CHAPTER 57-43.1
MOTOR VEHICLE FUELS AND IMPORTER FOR USE TAXES

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 person importing or purchasing motor vehicle fuel for resale.
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.
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 [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, distributor, or consumer.
13. "Importer" means a refiner, supplier, distributor, or consumer 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; or 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.
16. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
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.
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 or fuel used as a component of or additive to another product when the use is not intended to result in combustion. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.
19. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, 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.
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.

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.
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.

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

1. Except as otherwise provided in this section, a tax of twenty-three cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. A refiner, supplier, or distributor shall remit the tax imposed by this section 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.
3. 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.

57-43.1-02.1. Additional motor vehicle fuels taxes.

Repealed by S.L. 1997, ch. 499, § 3.

57-43.1-03. Refund of tax for fuel used for an industrial purpose - Reduction for agricultural products utilization fund.

Any consumer who buys or uses any motor vehicle fuel for an industrial purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter.

57-43.1-03.1. Refund of tax for fuel used for agricultural purposes.

Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter.

57-43.1-03.2. Refund of tax for fuel purchased by native Americans - Fuels tax refund reserve fund - Continuing appropriation.

1. A native American may file a claim with the tax commissioner for a refund of motor vehicle fuel taxes paid by that person under this chapter or special fuel taxes paid under chapter 57-43.2 if the motor vehicle fuel or special fuel was purchased from a retail fuel dealer located on the Indian reservation where the native American is an enrolled member and the fuel was delivered to the native American on that reservation. The refund provisions of this chapter apply to refund claims made under this section.
2. A fuels tax refund reserve fund is created as a special fund in the state treasury. The tax commissioner shall deposit in that fund such amounts from motor vehicle fuel tax and special fuel tax collections as necessary to be expended for refunds to which native American government entities may be entitled under qualifying circumstances and conditions determined by the attorney general. There is appropriated as a continuing appropriation out of funds set aside under this subsection so much of the funds as is necessary to meet the expenditures authorized under this subsection and such funds may be expended for that purpose.

57-43.1-03.3. Refund - Emergency medical services operation - Fire department.

1. Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 or a fire department is entitled to a refund of taxes paid under this chapter for motor vehicle fuel purchased and used by the emergency medical services operation or fire department.
2. The refund provided for in this section is not subject to reduction for deposit in the agricultural products utilization fund or the agricultural research fund.
3. For purposes of this section, "fire department" means a fire department or fire district that has filed a certificate of existence under section 18-04-02 which has been approved.

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 indicate 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 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, 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 supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

57-43.1-05. Claim for refund - Limitation on filing.

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

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

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

57-43.1-06. Refund to prevent taxation by multiple jurisdictions.

Any person to whom motor vehicle 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 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. 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.

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.

57-43.1-07. Commissioner to examine and pay claims.

Within thirty days of the receipt of a claim for a refund of tax, the commissioner shall examine the claim and, if there are no apparent discrepancies, shall prepare an abstract showing the claim number and the name, address, and the amount due each claimant. All claims approved by the commissioner must be paid by warrant-checks prepared by the office of management and budget. The state treasurer is not required to retain the canceled checks by which any refund may have been paid for a period of more than six years from July first of the fiscal year in which the refund check is issued.

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 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 agricultural products utilization fund.

57-43.1-09. Refunds to private individuals or corporations prohibited - Exception.

Repealed by S.L. 1997, ch. 498, § 18.

57-43.1-10. Invoice issued to purchaser.

Repealed by S.L. 1997, ch. 498, § 18.

57-43.1-11. Assignment of refund claims.

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

57-43.1-12. Permit required during certain period - Revocation.

Repealed by S.L. 1997, ch. 500, § 2.

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.

57-43.1-13. 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 motor vehicle 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 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.

57-43.1-14. 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 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. 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.
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 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.

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.

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.

57-43.1-15. 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 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.

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.

57-43.1-16. 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 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. The tax commissioner may, upon request and for good cause shown, grant an extension of time to file a report not to exceed thirty days.
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 physical inventory at the beginning of the calendar month, the number of gallons in physical 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.

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. The tax commissioner may, upon request and for good cause shown, grant an extension of time to file a report not to exceed thirty days.
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.

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.

57-43.1-17. Commissioner to audit report 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 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 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 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 in a tax 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 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 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.

