

FIRST ENGROSSMENT
with Senate Amendments

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1478

Introduced by

Representatives Berg, Belter, Nelson, Pollert

Senators Espeguard, Klein

1 A BILL for an Act to create and enact a new subsection to section 57-43.1-01 of the North
2 Dakota Century Code, relating to a definition of E85 fuel; to amend and reenact sections
3 57-43.1-02 and 57-43.1-28 of the North Dakota Century Code, relating to reduced motor
4 vehicle fuels tax rate for sales of E85 fuel, deposit of taxes on that fuel in the township highway
5 aid fund, and to provide for transfer of funds to the highway tax distribution fund; to provide an
6 effective date; and to provide an expiration date.

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

8 **SECTION 1.** A new subsection to section 57-43.1-01 of the North Dakota Century
9 Code is created and enacted as follows:

10 "E85 fuel" means a petroleum product that is a blend of agriculturally derived
11 denatured ethanol and gasoline or natural gasoline that typically contains
12 eighty-five percent ethanol by volume, but at a minimum must contain sixty percent
13 ethanol by volume. E85 produced for use as a motor fuel must comply with ASTM
14 specification D 5798-96.

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

17 **57-43.1-02. Tax imposed on motor vehicle fuels.**

- 18 1. Except as otherwise provided in this section, a tax of twenty-one cents per gallon
19 [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
20 2. Sale of E85 fuel is exempt from the tax imposed under subsection 1 and is instead
21 subject to a tax of one cent per gallon [3.79 liters] on all E85 fuel sold or used in
22 this state. The tax imposed under this subsection is not subject to refund under
23 section 57-43.1-03 or 57-43.1-03.1. Within the scope of this section, the entire
24 amount of this tax exemption must be available to consumers of E85.

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

20 **SECTION 3. AMENDMENT.** Section 57-43.1-28 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-43.1-28. Transfer, deposit, and distribution of funds.** Taxes, license fees,
23 penalties, and interest collected under the provisions of this chapter must be transferred to the
24 state treasurer who shall deposit the moneys collected to the highway tax distribution fund,
25 except the entire proceeds of the tax imposed on E85 fuel under subsection 2 of section
26 57-43.1-02 must be deposited in the township highway aid fund and allocated as provided in
27 section 54-27-19.1. At the time of each transfer for deposit in the highway tax distribution fund,
28 the tax commissioner shall certify to the state treasurer the number of gallons of E85 fuel sold
29 or used in this state during the time period covered by that transfer and exempt from the tax
30 under subsection 1 of section 57-43.1-02. The department of commerce shall seek approval
31 for the transfer to the state treasurer of twenty cents for each gallon certified by the tax

1 commissioner, from the agricultural products utilization commission funding for deposit in the
2 highway tax distribution fund. The highway tax distribution fund must be distributed in the
3 manner prescribed by section 54-27-19.

4 **SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for
5 taxable events occurring after June 30, 2005, and through the month in which a cumulative
6 total of 1,200,000 gallons of E85 fuel has been reported to the commissioner as required in
7 section 57-43.1-02, and after that date is ineffective.