

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with the intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.
2. A person is guilty of a class A misdemeanor if:
  - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
  - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

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

**57-43.3-24. Tax collection allowance.** The person required to remit the tax imposed by this chapter shall deduct one percent of the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and transmitting it to the commissioner.

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

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

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

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

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

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

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

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

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

**SECTION 84. REPEAL.** Sections 57-43.1-18, 57-43.1-22, 57-43.1-23, 57-43.1-31, 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, 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, 57-43.2-16, 57-43.2-17, 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, 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 57-43.3-05 of the North Dakota Century Code and sections 57-43.1-20, 57-43.2-04, 57-43.2-12, and 57-43.2-35 of the 1997 Supplement to the North Dakota Century Code are repealed.

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President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2177.

Senate Vote:    Yeas    48        Nays    0        Absent    1

House Vote:    Yeas    97        Nays    0        Absent    1

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State