

1999 SENATE FINANCE AND TAXATION
SB 2177

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2177

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 01/18/99

Tape Number	Side A	Side B	Meter #
1	x		1475-end
Committee Clerk Signature <i>Shila Ward</i>			

Minutes:

SEN. URLACHER called the hearing to order. A BILL RELATING TO THE MOTOR VEHICLE FUEL TAX, THE SPECIAL FUEL TAX, INTERSTATE MOTOR CARRIERS TAX, AND THE AVIATION FUEL TAX, AND TO AMEND AND REENACT SECTIONS. JOAN GALSTER-TAX DEPARTMENT, submitted testimony. [ATTACHED] She stated the testimony submitted, was in sections and the Sen. could review it on their own time. Changes in existing law is to be cleared up. This bill will create uniformity. It changes existing law that needs to be clarified. We treat the Aviation section like the other two sections, give it the same types of definition, same licensing and reporting requirements, same delinquent fees, same hearing procedures, etc. There is a provision to increase the licensing fees from \$10. to \$20. All others are \$20.00. The fees are credited to the General Fund. Under special fuel the \$ goes to the Highway Distribution Fund. Used strictly for maintenance.

SEN. STENEHJEM-Who are the additional people to be taxed?

JOAN GALSTER-About 40 Business, that deal in aviation fuel. The interstate motor carriers would have to be licensed, and terminal operators would be about 5.

Sen. STENEHJEM- In the past have we charged or not charged tax on aviation fuel?

JOAN GALSTER-There is aviation fuel tax in place.

SEN. STENHJEM-It shows the bill has a fiscal note. Where does the minus come from?

JOAN GALSTER- It is the commission and shrinkage allowance. Up until this time there has been no commission. It would give them the commission, and this is where the negative comes in.

SEN. STENEHJEM-How many dollars are we talking about? The fees that are going into the General Fund and the Highway Fund?

JOAN GALSTER-About \$200.00, in a fiscal year.

SEN. URLACHER-What is the HB in relation to this? If this bill doesn't pass HB won't pass either.

JOAN GALSTER-The HB is a companion to this bill. We do expect it to pass.

DAVE FROELICH-Chairman of ND Marketeers Association. I appear here to support the bill. This bill will improve the process for marketeers .

DICK ELKIN-I am in support of the concept of the bill. Railroads are not primary transporters of fuel. In recent the tank truck has replaced us in hauling. This bill does have an impact on the railroad reporting requirements. This bill requires records maintained and reported. Requires the transporter to become part of the enforcement process. If you change one word-on page 19, line 21, pg 48-line 19, and on pg. 68 line 8, take out rail car. We haul a lot of special fuel, not

Page 3
Senate Finance and Taxation Committee
Bill/Resolution Number Sb 2177
Hearing Date 01/18/99

aviation fuel. One of the suppliers in ND is Amocco Oil, in Mandan. The refinery collects the tax and remits it.

SEN STENEHJEM- Do you foresee a problem by taking rail car out of the section?

JOAN GALSTER-It depends on how much fuel is being hauled by the Railroad, The language in the particular section is taken from So. Dak. Fuel is taxed in jurisdiction where it came to rest.

SEN. URLACHER-Any questions or discussion. Close hearing on 2177.

DISCUSSION TO DO PASS W/ AMENDMENTS MADE BY SEN STENEHJEM AND

SECONDED BY SEN WARDNER. 7 Y - 0 N. TAPE 3090-END # 3 TAPE 1/27/99

FISCAL NOTE

(Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: SB 2177

Requested by Legislative Council

Date of Request: 1/28/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: SB 2177, as amended, is expected to reduce special fund revenues as shown below:

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				-\$19,400		
Expenditures						

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: _____

4. **County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: January 29, 1999

Phone Number: 328-3402

"Revised"

FISCAL NOTE

Turn original and 14 copies)

Bill/Resolution No.: SB 2177

Amendment to: _____

Requested by Legislative Council

Date of Request: 1/4/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: SB 2177 is expected to reduce special fund revenues as shown below:

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				-\$19,400		
Expenditures						

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- a. For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: _____

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: January 15, 1999

Phone Number: 328-3402

FISCAL NOTE

Return original and 10 copies)

Bill/Resolution No.: SB 2177

Amendment to: _____

Requested by Legislative Council

Date of Request: 1/4/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: SB 2177 will impact revenues by less than \$5,000 during the 1999-2001 biennium.

2. **State fiscal effect in dollar amounts:**

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						

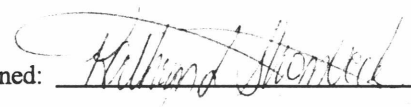
3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: _____

County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: 

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: 1-5-99

Phone Number: 328-3402

PROPOSED AMENDMENTS TO SENATE BILL NO. 2177

Page 1, line 19, after "57-43.2-13," insert "57-43.2-16,"

Page 14, line 17, remove "order"

Page 35, line 3, replace "or" with an underscored comma and after "distributor" insert ", or
retailer"

Page 35, line 4, remove ", on the wholesale distribution of special"

Page 35, line 5, remove "fuel to a retailer."

Page 35, line 9, after the first underscored comma insert "on a sale by a distributor to a
retailer."

Page 35, line 12, remove "to the retailer and" and after the underscored period remove "A
retailer who paid the tax to the supplier or"

Page 35, remove line 13

Page 36, line 1, replace "or" with an underscored comma and after "distributor" insert ", or
retailer"

Page 36, line 2, remove ", on the wholesale distribution of special"

Page 36, line 3, remove "fuel to a retailer."

Page 36, line 7, after the first underscored comma insert "on a sale by a distributor to a
retailer."

Page 36, line 10, remove "to the retailer and" and after the underscored period remove "A
retailer who paid the tax to the supplier or"

Page 36, remove line 11

Page 37, line 22, after the first underscored comma insert "a sale by a distributor to a retailer."

Page 37, line 24, remove "retailer and to the"

Page 39, line 13, after "exporter." insert "retailer."

Page 39, line 20, after "exporter." insert "retailer."

Page 40, line 27, after "distributor," insert "retailer."

Page 42, line 13, remove "order"

Page 45, line 18, after "distributor," insert "retailer."

Page 45, line 23, after "distributor," insert "retailer."

Page 63, line 26, remove "order"

Page 76, line 21, after "57-43.2-13," insert "57-43.2-16,"

Renumber accordingly

Date: 1/25/99
 Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2177

Senate Senate Finance and Taxation Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass w/ Amendment

Motion Made By Christmann Seconded By Schobinger

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER		✓			
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER		✓			
SENATOR KINNOIN		✓			
SENATOR KROEPLIN		✓			

Total (Yes) 3 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Failed

Date: 4/25/77
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2177

Senate Senate Finance and Taxation Committee
Finance + Tax

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass w/ Amend

Motion Made By Sen Stenehjem Seconded By Sen. Wardner

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Wardner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2177: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2177 was placed on the Sixth order on the calendar.

Page 1, line 19, after the sixth comma insert "57-43.2-16,"

Page 14, line 17, remove "order"

Page 35, line 3, replace "or" with an underscored comma and after "distributor" insert ", or retailer"

Page 35, line 4, remove ", on the wholesale distribution of special"

Page 35, line 5, remove "fuel to a retailer,"

Page 35, line 9, after the first underscored comma insert "on a sale by a distributor to a retailer,"

Page 35, line 12, remove "to the retailer and" and remove "A retailer who paid the tax to the supplier or"

Page 35, remove line 13

Page 36, line 1, replace "or" with an underscored comma and after "distributor" insert ", or retailer"

Page 36, line 2, remove ", on the wholesale distribution of special"

Page 36, line 3, remove "fuel to a retailer,"

Page 36, line 7, after the first underscored comma insert "on a sale by a distributor to a retailer,"

Page 36, line 10, remove "to the retailer and" and remove "A retailer who paid the tax to the supplier or"

Page 36, remove line 11

Page 37, line 22, after the first underscored comma insert "a sale by a distributor to a retailer,"

Page 37, line 24, remove "retailer and to the"

Page 39, line 13, after the fourth underscored comma insert "**retailer,**"

Page 39, line 20, after the second underscored comma insert "retailer,"

Page 40, line 27, after the first underscored comma insert "retailer,"

Page 42, line 13, remove "order"

Page 45, line 18, after the third underscored comma insert "**retailer,**"

Page 45, line 23, after the third underscored comma insert "retailer,"

Page 63, line 26, remove "order"

Page 76, line 21, after the sixth comma insert "57-43.2-16,"

Renumber accordingly

1999 HOUSE FINANCE AND TAXATION

SB 2177

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2177

House Finance and Taxation Committee

Conference Committee

Hearing Date March 2, 1999

Tape Number	Side A	Side B	Meter #
1		x	33.9
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

JOAN GALSTER, MOTOR FUEL TAX SUPERVISOR, OFFICE OF THE STATE TAX

COMMISSIONER, Testified in support of the bill, see written testimony. Gave an explanation of the engrossed bill.

REP. BELTER Asked if HB 1462 should fail in the Senate, then does there need to be amendments to this bill.

JOAN GALSTER No, this bill stands alone. It is the other bill that would need amendments if this bill fails.

REP. BELTER Are there any provisions in this bill for the enforcement of clear fuels?

JOAN GALSTER There is not. We did not deal with issues of tax rates nor of any additional dyed fuels enforcement, this is more of a technical bill.

REP. CLARK Referred to page 35, lines 11 - 13, is that really necessary?

JOAN GALSTER Stated it is standard language in motor fuels tax legislation to indicate the tax is actually a consumer tax, so that the seller of the fuel is the collector of the tax, and owes it at the time they sell it. That person has the right to pass it on down to the consumer. We have had situations where that has been in question in the past.

RON NESS, PRESIDENT OF THE NORTH DAKOTA PETROLEUM MARKETERS ASSN.

Testified in support of the bill. See written testimony. Referred to Rep. Clark's question - stating it is not as easy to pass on a gas tax in all situations as the public may think. Competition dictates the price of gas at the pump.

With no further testimony, the hearing was closed.

COMMITTEE ACTION (3-2-99), Tape #2, Side A, Meter #20.4

After discussion, committee members decided to wait with acting on the bill until a later date.

COMMITTEE ACTION (3-10-99), Tape #1, Side A, Meter #11.0

REP. GRANDE Made a motion for a DO PASS.

REP. MICKELSON Second the motion. MOTION CARRIED.

14 Yes 0 No 1 Absent.

REP. CLARK Was given the floor assignment.

Please type or use black pen to complete

Date 3-10-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2177

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Grande Seconded By Rep. Mickelson

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep. Clark

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
March 10, 1999 1:36 p.m.

Module No: HR-43-4456
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2177, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2177 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2177

MEMORANDUM

TO: Herb Urlacher, Chairman
Senate Finance & Tax Committee

FROM: Joan Y. Galster, Motor Fuel Supervisor
Office of State Tax Commissioner

RE: SB2177 - SECTIONS 17, 48, & 71 - Common or Contract Carriers

DATE: January 19, 1999

I contacted Donald W. Hagemen, the South Dakota motor fuels tax attorney, regarding their common or contract carrier provisions. South Dakota's law does include railroads in their common or contract carrier provisions. South Dakota has a very small rail system and it is believed that fuel is not being hauled by rail in that state. Mr. Hagemen said there may be some ethanol exported by rail but that is probably the extent of it. To date they have not received a diversion ticket from a railroad. Their law has been in effect since January 1, 1996.

