

2009 SENATE FINANCE AND TAXATION

SB 2375

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

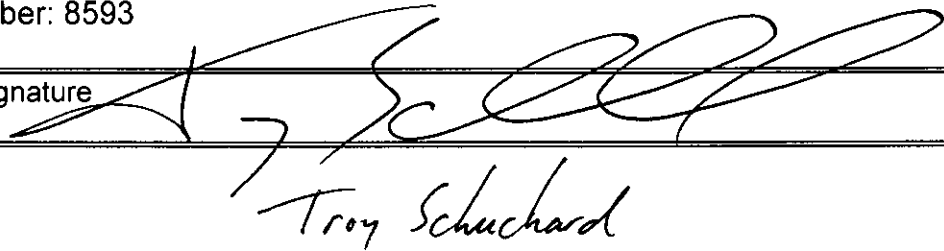
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8593

Committee Clerk Signature



Troy Schuchard

Minutes:

Chairman Cook: Opened hearing on SB 2375.

Senator Stenehjem, District 34: Left History of Dyed Fuel. See Attachment #1. We have been giving computerized forms of what vehicles useto the tax department. The bill is very narrow to requires digital records

3.35 Chairman Cook:

Senator Stenehjem: Yes.

Senator Hogue: Will this provide communities that do not have them any incentive to comply?

Senator Stenehjem: I would say that cities currently that have to install fuel tanks, may not have to if they put in computerized fuel systems.

Chairman Cook: This is for cities only; would this problem exist for counties also?

Senator Stenehjem: If you were to include counties or even the state highway departments that would be fine with me.

Vice Chairman Miller: What does it cost?

Senator Stenehjem: I don't expect them to run out and get a computerized system right away.

6.05 **Jeff Heinz, Public Works for Bismarck:** Testified in support of the bill. (See Attachment #2 for chart referenced to in the testimony)

8.20 **Vice Chairman Miller:** How big is \$100K tank, in gallons?

Jeff Heinz: 15K gallons

8.42 **Allen Walter,** Director of Public Works, City of Minot. Testified in support of the bill. We currently have the system in place and support this bill

9.00 **Senator Dotzenrod:** You have the system but have you made the change to dyed fuel?

Allen Walter: Not at this point. We have not.

Kevin Schulz: The state and counties are exempt on the state level, not on federal level.

11.25 **Senator Anderson:** I don't think this bill is a secret. I would think the counties if they were here in opposition, they would be here testifying.

9.48 **Chairman Cook:** Closed the hearing on SB 2375.

Vice Chairman Miller: Motion for do pass.

Senator Hogue: Seconded.

Motion for a do pass passed 7-0, all present.

FISCAL NOTE
Requested by Legislative Council
01/27/2009

Bill/Resolution No.: SB 2375

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2375 relates to dyed special fuel usage by cities.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill does not change the taxation of special fuels; there is no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/02/2009

Date: 02/04/09

Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. :

2375

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Miller Seconded By Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2375: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2375

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2375

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10154

Committee Clerk Signature

Minutes:

Chairman Belter: We have students here from Dickinson and Maple Valley. Welcome to the Finance and Tax Committee. We will open the hearing on SB 2375.

Senator Stenehjem: It is certainly an honor to be here. What you have before you is SB 2375 which I introduced to solve a situation we have. Some of you were here when we did something called buy right in diesel fuel, where you had to buy the right diesel fuel. At that time there was a problem in some areas, in municipalities mostly where they only had one fuel tank in the ground. In Bismarck, Minot, Grand Forks and some of these other communities, it would require us to put another fuel tank in the ground because all of our front end loaders, motor graders, construction dump trucks can run on dyed fuel or untaxed fuel, but garbage trucks and fire trucks have to burn taxed fuel or clear diesel fuel. At that time the law went in, an arrangement was made and we had a pilot program that allowed a city, if they had a computerized fuel system, they could report the number of gallons of diesel fuel that were run through the non-tax exempt vehicles. Then they paid the Tax Department the fuel taxes that were required by law. Administrations have come and gone and changes have been made and they feel a little uneasy that maybe they don't have the statutory authority to proceed or to keep continuing doing this in this way. That's why the bill is in here that would allow us to

continue; any city that has a computerized fueling system would be able to burn dyed diesel fuel in their fire trucks and their garbage trucks and pay the fuel tax that is required. With that, Mr. Chairman, I will be happy to answer any questions.

Chairman Belter: One thing I was wondering about was is there different sulfur content between the dyed and the clear and is that a problem for you?

Senator Stenehjem: After I put this bill in, that comment did come up. I talked to the people at Tesoro Refinery and they said, yes, it used to be high sulfur, low sulfur, but today it is all the same. The only difference he told me was the dye that was in the fuel.

Jeff Heintz, Public Works Director for the City of Bismarck: I am just here to testify in favor of this bill. I would like to hand out some information we did (**Attachment 1**) that compares what the cost would be for Bismarck if we had to put in additional fuel tank versus using the system that we are presently operating under. In talking with the representatives who sell computerized fuel systems, a computerized system could cost anywhere from \$16,000-22,000; it depends upon the type of program you wanted to install. A double-walled in-ground diesel fuel tank costs about \$100,000 to install. Our average annual savings on state diesel fuel tax is about \$14,000 by using the system we have in place with our computerized system. It would take us about 1.1 to 1.5 years to recover the savings of that computerized fuel system versus having to spend \$100,000 for a tank to hold the undyed fuel. Because of that, we feel it is important to continue to operate in this fashion and also to allow other cities across the state to utilize this type of a system to monitor the vehicles that are eligible and not eligible for the dyed fuels so the savings can be felt immediately by the city. Those monies can then be used for other operating expenses-- materials, equipment purchasing and all sorts of things.

Representative Pinkerton: Couldn't the smaller cities just write down on a piece of paper how much goes in one and how much goes in the other?

Senator Stenehjem: I am sure they could, but I am not sure what the Tax Department would say in regards to that. (inaudible).

Representative Pinkerton: Mr. Chairman, you wouldn't think that Glen City would ever write something down wrong.

Chairman Belter: We just had a bill based on trust with the truckers so there is not a lot of difference. Any other questions? Further testimony in support of 2375? Any opposition to 2375? Any neutral testimony on 2375? Questions of the committee for the Tax Department? If not, we close the hearing on SB 2375.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2375**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10155

Committee Clerk Signature



Minutes:

Chairman Belter: What are your wishes on SB 2375?

Representative Winrich: Mr. Chairman, I move a "do pass".

Representative Grande: Second.

Chairman Belter: Any discussion. If not, will the clerk read the roll for a "do pass" on SB 2375. A roll call vote resulted in 11 ayes, 0 nays, 2 absent/not voting. Representative Pinkerton will carry the bill.

Date: March 4, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2375

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Winrich Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande	/		Representative Winrich	/	
Representative Headland					
Representative Weiler	/				
Representative Wrangham	/				

Total (Yes) ~~10~~ 11 No 0

Absent 2 (Froelich + Headland)

Floor Assignment Representative Pinkerton

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

REPORT OF STANDING COMMITTEE (410)
March 4, 2009 1:02 p.m.

Module No: HR-39-4029
Carrier: Pinkerton
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2375: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2375 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2375

CHAPTER 528

HOUSE BILL NO. 1462

(Representatives Timm, Dorso)

SPECIAL FUELS DYES, DEFINITIONS, AND INVENTORY

AN ACT to create and enact section 57-43.2-38 of the North Dakota Century Code, relating to use of dyed special fuel in a licensed motor vehicle and penalties; to amend and reenact sections 57-43.1-26, 57-43.1-27, 57-43.2-01, 57-43.2-03, and 57-43.2-21 of the North Dakota Century Code, relating to definitions for special fuels tax purposes and inventory gains and losses for motor vehicle fuels and special fuels tax purposes; to repeal section 57-43.2-02.2 of the North Dakota Century Code, relating to refund of special fuels taxes; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁶ SECTION 1. AMENDMENT. Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-26. Inventory gains - Losses - Deductions allowed to dealer - Remedies. Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-42.1-16; but the allowance may not exceed one percent of the total received during that month:

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

³³⁶ Section 57-43.1-26 was also amended by section 23 of Senate Bill No. 2177, chapter 526.

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

5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

³³⁷ SECTION 2. AMENDMENT. Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a wholesale dealer supplier or distributor in motor vehicle fuel makes a sale to a retail outlet the wholesale dealer supplier or distributor shall credit the retail outlet with one-half of one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the dealer supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

³³⁸ SECTION 3. AMENDMENT. Section 57-43.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

³³⁷ Section 57-43.1-27 was also amended by section 24 of Senate Bill No. 2177, chapter 526.

³³⁸ Section 57-43.2-01 was also amended by section 31 of Senate Bill No. 2177, chapter 526.

