CHAPTER 57-43.3
AVIATION FUEL TAX

57-43.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Aviation fuel" means aviation gasoline, kerosene, jet 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. "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. "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 [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.

57-43.3-02. Tax imposed on aviation fuel.

1. 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.

57-43.3-03. Refund of tax.

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.
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.
4. The tax commissioner shall deposit in a fund known as the aviation fuel tax refund reserve, such amounts from aviation fuel tax collections as the commissioner deems necessary to pay refunds to persons entitled to refunds under this section.

57-43.3-03.1. 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 aviation fuel purchased and used by the emergency medical services operation or fire department.
2. 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.

57-43.3-04. Special excise tax levied.

Repealed by S.L. 2017, ch. 59, § 7.

57-43.3-05. Administration of tax.

Repealed by S.L. 1999, ch. 526, § 84.

57-43.3-06. Distribution of revenue.

Repealed by S.L. 2017, ch. 59, § 7.

57-43.3-07. Allocation of unclaimed refund revenue - Appropriation.

The tax collected by the commissioner under section 57-43.3-02, upon which no refund is claimed, and those revenues remaining as unclaimed refunds must be transferred to the state treasurer, who shall deposit the moneys in the aeronautics commission special fund. These funds are appropriated to the commission.

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.

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.

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.

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.

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.

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.

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. 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 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.

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. 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 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.

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.

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.

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.

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 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 the evidence that it is erroneous or excessive.

57-43.3-20. 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, 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.
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 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 annual aviation fuel tax liability of the corporation.

57-43.3-21. 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 governor, manager, or member of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments, is 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 pursuant to the provisions of this chapter.
2. If the governors, managers, or members of a limited liability company 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 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 annual aviation fuel tax liability of the limited liability company.

57-43.3-21.1. 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 annual aviation fuel tax liability of the limited liability limited partnership.

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 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.

57-43.3-23. 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.

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.

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.

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 monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner. 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.

57-43.3-27. Administration - Assistants and investigations authorized - Rules.

The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistants 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.

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.