Mr. Hagemen stated that there was no opposition by railroads in their state when the legislation was passed. South Dakota included railcars in their legislation so as to cover all possible means by which fuel can be transported. He further stated that, in his opinion, a railroad assumes certain responsibilities when it hauls fuel as a common carrier and those responsibilities include record keeping requirements. However, if a railroad never has a diverted load situation it should also never have any additional record keeping to do.

MEMORANDUM

TO: Herb Urlacher, Chairman
Senate Finance & Tax Committee

FROM: Joan Y. Galster, Motor Fuel Supervisor
Office of State Tax Commissioner
Phone: 8-3139

RE: SB2177 - SECTIONS 17, 48, & 71 - Common or Contract Carriers

DATE: January 20, 1999

I contacted David Casey, Audit Services Section Supervisor for the Department of Revenue and Finance in Iowa. Iowa included railroads in their common and contract carrier provisions in order to cover all carriers which could conceivably haul fuels. They had no opposition from railroads when their legislation was introduced. They had no opposition from any common or contract carrier.

Mr. Casey stated that to date he has no knowledge of a railroad filing a diverted load ticket. He also stated that to date Iowa has not actively enforced the common or contract carrier provision; partly due to the fact that they are getting much better information from terminals and suppliers than they used to which makes the carrier information less crucial. Mr. Casey added that the revenue department should, however, be able to obtain whatever information it needs whenever it is needed.

Mr. Casey indicated that it would perhaps be a rare situation for a railroad to have a diverted load situation, but that if it were to occur, the railroad would already have a record of it for billing purposes. In other words, if fuel is loaded onto a railcar at a terminal located at Point A and the bill of lading shows the destination is Point C. If the fuel is instead downloaded at point B, the railroad would need to alter its billing to reflect changes in any freight or other related charges and would have to provide shipping records related to that change. In an audit situation, an auditor would follow the load of fuel from the terminal to the destination using the bill of lading information and subsequent billing information. If the railroad is not included in this provision, it could not be audited. Fuel purchased by the railroad for its own use is an entirely different issue.

1/18/99 9:30

SB2177

Testimony by: Joan Y. Gaister ✓
Motor Fuel Tax Section Supervisor
Office of State Tax Commissioner

Senate Finance & Tax Committee - January 18, 1999

The Office of State Tax Commissioner and a Petroleum Marketer's study group have met several times during the past three years to study the North Dakota motor fuel tax laws and to discuss changes to clarify existing law, delete obsolete language, and to create uniformity between the three fuel tax Chapters.

For study purposes, the motor fuel tax law was divided into two major categories:

1. The statutes involving application of tax on sales to consumers, record keeping requirements for dealers relative to those sales, record keeping requirements for consumers, and refunds to consumers.
2. The statutes involving terminology, licensing, inventory reconciliations, reporting requirements, terminal operator responsibilities, common or contract carrier responsibilities, and other issues related to the sellers of fuel.

The first category was covered during the 1997 Legislation Session in HB 1311 which was passed and became effective April 1, 1997.

The second category consists of the issues before you today. The copy of my testimony handed out to you concludes with a SECTION by SECTION explanation to be used as a companion to the bill.

The three tax chapters involved in this bill are "Motor Vehicle Fuel" (gasoline/gasohol) Chapter 57-43.1, "Special Fuel" (heating, diesel, propane, kerosene, CNG) Chapter 57-43.2, and "Aviation Fuel" (aviation gasoline, jet fuel) Chapter 57-43.3.

The majority of the bill consists of technical changes involving tax law administration intended to delete obsolete language, restate and reorganize existing provisions for purposes of clarity, and to add provisions which are lacking under current law.

The Motor Vehicle Fuel tax Chapter 57-43.1 and the Special Fuel tax Chapter 57-43.2 contain provisions covering the same topics; however, the provisions are worded differently and appear in different parts of the respective Chapters. Also, several topics are addressed in more than one Section within each tax Chapter. This bill is intended to reorganize the existing provisions into Sections by topic within each Chapter, and to establish uniformity between the two tax Chapters.

The Aviation Fuel tax Chapter 57-43.3 lacks definitions, licensing and reporting requirements, imposition of penalty and interest, and any related administrative provisions. It vaguely refers to one of the other tax Chapters for administration of the tax. This bill is intended to make this tax Chapter uniform with the other two fuel tax Chapters.

The following SECTIONS of the bill contain provisions not found in current law and other changes of significance:

1. **SECTIONS 5, 37, and 61** create provisions allowing for a tax credit or tax refund to any reseller of fuel when the state tax has been paid and the fuel is resold to an agency of the U.S. Government. The issue involves credit card sales. Previously the credit cards were issued by major oil companies who made adjustments to their tax returns covering these transactions. Currently there are independent credit card companies involved shifting the burden of the adjustments down to local fuel sellers including retailers. Current law does not provide for these situations.
2. **SECTIONS 9, 39, and 63** create a requirement that terminal operators must obtain a license, and **SECTIONS 16, 47, and 70** require that they file reports. Currently terminal operators voluntarily provide the Commissioner with copies of bills of lading covering all fuel disbursed over the rack at in-state terminals; however, there is no statutory authority to require that information. The terminal information is crucial for determining fuel disbursements by major fuel suppliers.

SECTION 9 also makes a change in the Fund to which the motor vehicle fuel license fee is deposited. Under current law, 57-43.1-14 (see SECTION 10) includes the provisions for license fees and requires that the fees be credited to the general fund. This provision is not consistent with Article X, Section 11 of the Constitution of North Dakota which requires that motor fuel license fees be apportioned and used solely for construction,

reconstruction, repair and maintenance of public highways. Nor is it consistent with the provisions in the Special Fuel tax Chapter. The amendment deletes the language referring to the general fund and thereby causes the deposit to be made to the Highway Distribution Fund along with any other revenue collected under the fuel tax Chapters.

3. **SECTIONS 11, 12, 41, 42, 65, and 66** create provisions that "importers" and "exporters" of fuel (for resale) be required to supply proof that they are licensed in the jurisdiction from which the fuel is imported and in the jurisdiction into which the fuel is exported.
4. **SECTIONS 16, 47, and 70** create a requirement that terminal operators be required to file reports. Fuel receipt and disbursement transactions at a terminal is crucial information for total accountability purposes. The proposed provisions are in line with those adopted by other states.
5. **SECTIONS 17, 48, and 71** create a requirement that common or contract carriers hauling fuel be licensed, retain records, be subject to audit, and be required to report diverted loads. The provisions are compatible with similar requirements in other states and are crucial in accurately verifying imports and exports.
6. **SECTION 78** creates a penalty and interest requirement for aviation fuel tax. Current law does not provide for penalties or interest on late or unpaid aviation fuel tax.
7. **SECTION 79** creates a collection allowance of 1% of the tax due, to a maximum of \$500, for aviation fuel tax. The provision is identical to that for special fuels. Current law does not provide for such an allowance for aviation fuel.
8. **SECTIONS 28, 29,30, 56, 57, and 59** cover licensing and reporting requirements for interstate motor carriers. Current language is not compatible with the International Fuel Tax Agreement; therefore, this bill repeals the current sections covering these issues and consolidates the provisions into fewer sections.

PROPOSED AMENDMENTS TO THE BILL:

I handed out proposed amendments to this bill for your consideration. When the bill was initially drafted it contained an amendment to 57-43.2-03 changing the 2% special fuel excise tax

to \$.20 per gallon. If the tax were at \$.20 per gallon, rather than applied to the cost of the fuel, retailers would not need to be licensed and a supplier or distributor could pass the tax on making this tax application uniform with what is done in the motor vehicle fuel tax chapter. However, it was determined that such a change should not be part of an agency technical bill and it was removed accordingly. If the tax is to remain at 2%, which it does in this bill, retailers will continue to need licenses to allow them to purchase the fuel tax free and to make tax payments directly to the commissioner. In the process of revising the bill draft, I failed to target the changes needed to the sections covering licensing, bonding, and reporting. The majority of the proposed amendments to this bill rectify that problem.

SECTIONS 10, 40, and 63 of the bill cover bonding requirements and provide that "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 language goes on to state that "The **money order received** must be paid by the commissioner to the state treasurer...." It should read "The **money received**..."

Existing 57-43.2-16 covers the commissioner's authority to make a determination in the event that a required tax return is not filed. Those provisions are replaced by 57-43.2-14.1 in SECTION 50 of this bill; therefore, existing 57-43.2.16 should be repealed.

This bill stands alone but it also sets the base for a companion bill being introduced to move the point of taxation for motor vehicle fuel and special fuels to the rack (supplier level).

**The following is a SECTION by SECTION explanation
which may be used as a companion to the bill**

MOTOR VEHICLE FUEL (GASOLINE/GASOHOL) - TAX CHAPTER 57-43.1.

1. **SECTION 1 - p. 2 - AMENDMENT:**

Section 57-43.1-01. Definitions.

◆ **Subsections 7, 9, 13, 24, 26, 28, and 31:** Specific industry terms "distributor," "exporter," "importer," "refiner," "retailer," "terminal operator," and "supplier," replace the term "dealer" (current subsection 4). Using specific terms helps to clarify exactly which "person" in the fuel industry is referenced throughout the statute.

◆ **Subsections 3, 5, 8, 10, 11, 12, 20, 21, 23, 25, 29, 30, and 32:** These are definitions of

terms with specific meanings and which are used throughout the chapter.

◆ **Subsection 15:** The term "importer for use" defined in current subsection 6 is no longer appropriate. The correct term is "interstate motor carrier." This new subsection restates current subsection 6 to make that correction.

◆ Other amendments to the definitions consist of deleting terms no longer used in the statute and clarify the meaning of existing terms.

(For comparable provisions for the Special Fuel tax chapter, see SECTION 31, p. 29, and for comparable provisions for the Aviation Fuel tax chapter, see SECTION 59, p.57.)

2. **SECTION 2 - p. 7 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Change the term "dealer" to the applicable industry terms.

◆ Combine language covering tax imposition and tax remittance into one section. Currently 57-43.1-02, 57-43.1-20, and 57-43.1-23 cover this topic.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

(For comparable provisions for the Special Fuel tax chapter see SECTION 32, p. 34, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 60, p. 60.)

3. **SECTION 3 - p. 8 - AMENDMENT:**

57-43.1-04 - Form of claim for refund.

◆ The intent of this amendment is to delete the term "dealer" and to replace it with specific industry terms.

4. **SECTION 4 - p 9 - AMENDMENT:**

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

◆ The amendment removes reference to the special fuel tax chapter 57-43.2. A new section is proposed within the special fuel tax chapter to cover this issue.

(For comparable provisions for the Special Fuel tax chapter see SECTION 36, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p. 60.)

5. **SECTION 5 - p. 9- CREATE NEW SECTION:**

Section 57-43.1-06.1 - Refund of tax on tax exempt sales.