2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
5. "Director" means the director of the department of transportation.
6. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
7. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
8. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
9. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of persons or vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.340] kilograms; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.340] kilograms gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
9. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;

- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power take-off unit; and
- j. Other similar business activity.

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

~~"Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.~~

11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

12. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.

13. "Person" means every natural person, fiduciary, association, corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.

15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

16. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.

17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, all gases and liquids which meet the

specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

359 SECTION 4. AMENDMENT. Section 57-43.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels; which are exempted from the tax imposed under section 57-43.2-02.
2. ~~The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.~~
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. 4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

359 Section 57-43.2-03 was also amended by section 34 of Senate Bill No. 2177, chapter 526.

6. 5. The dealer shall remit the tax imposed by this section on all sales to a consumer.

360 SECTION 5. AMENDMENT. Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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

360 Section 57-43.2-21 was also amended by section 54 of Senate Bill No. 2177, chapter 576.

the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.

5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 6. Section 57-43.2-38 of the North Dakota Century Code is created and enacted as follows:

57-43.2-38. Dyed special fuel - Administrative fees - Inspections.

1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the tax imposed by section 57-43.2-03 and, unless otherwise provided in this section, may not be used in the fuel supply tank of a licensed motor vehicle. The owner or operator of a licensed motor vehicle found to contain dyed special fuel in the fuel supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to be determined based on the capacity of the fuel supply tank of the licensed vehicle involved and is subject to administrative fees as follows:
 - a. A two hundred fifty dollar fee for the first violation.
 - b. A five hundred dollar fee for a second violation occurring within three years of a previous violation.
 - c. A one thousand dollar fee for a third violation occurring within three years of two previous violations.
 - d. A five thousand dollar fee for the fourth and subsequent violations occurring within three years of three or more previous violations.
2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be considered dyed if the fuel contains traces of the dye in an amount sufficient to be found in violation of federal laws and rules.
3. For purposes of enforcing the provisions of this section, the highway patrol, by agreement with the commissioner, may:
 - a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of fuel from the fuel supply tank of the vehicle in a manner and in a quantity sufficient to determine whether the fuel is a special fuel and to determine the dye content of the fuel.
 - b. Physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel for coloration, markers, and shipping papers.

Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping papers by the highway patrol is subject to a civil penalty of not more than one thousand dollars per occurrence.
4. The highway patrol may issue a citation covering any violation of this section, and the person receiving a citation has the right to a hearing

before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing.

5. This section does not apply to:

- a. A person who purchased dyed special fuel in another state or Canadian province and imported that fuel into the state in the supply tank of a licensed motor vehicle provided the state or Canadian province where the fuel was purchased does not prohibit its use in that vehicle.
- b. A state or local government using dyed special fuel in licensed vehicles for purposes of construction, reconstruction, repair, or maintenance of public roads or highways.
- b. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund.

³⁶¹ SECTION 7. REPEAL. Section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 8. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1999-2000 interim the application, enforcement, and administration under the fuels tax laws.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1999.

Approved April 22, 1999
Filed April 22, 1999

³⁶¹ Section 57-43.2-02.2 was amended by section 33 of Senate Bill No. 2177, chapter 526.

Measure Actions

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House Journal; SJ=Senate Journal

Rep. Timm, Dorso

A BILL for an Act to create and enact sections 57-43.1-02.2, 57-43.1-12.1, 57-43.2-03.1, 57-43.2-04.4, 57-43.2-38, 57-43.3-02.2, 57-43.3-09, 57-43.3-14, 57-43.3-18, 57-43.3-28, and chapter 57-43.4 of the North Dakota Century Code, relating to collection by the supplier of motor vehicle, special fuels, aviation fuels, and alternative fuels taxes, taxation of inventories, administration, enforcement, and penalties; to amend and reenact sections 57-43.1-02, 57-43.1-14, 57-43.1-16, 57-43.1-24, 57-43.1-26, 57-43.2-01, 57-43.2-02, 57-43.2-03, 57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-11, 57-43.2-21, and 57-43.3-02 of the North Dakota Century Code, relating to collection by suppliers of motor vehicle, special fuels, aviation fuels, and alternative fuels taxes, taxation of inventories, administration, enforcement, and penalties; to repeal sections 57-43.1-27 and 57-43.3-24 of the North Dakota Century Code, relating to motor vehicle fuels tax imposition and credit for losses and aviation fuel taxes collection allowances; and to provide an effective date.

01/18	House	Introduced, first reading, referred Finance and Taxation	HJ 150
02/03	House	Committee Hearing 10:00	
02/03	House	Reported back amended, amendment p0c y 010 n 004	HJ 443
02/12	House	Amendment adopted, placed on calendar	HJ 449
02/15	House	Second reading, passed as amended, yeas 050 nays 047	HJ 501
02/16	Senate	Received from House	SJ 477
02/17	Senate	Introduced, first reading, referred Finance and Taxation	SJ 534
03/16	Senate	Committee Hearing 10:00	
03/23	Senate	Reported back amended, amendment p0c y 007 n 000	SJ 823
03/24	Senate	Amendment adopted, placed on calendar	SJ 833
		Second reading, passed as amended, yeas 043 nays 004	SJ 833
03/24	House	Returned to House (12)	HJ 984
03/31	House	Refused to concur	HJ1075
		Conf comm appointed Mickelson Timm Warner	HJ1075

04/01	Senate	Conf comm appointed Wardner Urlacher Kinnoin	SJ1001
04/13	House	Reported back from conf comm, placed on calendar (Senate recede)	HJ2314
04/14	House	Conference committee report rejected	HJ1436
		New conf comm appointed Mickelson Timm Warner	HJ1437
04/14	Senate	New conf comm appointed Wardner Urlacher Kinnoin	SJ1259
04/14	House	Reported back from conf comm, placed on calendar (Senate recede)	HJ1456
04/15	House	Conference committee report rejected	HJ1486
		Reported back from conf comm, placed on calendar (Senate recede)	HJ1479
		Conference committee report adopted	HJ1485
		Second reading, passed as amended, yeas 073 nays 021	HJ1485
04/15	Senate	Reported back from conf comm, placed on calendar (Senate recede)	SJ1319
		Conference committee report adopted	SJ1323
		Second reading, passed as amended, yeas 028 nays 019	SJ1324
04/16	House	Signed by Speaker	HJ1551
04/16	Senate	Signed by President	SJ1355
04/19	House	Sent to Governor	
04/22	House	Signed by Governor	
04/22	House	Filed with Secretary of State	

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1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1462

House Finance and Taxation Committee

Conference Committee

Hearing Date February 3, 1999

Tape Number	Side A	Side B	Meter #
1	x		0.5
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

REP. MIKE TIMM, DIST. 5, MINOT, Introduced the bill. There was a study of this particular issue during the interium by the Finance Committee, at that time the North Dakota Motor Carrier's Association presented the idea of changing the tax collection point for fuels in the State of North Dakota. There was a need pointed out, that other states have made this change and South Dakota was one example where a lot more taxes were collected after this legislation was enacted. There is a possibility that North Dakota could collect taxes that are not being collected today.

REP. JOHN DORSO, DIST. 46, FARGO, Testified in support of the bill as a co-sponsor.

We have talked about changing the point of collection for quite a few sessions. We have gotten information from the federal government. Some of our surrounding states have moved the point

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House Finance and Taxation Committee
Bill/Resolution Number Hb 1462
Hearing Date February 3, 1999

of collection. I think it is time we move forward with this. I think it will give the tax department a better mechanism to collect the tax.

JOAN GALSTER, MOTOR FUEL TAX SUPERVISOR, STATE TAX DEPARTMENT,

Testified in a neutral position. See written testimony, plus an amendment to the bill. Referred to SB 2177 which goes along with HB 1462.

REP. BELTER The only point of taxation is at the supplier, as far as reports go, the only people that would be required to file reports to your office is the supplier.

JOAN GALSTER That is correct, with the exception of an importer. If one of those distributors is an importer, they would have to continue to be licensed, they would have to report that import and they would have to pay the tax on that import.

REP. SCHMIDT You mentioned the highway patrol would be the enforcers, could you expound on that a little bit.

JOAN GALSTER The highway patrol by agreement with the tax commissioner, would be the enforcer of the dyed fuel penalty. You look for vehicles with dyed fuel in their fuel tank. The highway patrol would have the authority to stop vehicles, such as big trucks, they would take a sample of their fuel and write out a penalty.

REP. BELTER For example, my North Dakota dealer goes to Minnesota and gets a tanker load of fuel and brings it to my farm, is he an importer then?

JOAN GALSTER Yes, he would pay the tax to the tax commissioner. He would be required to file the report and pay the tax. But, his report would only be based on that import.

REP. RENNERTFELDT Would this also include fuel coming out of Canada?

JOAN GALSTER Yes, we have exchange agreements with Canada where we cross check.