57-43.1-17.1. Determination if no report is filed.

If a person fails, neglects, or refuses to file a motor vehicle 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 57-43.1-21. An assessment made by the commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any case when 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.

57-43.1-17.2. Corporate officer liability.

1. 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, the president, vice president, secretary, or treasurer, jointly or severally, 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.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post and maintain with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the corporation.

57-43.1-17.3. Governor and manager liability.

1. 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 governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member'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 under the provisions of this chapter.

2. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post and maintain with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

57-43.1-17.4. 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, together 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 indexing 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 indexing system the following data:
   a. The name of the taxpayer.
   b. The name "State of North Dakota" as claimant.
   c. The date and time the notice of lien was indexed.
   d. The amount of the lien.
   e. The internal revenue service taxpayer identification number or social security number of the taxpayer.

   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 may be indexed in the central indexing 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 indexing system, the commissioner shall index a satisfaction of the lien in the central indexing 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.

57-43.1-17.5. Liability of a general partner in a limited liability limited partnership.

1. If a limited liability limited partnership holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, the general partners, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payment of the tax are personally liable for the partnership's failure. The dissolution of a limited liability limited partnership does not discharge a general partner's liability for a prior failure of the partnership 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.
2. If the general partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability limited partnership must make a cash deposit or post and maintain with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated motor fuel tax liability of the limited liability limited partnership.

57-43.1-18. Sale in original package - Invoice - Delivery of copies.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-19. Sale to consumer in original package - Invoice required.

Repealed by S.L. 1997, ch. 498, § 18.

57-43.1-20. Tax chargeable to consumer.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-21. 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 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.

57-43.1-22. Conditions precedent to reinstatement of license.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-23. Payment of tax.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-24. Tax collection allowance.

The person required to remit the tax imposed by this chapter shall retain two percent 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.

57-43.1-25. Retention of records - Subject to inspection.

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. 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.

57-43.1-26. Inventory gains - Losses.

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 monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner. 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-half 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 above the one-half of one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the 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.

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

When a supplier or distributor in motor vehicle fuels makes a sale to a retail outlet, the supplier or distributor shall credit the retail outlet with one-half of 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 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.

57-43.1-28. Transfer, deposit, and distribution of funds.

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.

57-43.1-29. Motor fuel and other motor vehicle taxes to be used for highway purposes.

After deducting from state motor vehicle registration fees, license fees, motor fuel taxes, and other special taxes imposed on motor vehicle owners and operators, other than driver's license fees, the cost of administration and collection authorized by legislative appropriation only, the proceeds remaining must be used for the construction, improvement, and maintenance of highways and the associated expenses of administration and for no other purpose, except the proceeds remaining as revenue from aviation gasoline taxes and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft.

57-43.1-30. 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 efficient administration and enforcement of this chapter and may adopt and enforce reasonable rules relating to the administration and enforcement of this chapter.

57-43.1-31. Penalty.

Repealed by S.L. 1999, ch. 526, § 84.

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 five dollars.

57-43.1-33. Levy of importer for use tax.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-34. Computation.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-35. Exemptions.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-36. Importer for use license required.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-37. Issuance and display.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-38. Assignment forbidden.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-39. Revocation, cancellation, and surrender of importer for use license.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-40. Occasional trip permits.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-41. Authorization of the commissioner.
Repealed by S.L. 1993, ch. 564, § 7.

57-43.1-42. Credit for North Dakota purchases - Refunds.
Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-42.1. Credit for taxes paid on worthless accounts and refunds.
Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-42.2. Nonrefundability of taxes.
Repealed by S.L. 1993, ch. 564, § 7.

57-43.1-43. Importer for use tax, reports, payments, records, penalties, disposition of funds, audits, and assessments.
Repealed by S.L. 1999, ch. 526, § 84.

57-43.1-44. Cooperative motor vehicle fuels agreements.
1. The director may enter into cooperative agreements for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The director may disclose the location of officers, motor vehicles, and other real and personal property of users of motor fuels.
4. An agreement may provide for audits of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate or internationally, to determine if the motor fuel taxes due are properly reported and paid. The findings of audits performed on persons that have a taxable use of motor fuels may be shared among parties to a cooperative agreement. For persons not based in this state and who have taxable use of motor fuel in this state, the director or the commissioner may serve the audit findings, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.
5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

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.

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.

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.