◆ The new section provides that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

(For comparable provisions for the Special Fuel tax chapter see SECTION 37, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p.60.)

6. **SECTION 6 - p. 10 - AMENDMENT:**

Section 57-43.1-08 - Refund to state or political subdivision.

◆ The intent of this amendment is to change the name of the fund into which the revenue is to be deposited from “agriculturally derived agriculture fuel tax fund” to “agricultural fuel tax fund.” This is requested so that the name of the fund coincides with the name given to the same fund in sections 57-43.1-03 and 57-43.1-03.1.

7. **SECTION 7 - p. 10 - AMENDMENT:**

Section 57-43.1-11 - Assignment of refund claims.

◆ The intent of this amendment is to delete the term “dealer” and to clarify existing language.

8. **SECTION 8 - p. 10 - CREATE NEW SECTION:**

Section 57-43.1-12.1 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent is to repeal section 57-43.1-42.1 where the provisions now appear and to reenact those provisions in a more appropriate place within the tax chapter. (See SECTION 84, p. 76 for the requested repeal.)

(For comparable provisions for the Special Fuel tax chapter see SECTION 38, p. 39, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 72, p. 70.)

9. **SECTION 9 - p. 11 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Delete the term “dealer” and to replace it with specific industry terms.

◆ Clarify who must be licensed. The amendment specifically excludes retailers from the licensing requirements. Currently, all retailers should be licensed; however, in practice they are not required to do so but may elect to pay the tax to the supplier or distributor.

◆ Combine provisions covering who must be licensed, what is required on an application for a license, signature requirements, and license fees into one section for purposes of clarity.

◆ Require terminal operators to be licensed. This provision is compatible with motor fuel tax laws in other states and is used to assure total accountability of fuel available for sale in the state.

◆ Delete the requirement that the license fee be deposited into the General Fund. Article X Section 11 of the Constitution of North Dakota provides that all motor vehicle fuel tax license fees be deposited into the Highway Distribution Fund. This amendment makes that correction and makes the provision uniform with the Special Fuel tax chapter under which the license fees are deposited into the Highway Distribution Fund. There is no change to the current license fee of \$20.00.

(For comparable provisions for the Special Fuel tax chapter see SECTION 39, p. 39, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 63, p. 61.)

10. **SECTION 10 - p. 12 - AMENDMENT:**

Section 57-43.1-14 - Bond or letter of credit required.

The intent this amendment is to:

◆ Retain the mandatory requirement that a security must be submitted with an application for a new license but change the minimum time period after which the Commissioner

may waive the bond requirement from three years to five years. Three years is insufficient time to determine whether a business is financially secure.

◆ Remove provisions regarding licenses and relocate those provisions to 57-43.1-13 (see SECTION 9, p. 11.)

(For comparable provisions for the Special Fuel tax chapter see SECTION 40, p. 40, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 64, p. 63.)

11. **SECTION 11 - p. 14 - CREATE NEW SECTION:**

Section 57-43.1-14.1 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Special Fuel tax chapter see SECTION 41, p. 42, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 65, p. 64.)

12. **SECTION 12 - p. 15 - CREATE NEW SECTION:**

Section 57-43.1-14.2 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Special Fuel tax chapter see SECTION 42, p. 42, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 66, p. 64.)

13. **SECTION 13 - p. 15 - AMENDMENT:**

Section 57-43.1-15 - Application for license - issuance of license - denial of license.

The intent of this amendment is to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Special Fuel tax chapter see SECTION 43, p. 43, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 67, p. 64.)

14. **SECTION 14 - p. 16 - CREATE NEW SECTION:**

57-43.1-15.1 - Revocation of license - hearing to show cause - reinstatement.

The intent of the new section is to:

◆ Consolidate license revocation and reinstatement provisions into one section. Current provisions are interspersed with the penalty and interest provisions in 57-43.1-21 and appear in 57-43.1-22.

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

(For comparable provisions for the Special Fuel tax chapter see SECTION 44, p. 44, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 68, p. 65.)

15. **SECTION 15 - p. 16 - AMENDMENT:**

Section 57-43.1-16 - Monthly report by refiner, supplier, distributor, importer, or exporter required.

The intent of this amendment is to:

◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.

◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.

◆ Allow reports to be filed electronically.

◆ Clarify what information needs to be reported.

◆ Delete obsolete language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 46, p. 45, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 69, p. 65.)

16. **SECTION 16 - p. 18 - CREATE NEW SECTION:**

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

◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Special Fuel tax chapter see SECTION 47, p. 47, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 70, p. 67.)

17. **SECTION 17 - p. 19 - CREATE NEW SECTION:**

Section 57-43.1-16.2 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.

◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Special Fuel tax chapter see SECTION 48, p. 48, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 71, p. 68.)

18. **SECTION 18 - p. 21 - AMENDMENT:**

Section 57-43.1-17 - Commissioner to audit report and assess tax.

The intent of this amendment is to:

◆ Clarify the audit provisions.

◆ Delete obsolete language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 49, p. 50, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 73, p. 70.)

19. **SECTION 19** - p. 23 - AMENDMENT:

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

◆ The intent of this amendment is to delete the term "dealer" and to make the language generic.

(For comparable provisions for the Special Fuel tax chapter see SECTION 50, p. 52, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 74, p. 71.)

20. **SECTION 20** - p. 23 - AMENDMENT:

Section 57-43.1-21 - Penalty and interest - violations.

The intent of this amendment is to:

◆ Incorporate all penalty, interest and other violation provisions into one section.

◆ Delete language which does not apply to this issue.

Current provisions are interspersed with other language in this section and in 57-43.1-31.

(For comparable provisions for the Special Fuel tax chapter see SECTION 51, p. 52, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 78, p. 74.)

21. **SECTION 21** - p. 24 - AMENDMENT:

Section 57-43.1-24 - Tax collection allowance.

◆ The intent of this amendment is to clarify the provisions providing for a tax collection allowance.

(For comparable provisions for the Special Fuel tax chapter see SECTION 35, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 79, p. 74.)

22. **SECTION 22** - p. 24 - AMENDMENT:

Section 57-43.1-25 - Retention of records - subject to inspection.

The intent of this amendment is to:

◆ Clarify provisions relating to the retention of records.

◆ Delete the term "dealer" and replaces it with specific industry terms.

(For comparable provisions for the Special Fuel tax chapter see SECTION 45, p. 44, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 80, p. 75.)

23. **SECTION 23** - p. 25 - AMENDMENT:

Section 57-43.1-26 - Inventory gains - losses.

The intent of this amendment is to:

◆ Require physical inventories.

◆ Clarify existing provisions pertaining to inventory fluctuations.

◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions for the Special Fuel tax chapter see SECTION 54, p. 54, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 81, p. 75.)

24. **SECTION 24** - p. 26 - AMENDMENT:

Section 57-43.1-27 - Sales of motor vehicle fuels to retail outlets - tax imposed - credit for losses.

◆ The intent of this amendment is to delete the term "dealer" and replaces it with specific industry terms.

25. **SECTION 25** - p. 26 - AMENDMENT:

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

◆ The intent of this amendment is to clarify the language and to make it compatible with the Special Fuel tax chapter.

(For comparable provisions for the Special Fuel tax chapter see SECTION 52, p. 53.)

26. **SECTION 26** - p. 27 - AMENDMENT:

Section 57-43.1-30 - Administration - Assistance authorized - Rules.

◆ The intent of this amendment is to clarify the language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 55, p. 55, and for comparable provisions for the aviation Fuel tax chapter see SECTION 82, p. 76.)

27. **SECTION 27** - p. 27 - AMENDMENT:

Section 57-43.1-32 - Erroneously or illegally collected taxes.

The intent of this amendment is to change the minimum credit or refund from ten dollars to five dollars for compatibility with all other tax chapters.

(For comparable provisions for the Special Fuel tax chapter see SECTION 53, p. 53, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 83, p. 76.)

28. **SECTION 28** - p. 27 - CREATE NEW SECTION:

Section 57-43.1-45 - Motor vehicle fuel for interstate motor carriers - computation - credits - refunds.

This section, together with proposed 57-43.1-46 (SECTION 29) and 57-43.1-47 (SECTION 30), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.1-33, 57-43.1-34, and 57-43.1-42 consolidate them into one section.

(For comparable provisions for the Special Fuel tax chapter see SECTION 56, p. 55.)

29. **SECTION 29** - p. 28 - CREATE NEW SECTION:

Section 57-43.1-46 - Interstate motor carrier required to obtain license - display - revocation or cancellation of license - occasional trip permits in lieu of license.

This section, together with proposed 57-43.1-45 (SECTION 28) and 57-43.1-47 (SECTION 30), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40 consolidate them into one section.

(For comparable provisions for the Special Fuel tax chapter see SECTION 57, p. 56.)

30. **SECTION 30** - p. 28 - CREATE NEW SECTION:

Section 57-43.1-47 - Interstate motor carrier tax reports - payments - audits - assessments.

This section, together with proposed 57-43.1-45 (SECTION 28) and 57-43.1-46 (SECTION 29), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

- ◆ Replace compatible provisions in existing section 57-43.1-43.

(For comparable provisions for the Special Fuel tax chapter see SECTION 58, p. 57.)

SPECIAL FUEL (DIESEL/HEATING/CNG/LP) - TAX CHAPTER 57-43.2.

31. SECTION 31 - p. 29 - AMENDMENT:

Section 57-43.2-01. Definitions.

◆ **Subsections 7, 9, 15, 27, 29, 32, and 35:** Specific industry terms "distributor," "exporter," "importer," "refiner," "retailer," "terminal operator," and "supplier," replace the terms "dealer," "special fuel dealer," and "special fuel wholesaler." Using specific terms helps to clarify exactly which "person" in the fuel industry is referenced throughout the statute.

◆ **Subsections 3, 5, 8, 10, 11, 14, 22, 23, 28, 33, 34, and 36:** These are definitions of terms with specific meanings and which are used throughout the chapter.

◆ **Subsection 17:** The term "importer for use" defined in current subsection 8 is no longer appropriate. The correct term is "interstate motor carrier." This new subsection restates current subsection 8 to make that correction.

◆ Other amendments to the definitions consist of deleting terms no longer used in the statute and clarify the meaning of existing terms.

(For comparable provisions for the Motor Vehicle Fuel tax chapter, see SECTION 1, p. 2, and for comparable provisions for the Aviation Fuel tax chapter, see SECTION 59, p.57.)

32. SECTION 32 - p. 34 - AMENDMENT:

Section 57-43.2-02 - Tax imposed.

The intent of this amendment is to:

◆ Change the term "dealer" to the applicable industry terms.

◆ Combine language covering the per gallon tax imposition and tax remittance into one section. Currently 57-43.2-02, and 57-43.2-04 cover this topic.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer. [The bill needs to be amended and this change deleted.]

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 2, p.7, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 60, p. 60.)

33. **SECTION 33 - p. 36 - AMENDMENT:**

57-43.2-02.2 - Refund of tax for special fuel used for heating or for an agricultural, industrial, or railroad purpose.

◆ The intent of the amendment is to specify that the 2% excise tax imposed by section 57-43.2-03 be deducted from a refund of the tax imposed by section 57-43.2-02.