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House Finance and Taxation Committee

Bill/Resolution Number Hb 1462

Hearing Date February 3, 1999

REP. WARNER Explain how agricultural fuels, and how that tax is rebated.

JOAN GALSTER The consumer comes directly to the tax commissioner for refunds like it is done now, and that is how it will continue.

REP. BELTER Regarding the fiscal note, it says additional revenues up to 2.5 million, where would you expect to get those revenues?

JOAN GALSTER From the inventory tax the first of the year.

REP. BELTER That would not really be new money.

JOAN GALSTER That is right.

REP. WINRICH Your written testimony notes that there was an allowance for shrinkage in the senate bill, and this bill would repeal that, is shrinkage not a problem with aviation fuel, why are we not treating aviation fuel the same?

JOAN GALSTER The reason we did that is because, in SB 2177 giving them a shrinkage allowance on aviation fuel, did have a slight revenue affect on the aeronautics commission funding, and we were told in drafting this particular bill, that it should be revenue neutral, therefore, in order to make it revenue neutral, we took it back out.

REP. WINRICH Does the aeronautics commission take a position on this?

JOAN GALSTER I have not heard.

DICK JOHNSON, NORTH DAKOTA MOTOR CARRIER'S ASSN. Testified in support of the bill. See written testimony.

MARSHAL MOORE, DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION,

Testified in support of the bill. Gave a report of what has happened over the past years and what is happening in surrounding states. Some of them moving to the rack and some of the distributor,

but in each case they were taxing more fuel and obtaining more revenue. Each one of the states were contacted. Nebraska doesn't go to the rack, they made some other changes. Wyoming went to the rack and indicated the first year they had six million dollars additional revenue. South Dakota moved to the rack in 1996 and had a significant increase. Montana moved to the point of distribution, and they had a significant increase. Every state has indicated there were places where there was some leakage of fuel brought into the state and has not been taxed.

REP. MICKELSON Referred to the chart, are these increases in these states a one time initial increase?

MARSHAL MOORE I haven't had a chance to read all of the increases shown, I am assuming they are the increases they saw in the first two or three years. We should take a look whether the increases were on a curve or increases of fuel usage anyway.

LEROY ERNST, NORTH DAKOTA MOTOR CARRIER'S ASSN. Testified in support of the bill. Addressed Rep. Mickelson's question. If you look at the state of Nevada, it shows an increase of twenty five percent, I was in contact with the people from Nevada, when they initially taxed this legislation, it was only on special fuels, they are also looking at a bill which will move the point of taxation on gasoline as well. The twenty five percent of increase in Nevada, covers only special fuels. They anticipate with the passing of the other bill, that that percentage will increase even more.

CURT PETERSON, NORTH DAKOTA ASSOCIATION OF GENERAL CONTRACTORS.

Testified in support of the bill.

LOWELL RIDGEWAY, NORTH DAKOTA PETROLEUM COUNCIL, Testified in support of the bill.

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House Finance and Taxation Committee

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Hearing Date February 3, 1999

MARK JOHNSON, NORTH DAKOTA ASSOCIATION OF COUNTIES, Testified in support of the bill.

RICK CLAYBURGH, STATE TAX COMMISSIONER, Testified in a neutral position. In administering the motor fuel, I think changing the point of taxation does have an advantage for our administration of the tax. In putting together the fiscal note, there was discussion, when the governor put his budget together also and specifically talked about revenue enhancement. For us to say that this bill will bring in a million or two million or more in additional funding other than dealing with the special fuel tax and changing the percentage, or on just the issue of bringing in some money that would have come down the line. To do that, we feel we have a fairly good program in effect now to deal with fuel taxation, however, there are abilities to avoid fuel tax in North Dakota, but is it occurring, we can't tell you. From our point of view, we think in changing the point or reducing the point of contact fuel in the state, makes sense from an administrative standpoint and also from a taxation standpoint.

RON NESS, NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION, Testified in opposition of the bill. See written testimony. Also submitted a handout regarding state tax collection procedures and an analysis of each state and where they are at. Also presented a handout which shows which states moved to the rack - referred to state dyed fuel penalties.

REP. GRANDE How do your members currently handle federal tax?

RON NESS The federal tax moved to the rack in 1994.

REP. GRANDE Would it not make sense to follow in line?

RON NESS We do not believe it will. The federal tax and state tax are handled differently.

When the federal government proposes something, marketers across the whole United States are

treated equally. Imposing the rack tax here, will put us on a different level than Minnesota and Montana. South Dakota is currently at the rack.

REP. WARNER Can you give me some idea of the cost of money involved for your retailers preparing for the tax report.

RON NESS My figures show that it will be about 2.7 million dollars for our membership.

REP. WINRICH You argued about the fact that we can't anticipate increased revenues off of this proposal, but it seems to me there is another reason for this and that is that it would make the tax easier for the state to administer. Some of the testimony related to the fact that they would be getting one report instead of several, your alternative proposal generates new audit reports and you even suggested that perhaps we have to increase the allocation to the tax commissioner, etc., I don't understand what would be so disruptive of your industry about making a change, which might generate more revenue and be more efficient.

RON NESS We will address that in additional testimony. One of our primary concerns is a penny advantage for one marketer over another can create a tremendous business advantage or disadvantage. There are a lot of changes in here, and we are not sure that all of them can work.

DAVE FROELICH, FROELICH OIL COMPANY, BISMARCK, Testified in opposition of the bill. The bill is a little bit of a rush to judgment portraying petroleum marketers as tax cheaters, with millions of dollars to be found. The cheaters are not the marketers, they are the end users, they will still go undetected without enhanced enforcement. That is the real solution to the problem of tax evasion. The bill will also create a tremendous amount of confusion, it does reduce the amount of taxpayers in the present situation. You would have to track one transaction two different times. This is a very sensitive issue, tinkering with it, can cost a business a lot of

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House Finance and Taxation Committee

Bill/Resolution Number Hb 1462

Hearing Date February 3, 1999

money. The bill will have a negative cash flow affect on marketers if they are unable to sell their product before the tax is due. Gave an example of having your whole store full of inventory, and having to pay the tax when you purchased the product not after you sell it. This is a bill that looks good on the surface, has some good intentions, but to move the tax to the rack, is not a no-brainer.

RICHARD ELKIN, BURLINGTON NORTHERN RAILROAD, Testified in opposition of the bill. The part we oppose of the bill, is the tax increase. We presently pay a two percent excise tax on locomotive fuel. The money goes to the highway fund. It is the locomotive fuel increase that we object to. Our average cost of fuel has been forty three cents, it has been a long time since we were over fifty, and never have we been at seventy five cents. We buy a lot of fuel, in North Dakota, this year, we will purchase between seventy five and eighty million gallons of locomotive fuel.

TOM KELSCH, REPRESENTING THE CANADIAN PACIFIC RAILROAD, Testified in opposition of the bill. Quoting the same statements that Richard Elkin made.

CORNELIUS KOOREN, GENERAL MGR. FARMER'S UNION OIL CO., DICKINSON, Testified in opposition of the bill. I am a retailer. We need revenue and we need roads. The thing though, as I look at this, the inventory is the big enhancement for revenue. We maintain quite a bit of inventory that now is state tax free. That is one thing that impacts us as a retailer. The other thing I am concerned about is the process of how we collect our fee back that you currently paid up for collecting the tax. I don't understand how that system is going to be set up. I am sure it will be awful cumbersom. Second concern is on the shrinkage allowance. Our company has never taken the full shrinkage allowance allowed by state law. In this case, I don't

know how we would work that. There was a question of how much it might cost. In our business, that I am responsible for, I will have to come with an additional eighty four thousand dollars in working capital to support the on-going tax payment in addition to the amount we have to pay on the inventory that we own. I speak in opposition as a financial burden to a small business in North Dakota, and there are a lot of people just like us.

REP. GROSZ Can you explain the eighty four thousand dollars needed?

CORNELIUS KOOREN That is based on the gallons that we sell on a monthly basis.

REP. GROSZ How often does the average gallon of gas stay in your tank?

CORNELIUS KOOREN We turn our inventory about every ten days.

RICHARD SCHLOSSER, NORTH DAKOTA FARMERS UNION, Testified in opposition of the bill. Some of the concerns we have are the impacts on the affiliated cooperatives as previously presenter spoke to. We did develop some policies in the last convention on the increased work of capitol requirements, if these cooperatives are required to pay at the rack. As a member/owner of a cooperative, those costs will be passed on to the consumer.

MATT BJORNSON, BJORNSON OIL COMPANY, CAVALIER, Testified in opposition of the bill. In addition to our retail station, we also supply small bulk dealers and single station owners in small towns. This bill to us, creates a tremendous accounting problem. A lot of these small dealers are hanging on by a thread right now. They don't need any more demands on their working capital. There have been a lot of comparisons with North Dakota and the rest of the company, and gladly, we are different in a lot of ways. In one way, our state enjoys a very competitive market with a lot of independent suppliers and enjoy a very competitive retail market with a lot of independent suppliers. In California or Arizona, you will not find someone

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House Finance and Taxation Committee

Bill/Resolution Number Hb 1462

Hearing Date February 3, 1999

like me with their last name up on their service station. This bill does not help the independent atmosphere we have today.

When they talk about moving the point of taxation to a supplier, I think you should know that you don't have to be a mega multi-national corporation to be a supplier. Many of those people are brokers, and they come from all over the country, most of them are good companies, but some of them are not on the firmest ground. In this proposal, the state will be going to these people and they will be taking the North Dakota tax dollar out of state and they will be the stewarts, of the tax money submitted, as opposed to having the local dealers being the stewarts of that tax money.

REP. FROELICH Will this bill create any costs to the state?

JOAN GALSTER Answered it is hard to say. Maybe in the long run.

REP. FROELICH Do you foresee any problems with this bill in the new tax agreement with the tribes?

JOAN GALSTER I don't think it will affect the agreement with the tribes. They will have to take it upon themselves to amend an ordinance which will accommodate any ordinance that will present a problem.

GARY ANDERSON, STATE TAX DEPARTMENT Commented regarding the cost to the department. It is difficult to identify costs. Under this particular bill, it would result in fewer taxpayers having the responsibility of reporting to us. As a result, that would result in fewer tax reports, or modified tax reports. This would result in better compliance as a result of that activity. It does allow us more opportunity to concentrate on the taxable transactions within the state.

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House Finance and Taxation Committee

Bill/Resolution Number Hb 1462

Hearing Date February 3, 1999

With no further testimony, the hearing was closed.

COMMITTEE ACTION 2-9-99, Tape #1, Side A, Meter #0.5

REP. BELTER Recommended they amend the bill by changing the rate of tax on page 15, line 24, change it to 1.2 cents per gallon. He felt two and a half cents was too high. Another amendment from the Tax Department was discussed. Also page 4, line 2 and page 17, line 11, was amended to use the month of "February" for when the tax would be due.

REP. GRANDE Made a motion to adopt the amendments as presented.

REP. WICKENHEISER Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. GROSZ Made a motion for a DO PASS AS AMENDED.

REP. GRANDE Second the motion. MOTION CARRIED.

9 Yes 5 No 1 Absent

REP. GROSZ Was given the floor assignment.

COMMITTEE ACTION 2-10-99, Tape #1, Side A, Meter #0.6

REP. BELTER Asked for a motion to reconsider the action by which the bill was passed out of committee.

REP. MICKELSON Made a motion re reconsider the action.

REP. GRANDE Second the motion. MOTION CARRIED

REP. BELTER Presented another set of amendments which the Tax Department requested.

JOAN GALSTER, STATE TAX DEPARTMENT, Appeared before the committee to explain what the new amendments did. The reason for the amendment was that some of the suppliers

had taken a look at this, allowing the suppliers to have a tax free inventory, if they are also a distributor and retailer, puts them at an unfair advantage over the distributor or retailer who is not a supplier. So to resolve this, if a supplier is also a distributor and a retailer, which some of them are, using Amoco Oil as an example, Amoco Oil has fuel at local service stations, where Amoco actually owns that fuel at that retail station until it is sold. Under the bill, the way it is written, Amoco could have a tax free inventory at that retail level, where the competitor could not. This amendment would change it so that Amoco would have to pay the tax up front where they pull it out of the terminal, and place it into their retail, so it would be tax paid at that level, like all other retailers. On page 3 of the bill, in Section 2, we took out, "other than a supplier" and added in when the fuel is removed from a terminal by the supplier. Another change was on page 9, line 2 of the bill. We added the "distributor" or "retailer".

There were also another set of amendments being prepared, which would be presented later in the day.

LATER IN THE DAY. Tape #1, Side A, Meter #41.0

REP. GROSZ Made a motion to adopt the additional amendments to be added to amendments which were adopted earlier.

REP. GRANDE Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. GRANDE Made a motion for a DO PASS AS AMENDED.

REP. GROSZ Second the motion. MOTION CARRIED.

10 Yes 4 No 1 Absent

REP. GROSZ Was given the floor assignment.

FISCAL NOTE

Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: Engrossed HB 1462

Requested by Legislative Council

Date of Request: 4/15/99

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: If enacted with amendments to Engrossed HB 1462, the estimated biennial fiscal impact would be \$1.95 million. All revenues would be distributed according to the highway distribution fund formula except for the civil penalty component of the enforcement provision. Penalties would be placed in the state highway fund only. The distribution of the estimated \$1.95 million is 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				\$1.340 million		
Expenditures						

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
			\$380,000	\$230,000				

If additional space is needed
attach a supplemental sheet.

Signed: *Kathryn L. Strombeck*

Typed Name: Kathryn L. Strombeck

Department: Tax

Phone Number: 328-3402

Date Prepared: April 15, 1999

FISCAL NOTE

(Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: Engrossed HB 1462

Requested by Legislative Council

Date of Request: 3/24/99

- 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: If enacted with amendments to the First Engrossment (pp. 823-826, Journal of the Senate), HB 1462 would likely result in additional revenue due to the enforcement provisions and possibly due to the "Eury-Rite" provisions of the bill. The amount of the potential additional revenue is unknown. We believe the positive revenues could be between \$0 and \$2.0 M for the 99-01 biennium.

- 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						

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

- For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- 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: Kathryn L. Strombeck

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: March 26, 1999

Phone Number: 328-3402

Revised
FISCAL NOTE

Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: HB 1462

Requested by Legislative Council

Date of Request: 2/12/99

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: The amendments to HB 1462 that change the tax rate from 1.5 cents to 1.2 cents per gallon (page 445 of the Journal of the House) are expected to reduce revenues by \$1.28 million as shown below. The provision to tax inventories cannot be estimated exactly, but could result in a one-time increase in revenues of up to \$2.5 million in year 2000. Other factors that could potentially increase revenues if this bill is enacted include: An immediate, short-term "bump" in revenues due to changing the point of taxation (some states have reported experiencing this); additional tax and penalty from dyed fuel enforcement; and additional audit revenues from increasing the audit "coverage" by utilizing department resources auditing large companies in place of small, individual taxpayers. The combined effect of all of these factors could possibly result in an increase of up to \$2 M in the 1999-01 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				-\$806,400		
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
			-\$473,600					

If additional space is needed
attach a supplemental sheet.

Signed: Kathryn L. Strombeck

Typed Name: Kathryn L. Strombeck

Department: Tax

Phone Number: 328-3402

Date Prepared: March 18, 1999

FISCAL NOTE

Return original and 14 copies)

Bill/Resolution No.: _____

Amendment to: HB 1462

Requested by Legislative Council

Date of Request: 2/12/99

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: The amendments to HB 1462 that change the tax rate from 1.5 cents to 1.2 cents per gallon (page 445 of the Journal of the House) is expected to reduce revenues by \$1,280,000 as shown below. All other provisions of HB 1462 as amended are approximately revenue neutral except for the provision to tax inventories. Although the exact amount is unknown, the provision to tax inventories could result in additional revenues of up to \$2.5 million in the year 2000.

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				-\$806,400		
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
			-\$473,600					

If additional space is needed
attach a supplemental sheet.

Signed: _____

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: February 15, 1999

Phone Number: 328-3402

FISCAL NOTE

(Return original and 14 copies)

Resolution No.: HB 1462

Amendment to: _____

Requested by Legislative Council

Date of Request: 1/20/99

- 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: The credit allowance provisions of HB 1462 are approximately revenue neutral. The provision to tax inventories, however, could result in additional revenues of up to \$2.5 million in FY 2000. The exact amount of revenue raised by taxing inventories is unknown.

- 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						

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

- For rest of 1997-99 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 1999-2001 biennium: _____
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- 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: Kathryn L. Strombeck

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: February 2, 1999

Phone Number: 328-3402

REPORT OF STANDING COMMITTEE

HB 1462: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1462 was placed on the Sixth order on the calendar.

Page 1, line 23, after the period insert "For a supplier who is also a distributor or retailer, the motor vehicle fuel must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 3, line 1, after the period insert "For a supplier who is also a distributor or retailer, the motor vehicle fuel must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 3, line 29, remove ", other than a supplier."

Page 4, line 2, replace "the month next" with "February" and after the underscored period insert "The tax on inventories does not apply to a supplier's motor vehicle fuel in a terminal."

Page 4, line 5, replace "Taxes" with "Except in the case of sales to bonded distributors, taxes"

Page 4, after line 13, insert:

"In the case of supplier sales to bonded distributors, if the distributor fails to pay the supplier the tax on or before the date the supplier must remit it to the commissioner, the supplier may receive a credit for such nonpayment on a subsequent month's tax return. To receive such credit, the supplier shall notify the commissioner no later than ten working days after the due date of the distributor's failure to timely pay. This notification must include such information as the commissioner requires. The commissioner shall issue the supplier written confirmation that the credit is approved.