34. **SECTION 34 - p 36 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Change the term “dealer” to the applicable industry terms.

◆ Include provisions covering the due date.

◆ Include provisions that the commissioner pay the money over to the state treasurer.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer shall pass the tax on to the consumer. [This section of the bill needs to be amended to delete this particular provision.]

35. **SECTION 35 - p. 38 - AMENDMENT:**

Section 57-43.2-04.1 - Tax Collection allowance.

◆ The intent of this amendment is to clarify the provisions providing for a tax collection allowance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 21,

p. 24, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 79, p. 74.)

36. **SECTION 36 - p. 38 - CREATE NEW SECTION:**

Section 57-43.2-04.2 - Refund to prevent taxation by multiple jurisdictions.

◆ This section is created to include provisions for a refund of special fuel tax in the event the fuel is removed from the state for resale in another jurisdiction that is taxable in that jurisdiction. Currently reference to the Special Fuel tax chapter is included in a similar provision in the Motor Vehicle Fuel tax chapter. (See the amendment in SECTION 4 of this bill.)

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 9, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p. 60.)

37. **SECTION 37 - p. 38- CREATE NEW SECTION:**

Section 57-43.2-04.3 - Refund of tax on tax exempt sales.

◆ The new section provides that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 9, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p.60.)

38. **SECTION 38 - p. 39 - CREATE NEW SECTION:**

Section 57-43.2-04.4 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent is to repeal section 57-43.2.35.1 where the provisions now appear and to reenact those provisions in a more appropriate place within the tax chapter. (See SECTION 84, p. 76 for the requested repeal.)

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 8, p. 10, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 72, p. 70.)

39. **SECTION 39 - p. 39 - AMENDMENT:**

Section 57-43.2-05 - Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - license fees.

The intent of this amendment is to:

- ◆ Delete the term “dealer” and to replace it with specific industry terms.
- ◆ Clarify who must be licensed. The amendment specifically excludes retailers from the licensing requirements. [This section of the bill needs to be amended to require retailers to be licensed.]
- ◆ Combine provisions covering who must be licensed, what is required on an application for a license, signature requirements, and license fees into one section for purposes of clarity.
- ◆ Require terminal operators to be licensed. This provision is compatible with motor fuel tax laws in other states and is used to assure total accountability of fuel available for sale in the state.
- ◆ Include the licensing requirements for liquefied petroleum with all other special fuels and grant the commissioner an option to require a separate license. Currently provisions

for licensing "liquefied petroleum gas dealers" are found in 57-43.2-25 which is to be repealed in SECTION 84 of this bill.

◆ Change the license fee for special fuel from fifteen dollars to twenty dollars in line with the current license fees for motor vehicle fuel and for liquefied petroleum.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 9, p. 11, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 63, p. 61.)

40. **SECTION 40 - p. 40 - AMENDMENT:**

Section 57-43.2-07 - Bond or letter of credit required.

The intent of this amendment is to:

◆ Retain the mandatory requirement that a security must be submitted with an application for a new license but change the minimum time period after which the Commissioner may waive the bond requirement from three years to five years. Three years is insufficient time to determine whether a business is financially secure.

◆ Combine the security requirements for liquefied petroleum from 57-43.2-25 into this section.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 10, p. 12, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 64, p. 63.)

41. **SECTION 41 - p. 42 - CREATE NEW SECTION:**

Section 57-43.2-07.1 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 11, p. 14, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 65, p. 64.)

42. **SECTION 42 - p. 42 - CREATE NEW SECTION:**

Section 57-43.2-07.2 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 12, p. 15, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 66, p. 64.)

43. **SECTION 43 - p. 43 - AMENDMENT:**

Section 57-43.2-08 - Application for license - issuance of license - denial of license.

The intent of this amendment is to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 15, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 67, p. 64.)

44. **SECTION 44 - p. 44 - AMENDMENT:**

57-43.2-09 - Revocation of license - hearing to show cause - reinstatement.

The intent of this amendment is to:

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

◆ Provide for reissuance of a license after a license has been revoked compatible with similar provisions in the Motor Vehicle Fuel tax chapter.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 14, p. 16, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 68, p. 65.)

45. **SECTION 45 - p. 44 - AMENDMENT:**

Section 57-43.2-10 - Retention of records - subject to inspection.

The intent of this amendment is to:

◆ Clarify provisions relating to the retention of records.

◆ Delete the term "dealer" and replace it with specific industry terms.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 22, p. 24, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 80, p. 75.)

46. **SECTION 46 - p. 45 - AMENDMENT:**

Section 57-43.2-11 - Report by refiner, supplier, distributor, importer, or exporter required.

The intent of this amendment is to:

◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.

◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.

◆ Allow reports to be filed electronically.

◆ Clarify what information needs to be reported.

◆ Delete obsolete language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 15, p. 16, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 69, p. 65.)

47. **SECTION 47 - p. 47 - CREATE NEW SECTION:**

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

◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 16, p. 18, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 70, p. 67.)

48. **SECTION 48 - p. 48 - CREATE NEW SECTION:**

Section 57-43.2-11.2 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.

◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 17, p. 19, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 71, p. 68.)

49. **SECTION 49 - p. 50 - AMENDMENT:**

Section 57-43.2-14 - Commissioner to audit reports and assess tax.

The intent of this amendment is to:

◆ Clarify the audit provisions.

◆ Delete obsolete language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 18, p. 21, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 73, p. 70.)

50. **SECTION 50 - p. 52 - CREATE NEW SECTION:**

Section 57-43.2-14.1 - Determination if no report is filed.

◆ The new section is created to provisions on this issue comparable to those found in the Motor Vehicle Fuel tax chapter and replaces 57-43.2-16.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 19, p. 23, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 74, p. 71.)

51. **SECTION 51 - p. 52 - AMENDMENT:**

Section 57-43.2-15 - Penalty and interest - violations.

The intent of this amendment is to:

◆ Incorporate all penalty, interest and other violation provisions into one section.

◆ Delete language which does not apply to this issue.

Current provisions are interspersed with other language in this section and in 57-43.2-17, 57-43.2-23, and 57-43.2-24.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 20, p. 23, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 78, p. 74.)

52. **SECTION 52 - p. 53 - AMENDMENT:**

Section 57-43.2-19 - Transfer, deposit, and distribution of funds.

◆ The intent of this amendment is to clarify the language and to make it compatible with the Motor Vehicle Fuel tax chapter.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 25, p. 26.)

53. **SECTION 53 - p. 53 - AMENDMENT:**

Section 57-43.2-20 - Erroneously or illegally collected taxes.

The intent of this amendment is to change the minimum credit or refund from ten dollars to five dollars for compatibility with all other tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 27, p. 27, and for comparable provisions in the Aviation Fuel tax chapter see SECTION 83, p. 76.)

54. **SECTION 54 - p. 54 - AMENDMENT:**

Section 57-43.2-21 - Inventory gains - losses.

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Clarify existing provisions pertaining to inventory fluctuations.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 23, p. 25, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 81, p. 75.)

55. **SECTION 55 - p. 55 - AMENDMENT:**

Section 57-43.2-22 - Administration - Assistance authorized - Rules.

◆ The intent of this amendment is to clarify the language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 26, p. 27, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 82, p. 76.)

56. **SECTION 56 - p. 55 - CREATE NEW SECTION:**

Section 57-43.2-38 - Special fuel tax for interstate motor carriers - computation - credits - refunds.

This section, together with proposed 57-43.2-39 (SECTION 57) and 57-43.2-40 (SECTION 58), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.2-26, 57-43.2-27, and 57-43.2-35 consolidate them into one section.

(For comparable provisions in the Motor Vehicle Fuel tax chapter see SECTION 28, p. 27.)

57. **SECTION 57 - p. 56 - CREATE NEW SECTION:**

Section 57-43.2-39 - Interstate motor carrier required to obtain license - display - revocation or cancellation of license - occasional trip permits in lieu of license.

This section, together with proposed 57-43.2-38 (SECTION 56) and 57-43.2-40 (SECTION 58), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, and 57-43.2-33, and consolidate them into one section.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 29, p. 28.)

58. **SECTION 58 - p. 57 - CREATE NEW SECTION:**

Section 57-43.2-40 - Interstate motor carrier tax reports - payments - audits - assessments.

This section, together with proposed 57-43.2-38 (SECTION 56) and 57-43.2-39 (SECTION 57), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing section 57-43.2-36

(For comparable provisions in the Motor Vehicle Fuel tax chapter see SECTION 30, p. 28.)

AVIATION FUEL (AVIATION GASOLINE/JET FUEL) - TAX CHAPTER 57-43.3.

59. **SECTION 59 - p. 57 - AMENDMENT:**

Section 57-43.3-01 - Definitions.

◆ The intent of this amendment is to add various definitions to this tax chapter compatible with the definitions which appear in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 1, p. 2 and for comparable provisions for the Special Fuel tax chapter see SECTION 31, p. 29.)

60. **SECTION 60 - p. 60 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Change the term “dealer” to the applicable industry terms.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

◆ Include a due date for tax remittance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 7, and for comparable language in the Special Fuel tax chapter see SECTION 32, p. 34.)

61. **SECTION 61 - p. 60 - AMENDMENT:**

Section 57-43.3-03 - Refund of tax.

The intent of this amendment is to:

◆ Specify that the 4% excise tax imposed by section 57-43.3-04 be deducted from a refund of the tax imposed by section 57-43.3-02.

◆ Include a provision for a refund to avoid double taxation in the event that the aviation fuel is removed to another jurisdiction in which it is taxed.

◆ Provide that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

62. **SECTION 62 - p. 61 - AMENDMENT:**

Section 57-43.3-04 - Special excise tax levied.

◆ The intent this amendment is to clarify the language.

63. **SECTION 63 - p. 61 - CREATE NEW SECTION:**

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

The intent of the new section is to:

◆ Require a license for the sale of aviation fuel separate from Motor Vehicle Fuel and Special Fuel. Currently "aviation gasoline" is included with the Motor Vehicle Fuel license although the definition of "motor vehicle fuel" specifically excludes aviation gasoline. "Jet fuel" is currently included with Special Fuels only because it is a type of kerosene.

◆ Create licensing provisions compatible with those in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 9, p. 11 and for comparable provisions for the Special Fuel tax chapter see SECTION 39, p. 39.)

64. **SECTION 64 - p. 63 - CREATE NEW SECTION:**

Section 57-43.3-09 - Bond or letter of credit required.

The intent of the new section is to:

◆ Create security requirements for aviation fuel taxes compatible with those in the Motor Vehicle Fuel and Special Fuel tax chapters.

◆ Set the minimum security at an amount not less than \$500.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 10, p. 12 and for comparable provisions for the Special Fuel tax chapter see SECTION 40, p. 40.)

65. **SECTION 65 - p. 64 - CREATE A NEW SECTION:**

Section 57-43.3-10 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 11, p. 14, and for comparable provisions for the Special Fuel tax chapter see SECTION 41, p. 42.)

66. **SECTION 66** - p. 64 - CREATE NEW SECTION:

Section 57-43.3-11 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 12, p. 15, and for comparable provisions for the Special Fuel tax chapter see SECTION 42, p. 42.)