If the commissioner is notified that a distributor has failed to pay the supplier by the date the tax is due, the commissioner may revoke the distributor's license. In addition, the commissioner may pursue payment from the distributor's bonding company to satisfy the liability. If the commissioner revokes the distributor's license, the commissioner shall advise the supplier, and so advised, the supplier is no longer afforded the protection under this section. If a distributor's license is reinstated, the commissioner shall notify the supplier."

Page 4, line 18, after "supplier" insert ", distributor,"

Page 9, line 2, after "distributor" insert "or retailer"

Page 13, line 23, after the underscored period insert "For a supplier who is also a distributor or retailer, the special fuel must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 14, line 26, after the underscored period insert "For a supplier who is also a distributor or retailer, the special fuel must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 15, line 24, replace "one-half" with "two-tenths"

Page 15, line 25, after the period insert "For a supplier who is also a distributor or retailer, the special fuel subject to tax under this section must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 17, line 7, remove ", other than a supplier."

Page 17, line 11, replace "the month next" with "February" and after the underscored period insert "The tax on inventories does not apply to a supplier's special fuel in a terminal."

Page 17, line 21, after "distributor" insert "or retailer"

Page 17, line 26, replace "Taxes" with "Except in the case of sales to bonded distributors, taxes"

Page 18, after line 3, insert:

"In the case of supplier sales to bonded distributors, if the distributor fails to pay the supplier the tax on or before the date the supplier must remit it to the commissioner, the supplier may receive a credit for such nonpayment on a subsequent month's tax return. To receive such credit, the supplier shall notify the commissioner no later than ten working days after the due date of the distributor's failure to timely pay. This notification must include such information as the commissioner requires. The commissioner shall issue the supplier written confirmation that the credit is approved."

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Page 19, line 21, after "supplier" insert ", distributor."

Page 26, line 11, after the underscored period insert "For a supplier who is also a distributor or retailer, the aviation fuel must be considered sold and the tax imposed when the fuel is removed from a terminal by the supplier."

Page 27, line 5, remove ", other than a supplier."

Page 27, line 9, replace "the month next" with "February" and after the underscored period insert "The tax on inventories does not apply to a supplier's aviation fuel in a terminal."

Page 27, line 13, after "supplier" insert ", distributor."

Page 29, line 21, replace "Taxes" with "Except in the case of sales to bonded distributors, taxes"

Page 29, after line 29, insert:

"In the case of supplier sales to bonded distributors, if the distributor fails to pay the supplier the tax on or before the date the supplier must remit it to the commissioner, the supplier may receive a credit for such nonpayment on a subsequent month's tax return. To receive such credit, the supplier shall notify the commissioner no later than ten working days after the due date of the distributor's failure to timely pay. This notification must include such information as the commissioner requires."

The commissioner shall issue the supplier written confirmation that the credit is approved.

If the commissioner is notified that a distributor has failed to pay the supplier by the date the tax is due, the commissioner may revoke the distributor's license. In addition, the commissioner may pursue payment from the distributor's bonding company to satisfy the liability. If the commissioner revokes the distributor's license, the commissioner shall advise the supplier, and so advised, the supplier is no longer afforded the protection under this section. If a distributor's license is reinstated, the commissioner shall notify the supplier."

Page 37, line 2, replace "one-half" with "two-tenths"

Page 49, line 26, replace "register of deeds of" with "secretary of state."

Page 49, remove line 27

Renumber accordingly

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1462

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 3-16-99

Type Number	Side A	Side B	Meter #
HB 1462 TAPE 1	X		1662 - END
HB 1462 TAPE 1		X	0-END
HB 1462 TAPE 2	X		0-2180
HB 1462 TAPE 1	X March 22, 1999		2862 to end
HB 1462 TAPE 1	x March 22, 1999		2862 to end
HB 1462 TAPE 1		x March 22, 1999	0 to end
HB 1462 TAPE 2	x March 22, 1999		0 to 135
Committee Clerk Signature <i>Heide Wald</i>			

Minutes:

Sen Urlacher opened the hearing on HB 1462, A BILL RELATING TO MOTOR VEHICLE FUELS TAX IMPOSITION AND CREDIT FOR LOSSES AND AVIATION FUEL TAXES COLLECTION ALLOWANCES AND PROVIDE AN EFFECTIVE DATE.

Rep. Timm - This bill is an idea to come up with getting more money in to the Highway Distribution Fund, so they have the money to match the Federal money. This would change the point of collection on taxes for motor fuels.

Rep. Dorso - This would transfer collection from one source to another. It would tighten up audits because cases proven there is tax evasion. More efficiency of collecting the tax. The

bottom line want to keep status quo vs. what is good for the people of ND., and what is good for the Highway Distribution Fund.

Rick Clayburgh - ND State Tax Commissioner- Testimony submitted and attached.

Sen. Urlacher - Audits with SD & other States as well?

Rick Clayburgh - It will allow us to work with those States, right now we don't have any relationship with SD just conversation. In discussion with the Mounties in Canada. One issue we don't know is that we find an occasional mistakes that occur. A few adds up, not attempted to find abated fuel dollars, but to speed efficiency of the law, reduce fuel tax evasion, intentional or not.

Sen. Stenehjem - Fiscal note I read -

Rick Clayburgh - The original discussion in OMB, had about 2 million dollars in it, that had to do with changing special fuels from 2% at that point, not revenue neutral. This bill was put together to be revenue neutral, to all involved.

Sen. Stenehjem - At some time you will have to make some numbers will have to go to Appropriations. You'll have to estimate what the fiscal numbers are.

Rick Clayburgh - At this time we stand behind our fiscal note. I don't anticipate any revision.

Joan Galster - Tax Dept. - Testimony submitted and attached.

Sen. Stenehjem - Inventory that we had on hand at the end of the year, could that be related to how much time we would give them to pay the inventory?

Joan Galster - Another thing this bill does, provides tax credit allowances. Under current law, any licensee buys tax free, regardless of where they are in the distribution chain gets a commission off of the tax and gets the shrinkage or evaporation allowance. This bill combines

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these two types of allowances into a tax credit allowance, and in that tax credit allowance it is set up for motor vehicle fuel, that have 2.7%. The distributor would pass that down the chain.

Sen. Stenehjem - Is there a refund on un-dyed fuels?

Joan Galster - No.

Sen. Kinnoin - 581 retailers now and it would go down to 30? How often is an audit?

Joan Galster - There are 16-18-20 audits per year. We have about 100 importers now, and that includes some or all of the 30. So there is some overlapping.

Sen Stenehjem - We are not going to reduce from 581 - 30, were are going to reduce to about 100, is that a fair assessment of it?

Joan Galster - yes.

Debra Helmer - South Dakota - Director of Motor Vehicles. What we did in SD, and why.

in 1994 the Fed. Gov't moved the point of taxation to the rack, the Fed Govt.' doesn't have the same problems some of us have. When they moved the point of taxation, they moved it nation wide. They saw a drastic reduction in the fuel tax evasion area. We worked with what they had done and brought together a group of industry representatives, and discussed moving the point of taxation. 1. Mirror Fed Law. Refunds, allowed reefer fuel sales to get refund, and also for diesel in licensed vehicles. 2. Simplify our tax reporting. We reduced the number of licensees about from about 13,000 (users) theory in the area of our distributors, we had about 700 licensed distributors, prior to change, we have about 47 now. Of that we have 35 that pay 96% of the tax.

3. Revenue neutral. For marketers and suppliers.

Sen. Stenehjem - Complaints of unavailable dyed fuels?

Debra Helmer - None.

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Sen. Wardner - Revenue in to enforcement? Did you have increased costs there?

Debra Heimer - No, we do it with the same amount of staff. Computers were our big problem.

Chuck Furgan - South Dakota - Testimony submitted and attached.

Ron Ness - ND Petroleum Marketers Association - Testimony submitted and attached.

In opposition of this bill.

John Huber - Testimony submitted and attached.

Sen. Wardner - SD had a spike up.

Ron Ness - Statistically it isn't, new year it was very low so it was a washout.

Don Froelich - Froelich Oil= In opposition. Bill is a rush to judgment. This bill does not address the real issue, aimed at marketers. Bill creates confusion.

Matt Bjornson - Cavalier - We want all taxes to be paid, but the smallest business get hurt, they have additional accounting costs, double billing, of our product.

Dan Kunz - ND Grain Dealers Association - In the spring, Mr. Ness testified to this that distributors will build up their inventories in advance of road work and spring work coming on. They can't roll over the inventory in time prior to when collection is going to come. Increase the cost of the inventory, because they have to pay the tax before they can collect it. That increase the cost of operations, it will have to be passed on to their customers. Add a financial burden to industry that is already having their problems.

Ron Green - OK Tire, Williston - Our industry operates on pennies, we only have so many. This bill may take away the float that we need to make ends meet. Its one more thing digging into our pockets. Find some other way to get out tax dollars, probably through enforcement.

Sen. Stenehjem - Joan, a small gas station, compared to a distributor and owner of another gas station, would there be a competitive advantage to the person who has control all the way up in the chain, who might enjoy and decide where the float is?

Joan Galster - That could be better addressed by Ron Ness, but if under current law, if each were licensed and buying tax free there would be no competitive advantage that would save on taxes. Now under the bill 2177, the retailer of gasoline would no longer be licensed and would already be paying that tax, to the wholesaler.

Sen. Stenehjem - The distributor gets the float?

Joan Galster - The market would drive whether any of that float was given or passed on to an independent retailer.

Sen. Wardner - After you changed (SD) how did it affect the number of retailers, wholesalers in the State of SD?

Deb Helmer - We didn't see a big change.

Marshall Moore - Dept. of Transportation - Testimony submitted and attached. In support.

Sen. Stenehjem - If this bill doesn't pass, would the funds be used from the State planning funds? Use the funds for audits of fuel sales?

Marshall Moore - Yes.

Dick Elkin - Burlington/Santa Fe Railroad - Oppose to increase in tax, as we would have to pay, and we are large buyers of fuel. We buy in large volume and bids, and are opposed to even a penny tax. 3rd largest purchaser of fuel in America. Over 3 million gallons a day. In ND we buy a lot of fuel at the refinery. We support changing to the rack. Very important issue.

Sen Stenehjem - Are there States that charge a fuel tax to the Railroad and put it someplace other than the road fund?

Dick Elkin - Not to my knowledge. We try to take loads off the highways and save them.

Leroy Ernst - Motor Carriers Association - Submitted testimony and is attached.

Dick Johnson - Committee on Motor Carriers Association - Our members are major users of the highway system, and contributors of the tax fund. One of the key issues is to continue to find ways to supply revenues to the Hwy. Trust Fund, for maintaining those roads. We feel that it might be the right thing to do, collection to the rack. If our Tax Dept. is currently has about 600 accounts, they have to audit, and they are auditing 16-20 accounts a year, that ratio is less than 5%, and you may not get audited for 20 years. This could be that necessary reporting is not getting done, that should be. We are in support of changing the point of collection to the rack, and increase enforcement.

Sen. Urlacher closed the hearing.

DISCUSSION - 3-17-99 TAPE A #1, 445 - END, AND B - 0 - 1690.

MARCH 22, 1999 2862 TO END,

DISCUSSION ON SENATE BILL 2862

REPRESENTATIVE WARDNER: amendments to SENATE BILL 2862 (engrossed)

JOHN WALSTAD: leave 4 sections of the bill left, take of pages 1 to 10. first thing left after amendment is on page 10. Definitions for diesel special fuel and aviation fuel and amendment removes alternative fuel section. Page 14 provision is coming out of the engrossed bill. Page 16 amendment would reinstate the 2% special excise tax and take out the 1 and 2/10th cents per

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gallon change. Page 17 new language is eliminated. take out 18 to page 26, everything in between is eliminated.

SENATOR HEITKAMP adding the new subsection to replace the gas tax

JOHN WALSTAD: adding of amendments, page 26 fines for violations and changing the fines to 250 dollars, remaining fines left as is. Last page, on repeal section, sections being repealed are removed and insertion of the century code and the by rights for vehicles. Section 24 and the effective date and taking out the language on taxable inventories. That is no longer relevant

SENATOR WARDNER: thank you for leaving the effective date in

JOHN WALSTAD: Talking about the effective date and leaving the date in place

JOHN WALSTAD: Page 16 line 20-21 lines are over struck because of by-rights. Subsection 2 is struck out and the remaining amendments are renumbered

SENATOR URLACHER: other amendments that are not completed

SENATOR B.STEMEHJEM: explain amendments to the committee, burning died fuel and remitting taxes to the tax department. Tax exempt fuel and cleared verses dyed. exclusion of North Dakota vehicles. Further amendments to the bill. Evasion to highway tax and where the taxes go.

JOHN WALSTAD: amendments prepared for SENATOR B.STEMEHJEM: include everything in the amendment that was prepared for SENATOR WARDNER: with the addition of the things that he just described

SENATOR B.STEMEHJEM: that is correct

SENATOR CHRISTMANN: adopted the SENATOR WARDNER: amendments, elimination the tax on diesel fuel. Want tax free, have to buy the taxed fuel and accept the penalties

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JOHN WALSTAD: only three sections

DISCUSSION

JOHN WALSTAD: amendment are long because you have to take out everything, should have been a hog house amendment, amendment contained everything left in bill

SENATOR WARDNER: have we gotten the fiscal note on the amendments

JOHN WALSTAD: do not revise the fiscal note until after the amendments have been acted upon, no request to do one, unless a specific request

SENATOR WARDNER: highway distribution fund to be shared with the highways and the cities or straight into the highway fund

SENATOR B.STENEHJEM: why the highway fund

SENATOR URLACHER: any further question on the amendments or proposed amendments

RICK CLAYBURG question on the administrator of the revenue, concerned about special fuels going from a percent to a cents provides an administrative ease. Revenue to the railroads,

maintaining the changes to provide consistency for the state, SENATOR B.STEMEHEJEM:

amendments to ask cities and states to be exempt and supporting this option, shouldn't treat anyone differently, Marshal More at DOT and they support the by-right idea.

SENATOR CHRISTMANN: charging the cities and counties and state a fuel tax, don't pay any taxes but yet we are charging them a fuel tax. Neutral revenue and charging them this tax, tax payers are double paying on these fuel taxes, leave revenue neutral

RICK CLAYBURG: cities and states do pay on all construction items. Pass through tax depending on who does the work, state workers verses contractors, policy decision on roads and getting additional funding to match the federal highway dollars

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SENATOR WARDNER: more revenue to help highway dollars

JOHN WALSTAD: use tax

SENATOR WARDNER: federal Gov.. says you can't do that

JOHN WALSTAD: not certain of the issue.

SENATOR WARDNER: 93 session, taxing road construction to put more money back into road construction, Federal Government says you can't do that. This is similar to leverage highway funding

SENATOR B.STENEHJEM: taxes that the local entities and which taxes that they pay, corporate income taxes and making that taxes for the construction industry

SENATOR WARDNER: history of why the money or fines for picking up truck overloads went to the common schools trust fund

SENATOR WARDNER: all fines go to the school trust fund for education

SENATOR B.STENEHJEM: overloaded truck goes into highway construction fund, penalty, does not go to education, worked into that area

SENATOR WARDNER: honest answer

JOHN WALSTAD: have you gotten our newest fiscal note

SENATOR URLACHER: I am not

JOHN WALSTAD: revised fiscal note and changes associated with this fiscal note and error rate associated with this and the audit coverage effects as a revenue positive effect verses narrative assumption and the additional revenue

SENATOR URLACHER: we have this fiscal note

SENATOR CHRISTMANN: why isn't in the revenue line and it is in the narrative line?

JOHN WALSTAD: floor tax of 2.5 million depending on the management habits of the petroleum marketer and then also the length of time we allow the tax to pay. Extending the base period from 60 days to 90 days or 120 days, eliminating that source of revenue. Number of audits and knowing the total percentage as far as increased audits. All this not in fiscal note but in the narrative.

SENATOR CHRISTMANN: revenue increases if we adopt these amendments

JOHN WALSTAD: didn't know right now. In talks with South Dakota, we probably will see a slight increase with the increased audits. We will be picking up the missed fuel reporting

SENATOR B.STENEHJEM: what is the latest data on the fiscal note

JOHN WALSTAD: March 18, 1999 is the most current fiscal note

SENATOR CHRISTMANN: were do the precedes go from the fines levied against using the wrong fuel

RICK CLAYBURG going to the highway distribution fund, we really didn't know.

Dyed fuel enforcement and the fines that go along with this. Tax department will have authority over issuing this bill and highway patrol will enforce the bill once it's become law, check and balance at the administrative level.

SENATOR WARDNER: so SENATOR B.STENEHJEM: amendment would clarify where the fine fill is ate

RICK CLAYBURG: that is correct, we would clarify this for you, clarified this with the agencies as to what they want to do.

SENATOR CHRISTMANN: what was the other original fact on the first time penalty

RICK CLAYBURG: besides confiscation of the vehicle, I don't have any other penalties, but now it could be 500 or 1000 dollar's

SENATOR B.STENEHJEM: overloaded trucks, and how the system works, how legal process works with these trucks

RICK CLAYBURG: not really, we have not had a good experience in North Dakota with dyed fuel reporting at a federal level

SENATOR B.STENEHJEM: is this how envision the enforcement of this bill is the 250 dollars for the highway, scenario with dyed fuel.