67. **SECTION 67** - p. 64 - CREATE NEW SECTION:

Section 57-43.3-12 - Application for license - issuance of license - denial of license.

The new section is intended to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 15, and for comparable provisions for the Special Fuel tax chapter see SECTION 43, p. 43.)

68. **SECTION 68** - p. 65 - CREATE NEW SECTION:

57-43.3-13 - Revocation of license - hearing to show cause - reinstatement.

The intent of the new section is to:

◆ Create license revocation and reinstatement provisions for the aviation fuel tax chapter.

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 14, p. 16, and for comparable provisions for the Special Fuel tax chapter see SECTION 44, p. 44.)

69. **SECTION 69** - p. 65 - CREATE NEW SECTION:

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

The new section is intended to:

- ◆ Create a reporting requirement for aviation fuel.
- ◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.
- ◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.
- ◆ Allow reports to be filed electronically.
- ◆ Clarify what information needs to be reported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 15, p. 16 and for comparable provisions in the Special Fuel tax chapter see SECTION 46, p. 45.)

70. **SECTION 70 - p. 67 - CREATE NEW SECTION:**

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

- ◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 16, p. 18, and for comparable provisions for the Special Fuel tax chapter see SECTION 47, p. 47.)

71. **SECTION 71 - p. 68 - CREATE NEW SECTION:**

Section 57-43.3-16 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

- ◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.
- ◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 17, p. 19, and for comparable provisions in the Special Fuel tax chapter see SECTION 48, p. 48.)

72. **SECTION 72 - p. 70 - CREATE NEW SECTION:**

Section 57-43.3-17 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent of the new section is to provide credits or refunds for aviation fuel taxes paid on worthless accounts in the same manner as provided for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 8, p. 10, and for comparable provisions for the Special Fuel tax chapter see SECTION 38, p. 39.)

73. **SECTION 73 - p. 70 - CREATE NEW SECTION:**

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

◆ The intent of the new section is to provide the commissioner with the same authority to audit reports and assess aviation fuel taxes as granted for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 18, p. 21, and for comparable provisions for the Special Fuel tax chapter see SECTION 49, p. 50.)

74. **SECTION 74 - p. 71 - CREATE NEW SECTION:**

Section 57-43.3-19 - Determination if no report filed.

◆ The intent of the new section is to provide the commissioner with the same authority to make a determination of tax if no aviation fuel tax report is filed as granted for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 19, p. 23, and for comparable provisions for the Special Fuel tax chapter see SECTION 50, p. 52.)

75. **SECTION 75 - p. 72 - CREATE NEW SECTION:**

Section 57-43.3-20 - Corporate officer liability.

◆ The intent of the new section is to provide the same corporate officer liability for aviation fuel taxes as provided for in the motor vehicle fuel and special fuel tax chapters.

76. **SECTION 76 - p. 72 - CREATE NEW SECTION:**

Section 57-43.3-21 - Governor and manager liability.

◆ The intent of the new section is to provide the same governor and manager liability for aviation fuel taxes as provided for in the motor vehicle fuel and special fuel tax chapters.

77. **SECTION 77 - p. 72 - CREATE NEW SECTION:**

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

◆ The intent of the new section is to provide the commissioner with the same authority to obtain liens if necessary for aviation fuel tax purposes as granted for motor vehicle fuel and special fuel taxes.

78. **SECTION 78 - p. 74 - CREATE NEW SECTION:**

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

◆ The intent of the new section is to impose the same penalties and interest on delinquent or nonpayment of aviation fuel taxes as imposed on motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 20, p. 23, and for comparable provisions for the Special Fuel tax chapter see SECTION 51, p. 52.)

79. **SECTION 79 - p. 74 - CREATE NEW SECTION:**

Section 57-43.3-24 - Tax collection allowance.

◆ The intent of the new section is to provide for a collection allowance of 1% of the aviation fuel tax due, up to a maximum of \$500, compatible with the Special Fuel tax collection allowance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 21, p. 24, and for comparable provisions for the Special Fuel tax chapter see SECTION 35, p. 38.)

80. **SECTION 80 - p. 75 - CREATE NEW SECTION:**

Section 57-43.3-25 - Retention of records - subject to inspection.

◆ The intent of the new section is to provide for the same record retention and inspection requirements for aviation fuel taxes as those for motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 22, p. 24, and for comparable provisions for the Special Fuel tax chapter see SECTION 45, p. 44.)

81. **SECTION 81 - p. 75 - CREATE NEW SECTION:**

Section 57-43.3-26 - Inventory gains - losses.

◆ The intent of the new section is to provide the same inventory gain and loss requirements for aviation fuel as required for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 23, p. 25, and for comparable provisions for the Special Fuel tax chapter see SECTION 54, p. 54.)

82. **SECTION 82** - p. 76 - CREATE NEW SECTION:

Section 57-43.3-27 - Administration - assistance authorized - rules.

◆ The intent of the new section is to replace the current 57-43.3-05 (being repealed) and make the provisions identical to those found in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 26, p. 27, and for comparable provisions for the Special Fuel tax chapter see SECTION 55, p. 55.)

83. **SECTION 83** - p. 76 - CREATE NEW SECTION:

Section 57-43.3-28 - Erroneously or illegally collected taxes.

◆ The intent of the new section is to provide for an aviation fuel tax credit or refund of erroneously or illegally collected taxes in the same manner as currently provided for motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 27, p. 27, and for comparable provisions for the Special Fuel tax chapter see SECTION 53, p. 53.)

84. **SECTION 84** - p. 76 - REPEAL:

◆ This section provides for the repeal of obsolete sections. The majority of the language in those sections is incorporated into the amended or newly created sections in this bill.

SB2177 - First Engrossment

Testimony by: Joan Y. Galster
Motor Fuel Tax Section Supervisor
Office of State Tax Commissioner

House Finance & Tax Committee - March 2, 1999

The Office of State Tax Commissioner and a Petroleum Marketer's study group have met several times during the past three years to study the North Dakota motor fuel tax laws and to discuss changes to clarify existing law, delete obsolete language, and to create uniformity between the three fuel tax Chapters.

For study purposes, the motor fuel tax law was divided into two major categories:

1. The statutes involving application of tax on sales to consumers, record keeping requirements for dealers relative to those sales, record keeping requirements for consumers, and refunds to consumers.
2. The statutes involving terminology, licensing, inventory reconciliations, reporting requirements, terminal operator responsibilities, common or contract carrier responsibilities, and other issues related to the sellers of fuel.

The first category was covered during the 1997 Legislation Session in HB 1311 which was passed and became effective April 1, 1997.

The second category consists of the issues before you today. My comments today are based on the engrossed bill as passed by the Senate. The copy of my testimony handed out to you concludes with a SECTION by SECTION explanation to be used as a companion to the engrossed bill.

The three tax chapters involved in this bill are "Motor Vehicle Fuel" (gasoline/gasohol) Chapter 57-43.1, starting on page 2, "Special Fuel" (heating, diesel, propane, kerosene, CNG) Chapter 57-43.2, starting on page 29, and "Aviation Fuel" (aviation gasoline, jet fuel) Chapter 57-43.3, starting on page 58.

The majority of the bill consists of technical changes involving tax law administration intended to delete obsolete language, restate and reorganize existing provisions for purposes of clarity, and to add provisions which are lacking under current law.

The Motor Vehicle Fuel tax Chapter 57-43.1 and the Special Fuel tax Chapter 57-43.2 contain provisions covering the same topics; however, the provisions are worded differently and appear in different parts of the respective Chapters. Also, several topics are addressed in more than one Section within each tax Chapter. This bill is intended to reorganize the existing provisions into Sections by topic within each Chapter, and to establish uniformity between the two tax Chapters.

The Aviation Fuel tax Chapter 57-43.3 lacks definitions, licensing and reporting requirements, imposition of penalty and interest, and any related administrative provisions. It vaguely refers to one of the other tax Chapters for administration of the tax. This bill is intended to make this tax Chapter uniform with the other two fuel tax Chapters.

The following SECTIONS of the bill contain provisions not found in current law and other changes of significance:

1. **SECTIONS 5, 37, and 61** create provisions allowing for a tax credit or tax refund to any reseller of fuel when the state tax has been paid and the fuel is resold to an agency of the U.S. Government. The issue involves credit card sales. Previously the credit cards were issued by major oil companies who made adjustments to their tax returns covering these transactions. Currently there are independent credit card companies involved shifting the burden of the adjustments down to local fuel sellers including retailers. Current law does not provide for these situations.
2. **SECTIONS 9, 39, and 63** create a requirement that terminal operators must obtain a license, and **SECTIONS 16, 47, and 70** require that they file reports. Currently terminal operators voluntarily provide the Commissioner with copies of bills of lading covering all fuel disbursed over the rack at in-state terminals; however, there is no statutory authority to require that information. The terminal information is crucial for determining fuel disbursements by major fuel suppliers.

SECTION 9 also makes a change in the Fund to which the motor vehicle fuel license fee is deposited. Under current law, 57-43.1-14 (see **SECTION 10**) includes the provisions for license fees and requires that the fees be credited to the general fund. This provision is not consistent with Article X, Section 11 of the Constitution of North Dakota which requires that motor fuel license fees be apportioned and used solely for construction, reconstruction, repair and maintenance of public highways. Nor is it consistent with the provisions in the Special Fuel tax Chapter. The amendment deletes the language referring to the general fund causing the deposit to be made to the Highway Distribution Fund along with any other revenue collected under the fuel tax Chapters.

3. **SECTIONS 11, 12, 41, 42, 65, and 66** create provisions that "importers" and "exporters" of fuel (for resale) be required to supply proof that they are licensed in the jurisdiction from which the fuel is imported and in the jurisdiction into which the fuel is exported.
4. **SECTIONS 16, 47, and 70** create a requirement that terminal operators be required to file reports. Fuel receipt and disbursement transactions at a terminal consists of crucial information for total accountability purposes. The proposed provisions are in line with those adopted by other states.
5. **SECTIONS 17, 48, and 71** create a requirement that common or contract carriers hauling fuel be licensed, retain records, be subject to audit, and be required to report diverted loads. These provisions do not apply to entities in the fuel business hauling their own fuel with their own vehicles and they do not apply to consumers (such as railroads) hauling their own fuel. The provisions are compatible with similar requirements in other states and are crucial in accurately verifying imports and exports.
6. **SECTION 78** creates a penalty and interest requirement for aviation fuel tax. Current law does not provide for penalties or interest on late or unpaid aviation fuel tax.
7. **SECTION 79** creates a collection allowance of 1% of the tax due, to a maximum of \$500, for aviation fuel tax. The provision is identical to that for special fuels. Current law does not provide for such an allowance for aviation fuel. [The fiscal note reflects this **SECTION**. This provision is deleted in HB1462.]

8. **SECTIONS 28, 29,30, 56, 57, and 59** cover licensing and reporting requirements for interstate motor carriers. Current language is not compatible with the International Fuel Tax Agreement; therefore, this bill repeals the current sections covering these issues and consolidates the provisions into fewer sections.

This bill stands alone. It also establishes the base for HB1462, passed by the House, moving the point of taxation for motor vehicle fuel and special fuels to the rack (supplier level).

**The following is a SECTION by SECTION explanation
which may be used as a companion to the engrossed bill**

MOTOR VEHICLE FUEL (GASOLINE/GASOHOL) - TAX CHAPTER 57-43.1.

1. **SECTION 1 - p. 2 - AMENDMENT:**

Section 57-43.1-01. Definitions.

◆ **Subsections 7, 9, 13, 24, 26, 28, and 31:** Specific industry terms "distributor," "exporter," "importer," "refiner," "retailer," "terminal operator," and "supplier," replace the term "dealer" (current subsection 4). Using specific terms helps to clarify exactly which "person" in the fuel industry is referenced throughout the statute.

◆ **Subsections 3, 5, 8, 10, 11, 12, 20, 21, 23, 25, 29, 30, and 32:** These are definitions of terms with specific meanings and which are used throughout the chapter.

◆ **Subsection 15:** The term "importer for use" defined in current subsection 6 is no longer appropriate. The correct term is "interstate motor carrier." This new subsection restates current subsection 6 to make that correction.

◆ Other amendments to the definitions consist of deleting terms no longer used in the statute and clarify the meaning of existing terms.

(For comparable provisions for the Special Fuel tax chapter, see SECTION 31, p. 29, and for comparable provisions for the Aviation Fuel tax chapter, see SECTION 59, p.58.)

2. **SECTION 2 - p. 7 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Change the term "dealer" to the applicable industry terms.

◆ Combine language covering tax imposition and tax remittance into one section. Currently 57-43.1-02, 57-43.1-20, and 57-43.1-23 cover this topic.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

(For comparable provisions for the Special Fuel tax chapter see SECTION 32, p. 34, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 60, p. 60.)

3. **SECTION 3 - p. 8 - AMENDMENT:**

57-43.1-04 - Form of claim for refund.

◆ The intent of this amendment is to delete the term “dealer” and to replace it with specific industry terms.

4. **SECTION 4 - p 9 - AMENDMENT:**

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

◆ The amendment removes reference to the special fuel tax chapter 57-43.2. A new section is proposed within the special fuel tax chapter to cover this issue.

(For comparable provisions for the Special Fuel tax chapter see SECTION 36, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p. 61.)

5. **SECTION 5 - p. 9- CREATE NEW SECTION:**

Section 57-43.1-06.1 - Refund of tax on tax exempt sales.

◆ The new section provides that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

(For comparable provisions for the Special Fuel tax chapter see SECTION 37, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p.61.)

6. **SECTION 6 - p. 10 - AMENDMENT:**

Section 57-43.1-08 - Refund to state or political subdivision.

◆ The intent of this amendment is to change the name of the fund into which the revenue is to be deposited from “agriculturally derived agriculture fuel tax fund” to “agricultural fuel tax fund.” This is requested so that the name of the fund coincides with the name given to the same fund in sections 57-43.1-03 and 57-43.1-03.1.

7. **SECTION 7 - p. 10 - AMENDMENT:**

Section 57-43.1-11 - Assignment of refund claims.

◆ The intent of this amendment is to delete the term “dealer” and to clarify existing language.

8. **SECTION 8 - p. 10 - CREATE NEW SECTION:**

Section 57-43.1-12.1 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent is to repeal section 57-43.1-42.1 where the provisions now appear and to reenact those provisions in a more appropriate place within the tax chapter. (See SECTION 84, p. 76 for the requested repeal.)

(For comparable provisions for the Special Fuel tax chapter see SECTION 38, p. 39, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 72, p. 70.)

9. **SECTION 9 - p. 11 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Delete the term “dealer” and to replace it with specific industry terms.

◆ Clarify who must be licensed. The amendment specifically excludes retailers from the licensing requirements. Currently, all retailers should be licensed; however, in practice they are not required to do so but may elect to pay the tax to the supplier or distributor.

◆ Combine provisions covering who must be licensed, what is required on an application for a license, signature requirements, and license fees into one section for purposes of clarity.

◆ Require terminal operators to be licensed. This provision is compatible with motor fuel tax laws in other states and is used to assure total accountability of fuel available for sale in the state.

◆ Delete the requirement that the license fee be deposited into the General Fund. Article X Section 11 of the Constitution of North Dakota provides that all motor vehicle fuel tax license fees be deposited into the Highway Distribution Fund. This amendment makes that correction and makes the provision uniform with the Special Fuel tax chapter under which the license fees are deposited into the Highway Distribution Fund. There is no change to the current license fee of \$20.00.

(For comparable provisions for the Special Fuel tax chapter see SECTION 39, p. 39, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 63, p. 62.)

10. **SECTION 10 - p. 12 - AMENDMENT:**

Section 57-43.1-14 - Bond or letter of credit required.

The intent this amendment is to:

◆ Retain the mandatory requirement that a security must be submitted with an application for a new license but change the minimum time period after which the Commissioner may waive the bond requirement from three years to five years. Three years is insufficient time to determine whether a business is financially secure.

◆ Remove provisions regarding licenses and relocate those provisions to 57-43.1-13 (see SECTION 9, p. 11.)

(For comparable provisions for the Special Fuel tax chapter see SECTION 40, p. 40, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 64, p. 63.)

11. **SECTION 11 - p. 14 - CREATE NEW SECTION:**

Section 57-43.1-14.1 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Special Fuel tax chapter see SECTION 41, p. 42, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 65, p. 64.)

12. **SECTION 12 - p. 15 - CREATE NEW SECTION:**

Section 57-43.1-14.2 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Special Fuel tax chapter see SECTION 42, p. 43, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 66, p. 64.)

13. **SECTION 13 - p. 15 - AMENDMENT:**

Section 57-43.1-15 - Application for license - issuance of license - denial of license.

The intent of this amendment is to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Special Fuel tax chapter see SECTION 43, p. 43, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 67, p. 65.)

14. **SECTION 14 - p. 16 - CREATE NEW SECTION:**

57-43.1-15.1 - Revocation of license - hearing to show cause - reinstatement.

The intent of the new section is to:

◆ Consolidate license revocation and reinstatement provisions into one section. Current provisions are interspersed with the penalty and interest provisions in 57-43.1-21 and appear in 57-43.1-22.

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

(For comparable provisions for the Special Fuel tax chapter see SECTION 44, p. 44, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 68, p. 65.)

15. **SECTION 15 - p. 16 - AMENDMENT:**

Section 57-43.1-16 - Monthly report by refiner, supplier, distributor, importer, or exporter required.

The intent of this amendment is to:

◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.

◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.

◆ Allow reports to be filed electronically.

◆ Clarify what information needs to be reported.

◆ Delete obsolete language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 46, p. 45, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 69, p. 66.)

16. **SECTION 16 - p. 18 - CREATE NEW SECTION:**

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

◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed

on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Special Fuel tax chapter see SECTION 47, p. 47, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 70, p. 67.)

17. **SECTION 17 - p. 19 - CREATE NEW SECTION:**

Section 57-43.1-16.2 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.

◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Special Fuel tax chapter see SECTION 48, p. 48, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 71, p. 68.)

18. **SECTION 18 - p. 21 - AMENDMENT:**

Section 57-43.1-17 - Commissioner to audit report and assess tax.

The intent of this amendment is to:

◆ Clarify the audit provisions.

◆ Delete obsolete language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 49, p. 50, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 73, p. 70.)

19. **SECTION 19 - p. 23 - AMENDMENT:**

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

◆ The intent of this amendment is to delete the term "dealer" and to make the language generic.

(For comparable provisions for the Special Fuel tax chapter see SECTION 50, p. 52, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 74, p. 72.)

20. **SECTION 20 - p. 23 - AMENDMENT:**

Section 57-43.1-21 - Penalty and interest - violations.

The intent of this amendment is to:

- ◆ Incorporate all penalty, interest and other violation provisions into one section.
- ◆ Delete language which does not apply to this issue.

Current provisions are interspersed with other language in this section and in 57-43.1-31.

(For comparable provisions for the Special Fuel tax chapter see SECTION 51, p. 52, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 78, p. 74.)

21. **SECTION 21 - p. 24 - AMENDMENT:**

Section 57-43.1-24 - Tax collection allowance.

- ◆ The intent of this amendment is to clarify the provisions providing for a tax collection allowance.

(For comparable provisions for the Special Fuel tax chapter see SECTION 35, p. 38, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 79, p. 75.)

22. **SECTION 22 - p. 24 - AMENDMENT:**

Section 57-43.1-25 - Retention of records - subject to inspection.

The intent of this amendment is to:

- ◆ Clarify provisions relating to the retention of records.
- ◆ Delete the term "dealer" and replaces it with specific industry terms.

(For comparable provisions for the Special Fuel tax chapter see SECTION 45, p. 45, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 80, p. 75.)

23. **SECTION 23 - p. 25 - AMENDMENT:**

Section 57-43.1-26 - Inventory gains - losses.

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Clarify existing provisions pertaining to inventory fluctuations.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions for the Special Fuel tax chapter see SECTION 54, p. 54, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 81, p. 75.)

24. **SECTION 24** - p. 26 - AMENDMENT:

Section 57-43.1-27 - Sales of motor vehicle fuels to retail outlets - tax imposed - credit for losses.

◆ The intent of this amendment is to delete the term "dealer" and replace it with specific industry terms.

25. **SECTION 25** - p. 26 - AMENDMENT:

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

◆ The intent of this amendment is to clarify the language and to make it compatible with the Special Fuel tax chapter.

(For comparable provisions for the Special Fuel tax chapter see SECTION 52, p. 53.)

26. **SECTION 26** - p. 27 - AMENDMENT:

Section 57-43.1-30 - Administration - Assistance authorized - Rules.

◆ The intent of this amendment is to clarify the language.

(For comparable provisions for the Special Fuel tax chapter see SECTION 55, p. 55, and for comparable provisions for the aviation Fuel tax chapter see SECTION 82, p. 76.)

27. **SECTION 27** - p. 27 - AMENDMENT:

Section 57-43.1-32 - Erroneously or illegally collected taxes.

The intent of this amendment is to change the minimum credit or refund from ten dollars to five dollars for compatibility with all other tax chapters.

(For comparable provisions for the Special Fuel tax chapter see SECTION 53, p. 54, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 83, p. 76.)

28. **SECTION 28** - p. 27 - CREATE NEW SECTION:

Section 57-43.1-45 - Motor vehicle fuel for interstate motor carriers - computation - credits - refunds.

This section, together with proposed 57-43.1-46 (SECTION 29) and 57-43.1-47 (SECTION 30), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.1-33, 57-43.1-34, and 57-43.1-42 consolidate them into one section.

(For comparable provisions for the Special Fuel tax chapter see SECTION 56, p. 56.)

29. **SECTION 29 - p. 28 - CREATE NEW SECTION:**

Section 57-43.1-46 - Interstate motor carrier required to obtain license - display - revocation or cancellation of license - occasional trip permits in lieu of license.

This section, together with proposed 57-43.1-45 (SECTION 28) and 57-43.1-47 (SECTION 30), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40 consolidate them into one section.

(For comparable provisions for the Special Fuel tax chapter see SECTION 57, p. 56.)