RICK CLAYBURG: the way that I see this is the highway patrol will make the check, find the violation, report this violation to us, levy the fine, go to court or come to me. Feds are very aggressive on fuel tax abaters. this is were most of the enforcement will occur

SENATOR B.STENEHJEM: using dyed fuel at a bulk dealer and dealing with this in a federal matter

RICK CLAYBURG: glad you looked at this at the pump. we will look at this in a different matter

SENATOR B.STENEHJEM: it's happened by accident

JOAN GALSTER: amendments, enforcement against the penalty and were the money should go. Civil penalties. Money should go to highway funds and stating this in the amendments.

SENATOR WARDNER: percent to a cent change, would that effect state revenue

JOAN GALSTER: originally written like this so it would be revenue neutral to the state, issue has been discussed and which groupings are we hurting and which group aren't we

SENATOR WARDNER: price of gas increases, are we letting alot of revenue slip

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JOAN GALSTER: how high the price goes and at which point are we loosing money.

Advantage of having a fuel tax, no fluctuation and you know how many gallons you are using and revenue going way up and then way down.

SENATOR CHRISTMANN: find out the difference between the figures.

JOAN GALSTER: BN was understating the price. Nationwide average and over costing the price of fuel and the loosing of money. 1999 BN is back on track. This information was received from the bureau

JOAN GALSTER: certain amount of loss by Burlington Northern to include in the gallon price and had to build the loss amount into the price. Nothing illegal, but something that was worked on by IRS

JOAN GALSTER: activities that occurred that had the average price of fuel lower for unrecognized losses were 174 million dollars, Dec. 31, 1998. 49 cents per gallon loss

SENATOR URLACHER: built their losses into the price

SENATOR CHRISTMANN: in other states that due fuel enforcement, who checks the fuels for violations

JOAN GALSTER: different states have different arrangements. Most states have the Highway Patrol due the enforcing. Some states have their own enforcement. Makes sense to use the highway patrol.

SENATOR CHRISTMANN: local law enforcement would have nothing to do with this.

JOAN GALSTER: correct, just by the highway patrol

SENATOR KLEIN: was Burlington Northern paying more than they had to

JOAN GALSTER: If the information is correct they were

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SENATOR KLEIN: it would be a considerable amount, correct

JOAN GALSTER: yes

SENATOR URLACHER: difference in price

SENATOR B.STENEHJEM: eligible for a refund

JOAN GALSTER: no, they did this for a reason so they couldn't go back and adjust this on their income tax

SENATOR B.STENEHJEM: state exactly what the price is in the bill.

JOAN GALSTER: in rules and procedures is the price, removed that languages so that the dealer could compute the price. Margin of error is greater. Human error

SENATOR B.STENEHJEM: so many cents per gallon and adjust this price for inflation

JOAN GALSTER: that is an option for this bill

SENATOR CHRISTMANN: how much would a change would have to take place in order to implement a cent change

JOAN GALSTER: not sure of question, mixing the two fuel costs and administrative problems associated with this, by rate of dyed fuel

SENATOR CHRISTMANN: less than a penny a gallon so it would be just a penny

JOAN GALSTER: would that be just with the railroad and paying locomotive miles or how would you do that

SENATOR CHRISTMANN: whenever pay their taxes, they pay a certain amount and if it comes up a penny, than they pay a penny

JOAN GALSTER: only workers with the consumer and not the supplier. Fuel seller having to figure out the taxes on the fuel, % verses cents

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SENATOR B.STENEHJEM: can never charge less than 50 cents per gallon and if you do, you are charged 2%

SENATOR CHRISTMANN: be glad to pay less than a penny

SENATOR URLACHER: any further questions

DISCUSSION

SENATOR WARDER: proceeds going to highway fund, exempting local governments, keep 1.2 cents per gallon and helping the tax department and the paperwork problem. periodic review of this legislation.

SENATOR URLACHER: something that is reasonably acceptable

SENATOR B.STENEHJEM: not to exempt government from paying the taxes. Gov. vehicle would be allowed to run dyed fuel have to claim number of gallons and pay taxes on that amount. no exemptions.

SENATOR CHRISTMANN: which licensed Gov.. vehicles don't pay more than 2 percent and which have to pay the full tax

JOAN GALSTER: under current law a construction vehicle can get a refund of 20 cents per gallon on the fuel used on the licensed vehicles, any vehicles used in the city, buses, garbage trucks or vehicles not used in construction can not receive the refund, Federal Gov.. does not charge the state or local Gov.. a federal tax. Taxes charged to the fed for using dyed fuel. Fed Gov... does not care whether their using dyed fuel or not

SENATOR WARDNER: have a problem making the local Gov... different from the farmers, treat everyone the same

SENATOR URLACHER: any other comments

SENATOR WARDNER: discussion on 2 percent verses 1.2 cents per gallon on special fuels and if this will work

SENATOR B.STENEHJEM: extra work for the tax department and difficulties in the bill with percentage verses cents per gallon. stay at the two percent

SENATOR CHRISTMANN: lean towards two percent also and revenue loss associated with this and hurting the railroad. What are the railroads paying now verses 1.5 cents per gallon.

Exempting the cities and counties verses the farmers. Would like to see two amendments

SENATOR KROEPLIN: we are helping the transportation department by buying the right fuels

SENATOR CHRISTMANN: money from the field violations go into the highway fund for use by the DOT so the sheriffs and city police checking the tanks.

SENATOR URLACHER: Contract services with whomever

JOAN GALSTER: specific equipment that is needed by the enforcement in order to do this inspection and specific procedures and training

SENATOR CHRISTMANN: how does this dyed fuel work, does it turn the whole tank red or just a shade of pink

JOAN GALSTER: dye has to be in certain concentrations in order to be considered dyed fuel. If you have clear fuel and add the dye, I am not sure if it would be considered dyed. Red fuel is considered dyed. Some sent to labs to be considered dyed or not. Sellers of dyed fuel should not be putting dyed fuel into tanks used by public. Only certain pumps and tanks should carry dyed fuel.

SENATOR B.STENEHJEM: thinking about the black pump

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SENATOR KROEPLIN: dealer selling dyed fuel, basically by- right, could they Be shorting the state by using dyed fuel in their pumps

JOAN GALSTER: they certainly could. anything is possible. Never solve all of the problems of selling bulk dyed fuel to someone in agric. even though this person might not have a farm

SENATOR KROEPLIN: ran through the pumps, they would certainly be in trouble

JOAN GALSTER: federal law, in order to sell retain fuel from a pump, dyed fuel, under federal law it has to be a blocked pump.

SENATOR CHRISTMANN: have you looked over SENATOR WARDNER: amendments.

JOAN GALSTER: worked with the Senator on drafting the amendments

SENATOR CHRISTMANN: ticketing for violators. is this like a speeding ticket

JOAN GALSTER: attorney pointed out that there needs to be another amendment to address the violations, and how the judicial process works. Assessment of the penalty by another state and to determine the fine damage. red fuel, no questions to answer, any other color you get into other issues

SENATOR CHRISTMANN: addressing the amendments and where the fine goes to. The driver verses the owner of the company

JOAN GALSTER: this is already written into law

SENATOR B.STENEHJEM: over weight load, enforcement and posting bond and walking away by the driver. Same thing done here. SENATOR KROEPLIN: blocked pumps and the farmers coming in to a block pump to fill up there equipment. Cheating the system and the reasons for running it through the pump

SENATOR WARDNER: what agency do you feel should take care of this

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JOAN GALSTER: tax commissioners can contract with the highway patrol to enforce this, who takes this to conclusion and putting this into the amendments. This should be the tax

~~COMMISSIONER~~

SENATOR KINNOIN: size of nozzle is what determines a block pump

JOAN GALSTER: cannot explain this. I am not sure

SENATOR KINNOIN: vehicles required to use clear fuel have a certain size pump nozzle that can only fit into this. Small nozzle on a tank that uses tied fuel

SENATOR B.STENEHJEM: ever seen a semi, could fill up from a block tank.

SENATOR KINNOIN: speaking of pickups and cars

SENATOR B.STENEHJEM: nozzle size used when I fill up my suburban

SENATOR URLACHER: working more time

SENATOR KLEIN: restricted on cars verses pickups

JOAN GALSTER: certain restrictions regarding blocked pumps and mixing kerosene. filling up at a blocked pump and what to do about this

SENATOR URLACHER: amendments

DISCUSSION OF AMENDMENTS

SENATOR B.STENEHJEM: Gov.. agencies allowed to buy dyed fuel and pay the taxes on it. Didn't want to make the changes in the tax so they wouldn't have to pay one penny. Committee reaction on local Gov... buying dyed fuel.

SENATOR URLACHER: support for this issue and comments from members on this position.