30. **SECTION 30 - p. 28 - CREATE NEW SECTION:**

Section 57-43.1-47 - Interstate motor carrier tax reports - payments - audits - assessments.

This section, together with proposed 57-43.1-45 (SECTION 28) and 57-43.1-46 (SECTION 29), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing section 57-43.1-43.

(For comparable provisions for the Special Fuel tax chapter see SECTION 58, p. 57.)

SPECIAL FUEL (DIESEL/HEATING/CNG/LP) - TAX CHAPTER 57-43.2.

31. **SECTION 31 - p. 29 - AMENDMENT:**

Section 57-43.2-01. Definitions.

◆ **Subsections 7, 9, 15, 27, 29, 32, and 35:** Specific industry terms "distributor," "exporter," "importer," "refiner," "retailer," "terminal operator," and "supplier," replace the terms "dealer," "special fuel dealer," and "special fuel wholesaler." Using specific terms helps to clarify exactly which "person" in the fuel industry is referenced throughout the statute.

◆ **Subsections 3, 5, 8, 10, 11, 14, 22, 23, 28, 33, 34, and 36:** These are definitions of terms with specific meanings and which are used throughout the chapter.

◆ **Subsection 17:** The term "importer for use" defined in current subsection 8 is no longer appropriate. The correct term is "interstate motor carrier." This new subsection restates current subsection 8 to make that correction.

◆ Other amendments to the definitions consist of deleting terms no longer used in the statute and clarify the meaning of existing terms.

(For comparable provisions for the Motor Vehicle Fuel tax chapter, see SECTION 1, p. 2, and for comparable provisions for the Aviation Fuel tax chapter, see SECTION 59, p.58.)

32. **SECTION 32 - p. 34 - AMENDMENT:**

Section 57-43.2-02 - Tax imposed.

The intent of this amendment is to:

◆ Change the term "dealer" to the applicable industry terms.

◆ Combine language covering the per gallon tax imposition and tax remittance into one section. Currently 57-43.2-02, and 57-43.2-04 cover this topic.

◆ Require that the tax be collected by a supplier, distributor, or retailer on all sales to a consumer.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 2, p.7, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 60, p. 60.)

33. **SECTION 33 - p. 36 - AMENDMENT:**

57-43.2-02.2 - Refund of tax for special fuel used for heating or for an agricultural, industrial, or railroad purpose.

◆ The intent of the amendment is to specify that the 2% excise tax imposed by section 57-43.2-03 be deducted from a refund of the tax imposed by section 57-43.2-02.

34. **SECTION 34 - p 37 - AMENDMENT:**

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

The intent of this amendment is to:

◆ Change the term "dealer" to the applicable industry terms.

◆ Include provisions covering the due date.

◆ Include provisions that the commissioner pay the money over to the state treasurer.

35. **SECTION 35 - p. 38 - AMENDMENT:**

Section 57-43.2-04.1 - Tax Collection allowance.

◆ The intent of this amendment is to clarify the provisions providing for a tax collection allowance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 21, p. 24, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 79, p. 75.)

36. **SECTION 36 - p. 38 - CREATE NEW SECTION:**

Section 57-43.2-04.2 - Refund to prevent taxation by multiple jurisdictions.

◆ This section is created to include provisions for a refund of special fuel tax in the event the fuel is removed from the state for resale in another jurisdiction and is taxable in that jurisdiction. Currently reference to the Special Fuel tax chapter is included in a similar provision in the Motor Vehicle Fuel tax chapter. (See the amendment in SECTION 4 of this bill.)

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 9, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p. 61.)

37. **SECTION 37 - p. 38- CREATE NEW SECTION:**

Section 57-43.2-04.3 - Refund of tax on tax exempt sales.

◆ The new section provides that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 9, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 61, p.61.)

38. **SECTION 38 - p. 39 - CREATE NEW SECTION:**

Section 57-43.2-04.4 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent is to repeal section 57-43.2.35.1 where the provisions now appear and to reenact those provisions in a more appropriate place within the tax chapter. (See SECTION 84, p. 77 for the requested repeal.)

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 8, p. 10, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 72, p. 70.)

39. **SECTION 39 - p. 39 - AMENDMENT:**

Section 57-43.2-05 - Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - license fees.

The intent of this amendment is to:

- ◆ Delete the term “dealer” and to replace it with specific industry terms.
- ◆ Clarify who must be licensed.
- ◆ Combine provisions covering who must be licensed, what is required on an application for a license, signature requirements, and license fees into one section for purposes of clarity.
- ◆ Require terminal operators to be licensed. This provision is compatible with motor fuel tax laws in other states and is used to assure total accountability of fuel available for sale in the state.
- ◆ Include the licensing requirements for liquefied petroleum with all other special fuels and grant the commissioner an option to require a separate license. Currently provisions for licensing "liquefied petroleum gas dealers" are found in 57-43.2-25 which is to be repealed in SECTION 84 of this bill.
- ◆ Change the license fee for special fuel from fifteen dollars to twenty dollars in line with the current license fees for motor vehicle fuel and for liquefied petroleum.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 9, p. 11, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 63, p. 62.)

40. **SECTION 40 - p. 40 - AMENDMENT:**

Section 57-43.2-07 - Bond or letter of credit required.

The intent of this amendment is to:

- ◆ Retain the mandatory requirement that a security must be submitted with an application for a new license but change the minimum time period after which the Commissioner may waive the bond requirement from three years to five years. Three years is insufficient time to determine whether a business is financially secure.
- ◆ Combine the security requirements for liquefied petroleum from 57-43.2-25 into this section.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 10, p. 12, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 64, p. 63.)

41. **SECTION 41 - p. 42 - CREATE NEW SECTION:**

Section 57-43.2-07.1 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 11, p. 14, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 65, p. 64.)

42. **SECTION 42 - p. 43 - CREATE NEW SECTION:**

Section 57-43.2-07.2 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 12, p. 15, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 66, p. 64.)

43. **SECTION 43 - p. 43 - AMENDMENT:**

Section 57-43.2-08 - Application for license - issuance of license - denial of license.

The intent of this amendment is to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 15, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 67, p. 65.)

44. **SECTION 44 - p. 44 - AMENDMENT:**

57-43.2-09 - Revocation of license - hearing to show cause - reinstatement.

The intent of this amendment is to:

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

◆ Provide for reissuance of a license after a license has been revoked compatible with

similar provisions in the Motor Vehicle Fuel tax chapter.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 14, p. 16, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 68, p. 65.)

45. **SECTION 45 - p. 45 - AMENDMENT:**

Section 57-43.2-10 - Retention of records - subject to inspection.

The intent of this amendment is to:

- ◆ Clarify provisions relating to the retention of records.
- ◆ Delete the term "dealer" and replace it with specific industry terms.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 22, p. 24, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 80, p. 75.)

46. **SECTION 46 - p. 45 - AMENDMENT:**

Section 57-43.2-11 - Report by refiner, supplier, distributor, importer, or exporter required.

The intent of this amendment is to:

- ◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.
- ◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.
- ◆ Allow reports to be filed electronically.
- ◆ Clarify what information needs to be reported.
- ◆ Delete obsolete language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 15, p. 16, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 69, p. 66.)

47. **SECTION 47 - p. 47 - CREATE NEW SECTION:**

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

- ◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed

on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 16, p. 18, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 70, p. 67.)

48. **SECTION 48** - p. 48 - CREATE NEW SECTION:

Section 57-43.2-11.2 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.

◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 17, p. 19, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 71, p. 68.)

49. **SECTION 49** - p. 50 - AMENDMENT:

Section 57-43.2-14 - Commissioner to audit reports and assess tax.

The intent of this amendment is to:

◆ Clarify the audit provisions.

◆ Delete obsolete language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 18, p. 21, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 73, p. 70.)

50. **SECTION 50** - p. 52 - CREATE NEW SECTION:

Section 57-43.2-14.1 - Determination if no report is filed.

◆ The new section is created to provisions on this issue comparable to those found in the Motor Vehicle Fuel tax chapter and replaces 57-43.2-16.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 19, p. 23, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 74, p. 72.)

51. **SECTION 51 - p. 52 - AMENDMENT:**

Section 57-43.2-15 - Penalty and interest - violations.

The intent of this amendment is to:

- ◆ Incorporate all penalty, interest and other violation provisions into one section.
- ◆ Delete language which does not apply to this issue.

Current provisions are interspersed with other language in this section and in 57-43.2-17, 57-43.2-23, and 57-43.2-24.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 20, p. 23, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 78, p. 74.)

52. **SECTION 52 - p. 53 - AMENDMENT:**

Section 57-43.2-19 - Transfer, deposit, and distribution of funds.

- ◆ The intent of this amendment is to clarify the language and to make it compatible with the Motor Vehicle Fuel tax chapter.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 25, p. 26.)

53. **SECTION 53 - p. 54 - AMENDMENT:**

Section 57-43.2-20 - Erroneously or illegally collected taxes.

The intent of this amendment is to change the minimum credit or refund from ten dollars to five dollars for compatibility with all other tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 27, p. 27, and for comparable provisions in the Aviation Fuel tax chapter see SECTION 83, p. 76.)

54. **SECTION 54 - p. 54 - AMENDMENT:**

Section 57-43.2-21 - Inventory gains - losses.

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Clarify existing provisions pertaining to inventory fluctuations.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 23, p. 25, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 81, p. 75.)

55. **SECTION 55 - p. 55 - AMENDMENT:**

Section 57-43.2-22 - Administration - Assistance authorized - Rules.

◆ The intent of this amendment is to clarify the language.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 26, p. 27, and for comparable provisions for the Aviation Fuel tax chapter see SECTION 82, p. 76.)

56. **SECTION 56 - p. 56 - CREATE NEW SECTION:**

Section 57-43.2-38 - Special fuel tax for interstate motor carriers - computation - credits - refunds.

This section, together with proposed 57-43.2-39 (SECTION 57) and 57-43.2-40 (SECTION 58), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.2-26, 57-43.2-27, and 57-43.2-35 consolidate them into one section.

(For comparable provisions in the Motor Vehicle Fuel tax chapter see SECTION 28, p. 27.)

57. **SECTION 57 - p. 56 - CREATE NEW SECTION:**

Section 57-43.2-39 - Interstate motor carrier required to obtain license - display - revocation or cancellation of license - occasional trip permits in lieu of license.

This section, together with proposed 57-43.2-38 (SECTION 56) and 57-43.2-40 (SECTION 58), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing sections 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, and 57-43.2-33, and consolidate them into one section.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 29, p. 28.)

58. **SECTION 58** - p. 57 - CREATE NEW SECTION:

Section 57-43.2-40 - Interstate motor carrier tax reports - payments - audits - assessments.

This section, together with proposed 57-43.2-38 (SECTION 56) and 57-43.2-39 (SECTION 57), reenacts provisions covering interstate motor carriers and is intended to:

◆ Create language compatible with the administration of tax imposed on motor carriers per the provisions of an International Fuel Tax Agreement (IFTA).

◆ Replace compatible provisions in existing section 57-43.2-36

(For comparable provisions in the Motor Vehicle Fuel tax chapter see SECTION 30, p. 28.)

AVIATION FUEL (AVIATION GASOLINE/JET FUEL) - TAX CHAPTER 57-43.3.

59. **SECTION 59** - p. 58 - AMENDMENT:

Section 57-43.3-01 - Definitions.

◆ The intent of this amendment is to add various definitions to this tax chapter compatible with the definitions which appear in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 1, p. 2 and for comparable provisions for the Special Fuel tax chapter see SECTION 31, p. 29.)

60. **SECTION 60** - p. 60 - AMENDMENT:

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

The intent of this amendment is to:

◆ Change the term “dealer” to the applicable industry terms.

◆ Require that the tax be collected by a supplier or distributor on all sales to a retailer or to a consumer, and to specifically state that a retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

◆ Include a due date for tax remittance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 7, and for comparable language in the Special Fuel tax chapter see SECTION 32, p. 34.)

61. **SECTION 61** - p. 61 - AMENDMENT:

Section 57-43.3-03 - Refund of tax.

The intent of this amendment is to:

- ◆ Specify that the 4% excise tax imposed by section 57-43.3-04 be deducted from a refund of the tax imposed by section 57-43.3-02.
- ◆ Include a provision for a refund to avoid double taxation in the event that the aviation fuel is removed to another jurisdiction in which it is taxed.
- ◆ Provide that any person purchasing tax paid fuel for resale to the US Government may obtain a refund of the tax from the Commissioner. Currently only a person licensed with the Commissioner may take credit for or obtain a refund of tax in this type of situation. A retailer without a license cannot. This provision would allow any person in the fuel business to obtain a refund under these circumstances.

62. **SECTION 62 - p. 62 - AMENDMENT:**

Section 57-43.3-04 - Special excise tax levied.

- ◆ The intent this amendment is to clarify the language.

63. **SECTION 63 - p. 62 - CREATE NEW SECTION:**

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

The intent of the new section is to:

- ◆ Require a license for the sale of aviation fuel separate from Motor Vehicle Fuel and Special Fuel. Currently "aviation gasoline" is included with the Motor Vehicle Fuel license although the definition of "motor vehicle fuel" specifically excludes aviation gasoline. "Jet fuel" is currently included with Special Fuels only because it is a type of kerosene.
- ◆ Create licensing provisions compatible with those in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 9, p. 11 and for comparable provisions for the Special Fuel tax chapter see SECTION 39, p. 39.)

64. **SECTION 64 - p. 63 - CREATE NEW SECTION:**

Section 57-43.3-09 - Bond or letter of credit required.

The intent of the new section is to:

- ◆ Create security requirements for aviation fuel taxes compatible with those in the Motor Vehicle Fuel and Special Fuel tax chapters.
- ◆ Set the minimum security at an amount not less than \$500.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 10, p. 12 and for comparable provisions for the Special Fuel tax chapter see SECTION 40, p. 40.)

65. **SECTION 65** - p. 64 - CREATE A NEW SECTION:

Section 57-43.3-10 - Qualification for exporter license.

◆ A new section is proposed to require a person applying for a license as an exporter to supply proof that the person has a license in the jurisdiction into which the fuel is to be exported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 11, p. 14, and for comparable provisions for the Special Fuel tax chapter see SECTION 41, p. 42.)

66. **SECTION 66** - p. 64 - CREATE NEW SECTION:

Section 57-43.3-11 - Qualification for importer license.

◆ A new section is proposed to require a person applying for a license as an importer to supply proof that the person has a license in the jurisdiction from which the fuel is to be imported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 12, p. 15, and for comparable provisions for the Special Fuel tax chapter see SECTION 42, p. 43.)

67. **SECTION 67** - p. 65 - CREATE NEW SECTION:

Section 57-43.3-12 - Application for license - issuance of license - denial of license.

The new section is intended to:

◆ Provide for one license covering multiple license types. For example, a person who qualifies as a distributor and an importer would need only one license covering both.

◆ Provide the commissioner with the authority to deny a license for cause and to provide for a hearing.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 15, and for comparable provisions for the Special Fuel tax chapter see SECTION 43, p. 43.)

68. **SECTION 68** - p. 65 - CREATE NEW SECTION:

57-43.3-13 - Revocation of license - hearing to show cause - reinstatement.

The intent of the new section is to:

◆ Create license revocation and reinstatement provisions for the aviation fuel tax chapter.

◆ Provide for a hearing pursuant to the provisions of chapter 28-32.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 14, p. 16, and for comparable provisions for the Special Fuel tax chapter see SECTION 44, p. 44.)

69. **SECTION 69** - p. 66 - CREATE NEW SECTION:

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

The new section is intended to:

◆ Create a reporting requirement for aviation fuel.

◆ Provide that when the due date of a tax report and tax payment fall on a weekend or a holiday, the due date is extended to the first working day after the weekend or holiday.

◆ Allow a post mark by a service other than the U.S. Postal Service as proof of timely mailing.

◆ Allow reports to be filed electronically.

◆ Clarify what information needs to be reported.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 15, p. 16 and for comparable provisions in the Special Fuel tax chapter see SECTION 46, p. 45.)

70. **SECTION 70** - p. 67 - CREATE NEW SECTION:

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

◆ The proposed section requires terminal operators to file reports with the commissioner and specifies what type of information needs to be reported. Currently reports are filed on a voluntary basis with no statutory mandate or guidelines.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 16, p. 18, and for comparable provisions for the Special Fuel tax chapter see SECTION 47, p. 47.)

71. **SECTION 71** - p. 68 - CREATE NEW SECTION:

Section 57-43.3-16 - Common or contract carrier - license required - records required - diverted loads - commissioner to audit records.

The intent of the new section is to:

◆ Require common or contract carriers to obtain a license, create records, maintain records, and file diverted load information. The provisions are compatible with similar provisions in other states and are created for the purpose of assuring that fuel diverted from the jurisdiction named on records at a terminal is properly accounted for in the actual destination state.

◆ Provide the Commissioner with audit authority.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 17, p. 19, and for comparable provisions in the Special Fuel tax chapter see SECTION 48, p. 48.)

72. **SECTION 72 - p. 70 - CREATE NEW SECTION:**

Section 57-43.3-17 - Credit for taxes paid on worthless accounts and refunds.

◆ The intent of the new section is to provide credits or refunds for aviation fuel taxes paid on worthless accounts in the same manner as provided for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 8, p. 10, and for comparable provisions for the Special Fuel tax chapter see SECTION 38, p. 39.)

73. **SECTION 73 - p. 70 - CREATE NEW SECTION:**

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

◆ The intent of the new section is to provide the commissioner with the same authority to audit reports and assess aviation fuel taxes as granted for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 18, p. 21, and for comparable provisions for the Special Fuel tax chapter see SECTION 49, p. 50.)

74. **SECTION 74 - p. 72 - CREATE NEW SECTION:**

Section 57-43.3-19 - Determination if no report filed.

◆ The intent of the new section is to provide the commissioner with the same authority to make a determination of tax if no aviation fuel tax report is filed as granted for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 19, p. 23, and for comparable provisions for the Special Fuel tax chapter see SECTION 50, p. 52.)

75. SECTION 75 - p. 72 - CREATE NEW SECTION:

Section 57-43.3-20 - Corporate officer liability.

◆ The intent of the new section is to provide the same corporate officer liability for aviation fuel taxes as provided for in the motor vehicle fuel and special fuel tax chapters.

76. SECTION 76 - p. 72 - CREATE NEW SECTION:

Section 57-43.3-21 - Governor and manager liability.

◆ The intent of the new section is to provide the same governor and manager liability for aviation fuel taxes as provided for in the motor vehicle fuel and special fuel tax chapters.

77. SECTION 77 - p. 73 - CREATE NEW SECTION:

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

◆ The intent of the new section is to provide the commissioner with the same authority to obtain liens if necessary for aviation fuel tax purposes as granted for motor vehicle fuel and special fuel taxes.

78. SECTION 78 - p. 74 - CREATE NEW SECTION:

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

◆ The intent of the new section is to impose the same penalties and interest on delinquent or nonpayment of aviation fuel taxes as imposed on motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 20, p. 23, and for comparable provisions for the Special Fuel tax chapter see SECTION 51, p. 52.)

79. SECTION 79 - p. 75 - CREATE NEW SECTION:

Section 57-43.3-24 - Tax collection allowance.

◆ The intent of the new section is to provide for a collection allowance of 1% of the aviation fuel tax due, up to a maximum of \$500, compatible with the Special Fuel tax collection allowance.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 21, p. 24, and for comparable provisions for the Special Fuel tax chapter see SECTION 35, p. 38.)

80. SECTION 80 - p. 75 - CREATE NEW SECTION:

Section 57-43.3-25 - Retention of records - subject to inspection.

◆ The intent of the new section is to provide for the same record retention and inspection requirements for aviation fuel taxes as those for motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 22, p. 24, and for comparable provisions for the Special Fuel tax chapter see SECTION 45, p. 45.)

81. **SECTION 81 - p. 75 - CREATE NEW SECTION:**

Section 57-43.3-26 - Inventory gains - losses.

◆ The intent of the new section is to provide the same inventory gain and loss requirements for aviation fuel as required for motor vehicle fuel and special fuel.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 23, p. 25, and for comparable provisions for the Special Fuel tax chapter see SECTION 54, p. 54.)

82. **SECTION 82 - p. 76 - CREATE NEW SECTION:**

Section 57-43.3-27 - Administration - assistance authorized - rules.

◆ The intent of the new section is to replace the current 57-43.3-05 (being repealed) and make the provisions identical to those found in the Motor Vehicle Fuel and Special Fuel tax chapters.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 26, p. 27, and for comparable provisions for the Special Fuel tax chapter see SECTION 55, p. 55.)

83. **SECTION 83 - p. 76 - CREATE NEW SECTION:**

Section 57-43.3-28 - Erroneously or illegally collected taxes.

◆ The intent of the new section is to provide for an aviation fuel tax credit or refund of erroneously or illegally collected taxes in the same manner as currently provided for motor vehicle fuel and special fuel taxes.

(For comparable provisions for the Motor Vehicle Fuel tax chapter see SECTION 27, p. 27, and for comparable provisions for the Special Fuel tax chapter see SECTION 53, p. 54.)

84. **SECTION 84 - p. 77 - REPEAL:**

◆ This section provides for the repeal of obsolete sections. The majority of the language in those sections is incorporated into the amended or newly created sections in this bill.



NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION

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SB2177 HOUSE FINANCE AND TAXATION COMMITTEE

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the North Dakota Petroleum Marketers Association. I appear before you today in support of SB2177.

The State Tax Department in cooperation with the Petroleum Marketers Association have been working on a motor fuels tax study group in the interim. Petroleum marketers from across the state have come to Bismarck numerous times to work on the clarification and simplification of the motor fuel regulations. SB2177 is the result of the groups' efforts. The bill makes technical changes addressing definitions, licensing, and the reporting requirements of the tax collectors and tax remitters to the Tax Department. We believe this bill will improve the reporting process for marketers and the Tax Department.

The Petroleum Marketers Association would like to thank the Tax Commissioner and Joan Galster for their cooperation and hard work on this project. We support the changes in SB2177 and urge a do pass recommendation from the committee.

I would be happy to answer any questions.