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SENATOR B.STENEHJEM: move an amendment to be drafted, if it fails, don't do it. Move amendment to allow the city to burn dyed fuel in their vehicles and pay the tax due to the tax commissioner

SENATOR URLACHER: second to the amendment

SENATOR CHRISTMANN: second the amendment

SENATOR URLACHER: any further discussion

SENATOR CHRISTMANN: time to check the local governments to see what there reactions are

SENATOR URLACHER: plans after session

DISCUSSION

SENATOR KINNOIN: problems with city and county burning dyed fuel and treating everyone the same and buying tanks to store the dyed fuel

SENATOR WARDNER: ever treat people different and farmers getting mad

SENATOR URLACHER: complicating this process

SENATOR B.STENEHJEM: don't treat everyone alike in this state because the farmers are exempt from sales tax. exemption from everything

SENATOR URLACHER: directing the motion

SENATOR B.STENEHJEM: take amendment off the bill

SENATOR URLACHER: covering all amendments proposed and looking at these

SENATOR B.STENEHJEM: no objection and recapping what we are going to do SENATOR

WARDNER:

SENATOR KROEPLIN: understanding of this bill and the amendments with the enforcement of the bill and who does the infractions, revenue from the administrative fees into the highway fund

and the treatment of the cities. Amendment changes for SENATOR WARDNER and the treatment of the cities. Amendments and the administrative fees

SENATOR B.STENEHJEM: unintentionally

SENATOR KROEPLIN: two percent or 1.2 cent and leaving the amendment this way and drafting the amendments again

SENATOR CHRISTMANN: penalty phrase with first violation being 500, second 1000 and third being 5000. On those tanks this could be the amount of the fine.

SENATOR URLACHER: we have changed it once, is there a second

SENATOR B.STENEHJEM: second for the same reason

SENATOR WARDNER: thought that this was to low the first time. Agree with Commissioner Clayburg in dealing with the farmers and not clubbing them to death. penalty phase. Willing to leave the administrative fees as they are 250, 500. Just leave them

DISCUSSION

SENATOR KROEPLIN: feds can inspect trucks and make a fine, so we are just adding to this, correct

SENATOR URLACHER: that is my interrupt

SENATOR B.STENEHJEM: minimal state and federal enforcement and increasing the odds of getting caught

SENATOR CHRISTMANN: knowing the penalties for sure, allot higher if you shot a deer out of season

SENATOR URLACHER: all in favor of raising the fee say "I", one other proposed amendment

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Senate Finance and Taxation Committee

Bill/Resolution Number Hb 1462

Hearing Date 3-16-99

JOAN GALSTER: administration of the bill and started out with a 500 dollar fine and then I had to withdraw.

SENATOR WARDNER: when would the committee like to have the amendments?

SENATOR URLACHER: we will meet after the session and discuss this issue. Close the hearing on 1462.

SENATOR WARDNER: motion DO PASS AS AMENDED

SENATOR KINNOIN: second the motion

SENATOR URLACHER: hold the vote open for SENATOR SCHOBINGER.

CARRIER: WARDNER SEN. SCHOBINGER DID VOTE.

REPORT OF STANDING COMMITTEE

HB 1462, as engrossed: 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). Engrossed HB 1462 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 57-43.1-02.2, 57-43.1-12.1, 57-43.2-03.1," with "section"

Page 1, line 2, remove "57-43.2-04.4," and remove ", 57-43.3-02.2, 57-43.3-09, 57-43.3-14, 57-43.3-18, 57-43.3-28, and"

Page 1, line 3, remove "chapter 57-43.4" and replace "collection by the supplier of" with "use of dyed special fuel in a licensed motor vehicle and penalties"

Page 1, remove line 4

Page 1, line 5, remove "administration, enforcement, and penalties" and remove "57-43.1-02,"

Page 1, line 6, remove "57-43.1-14, 57-43.1-16, 57-43.1-24, 57-43.1-26," replace ", 57-43.2-02," with "and", and remove the seventh comma

Page 1, line 7, remove "57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-11, 57-43.2-21, and 57-43.3-02"

Page 1, line 8, replace "collection by suppliers of motor vehicle, special fuels, aviation" with "definitions for special fuels tax purposes"

Page 1, remove line 9

Page 1, line 10, remove "penalties" and replace "sections 57-43.1-27 and 57-43.3-24" with "section 57-43.2-02.2"

Page 1, line 11, replace "motor vehicle fuels tax imposition and credit for losses and aviation fuel" with "refunds of special fuels"

Page 1, line 12, remove "collection allowances"

Page 1, remove lines 14 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 20

Page 13, line 11, remove the overstrike over "~~compressed natural gas~~" and insert immediately thereafter an underscored comma

Page 13, line 17, remove "alternative fuels as defined in section 57-43.4-01,"

Page 13, remove lines 28 through 30

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 30

Page 16, remove lines 1 through 10

Page 16, line 14, remove the overstrike over "~~two percent~~"

Page 16, line 15, remove "one and two-tenths cents per gallon [3.79 liters]"

Page 16, line 16, remove "For a"

Page 16, remove lines 17 through 19

Page 16, line 20, overstrike "The special excise tax applies to all special fuels taxed under section 57-43.2-02"

Page 16, overstrike line 21

Page 16, line 22, overstrike "3."

Page 16, line 25, overstrike "4." and insert immediately thereafter "3."

Page 17, line 1, overstrike "5." and insert immediately thereafter "4."

Page 17, line 2, remove the overstrike over "~~identify the consumer to whom the sale was made,~~"

Page 17, line 3, remove the overstrike over "~~specify the purpose for which the special fuel was sold, and~~"

Page 17, line 5, overstrike "6." and insert immediately thereafter "5." and remove "The tax imposed by this section does not apply on sales by a supplier to another"

Page 17, remove line 6

Page 17, line 7, remove "7.", remove the overstrike over "~~The dealer~~", remove "A supplier", and remove the overstrike over "~~on all sales to a~~"

Page 17, line 8, remove "and shall pass the tax on to the distributor, retailer, or" and remove "A distributor"

Page 17, remove lines 9 through 30

Page 18, remove lines 1 through 30

Page 19, remove lines 1 through 29

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 30

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, line 3, replace "Penalties" with "Administrative fees"

Page 26, line 10, replace "civil penalties" with "administrative fees"

Page 26, line 11, replace "one" with "two", after "hundred" insert "fifty", and replace "fine" with "fee"

Page 26, line 12, replace "fine" with "fee"

Page 26, line 14, replace "fine" with "fee"

Page 26, line 16, replace "fine" with "fee"

Page 27, line 5, after "hearing" insert "before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing"

Page 27, after line 13, insert:

"6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund."

Page 27, remove lines 14 through 29

Page 28, remove lines 1 through 31

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 30

Page 33, remove lines 1 through 29

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 30

Page 37, remove lines 1 through 30

REPORT OF STANDING COMMITTEE (410)
March 23, 1999 10:51 a.m.

Module No: SR-52-5357
Carrier: Wardner
Insert LC: 90711.0304 Title: .0400

Page 38, remove lines 1 through 30

Page 39, remove lines 1 through 31

Page 40, remove lines 1 through 30

Page 41, remove lines 1 through 30

Page 42, remove lines 1 through 31

Page 43, remove lines 1 through 31

Page 44, remove lines 1 through 31

Page 45, remove lines 1 through 31

Page 46, remove lines 1 through 30

Page 47, remove lines 1 through 31

Page 48, remove lines 1 through 31

Page 49, remove lines 1 through 31

Page 50, remove lines 1 through 31

Page 51, remove lines 1 through 31

Page 52, remove lines 1 through 31

Page 53, remove lines 1 through 19

Page 53, line 20, replace "57-43.1-27" with "57-43.2-02.2", after "the" insert "1997 Supplement to the", and replace "and" with "is repealed."

Page 53, remove lines 21 and 22

Page 53, line 24, remove ", and taxable inventories held on,"

Renumber accordingly

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1462

House Finance and Taxation Committee

Conference Committee

Hearing Date April 5, 1999 thru April 14, 1999

Tape Number	Side A	Side B	Meter #
Tape 1, did not record			
Committee Clerk Signature <i>Jarvis Stein</i>			

Minutes:

REP. MICKELSON Called the conference committee meeting to order with all members present.

REP. TIMM Suggested amending the bill to add the rack tax into the bill for extra funding for the highway fund.

SEN. URLACHER Stated they listened to eight hours of testimony and reactions and that is what brought their committee to this conclusion.

SEN. WARDNER stated, the bill... eliminates periods to collect taxes. On the other side of the argument, he gave an example of how it affects the Mom & Pop suppliers and or distributors. They added the "buy rite" concept taken from South Dakota, which he felt would help with the paperwork involved. The dyed fuel enforcement was left in. The bill still makes a step in the

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House Finance and Taxation Committee

Bill/Resolution Number HB 1462conf.

Hearing Date April 5, 1999 thru April 13, 1999

right direction. He stated the rack tax is not a bad idea, but there are some people we need to take care of.

REP. TIMM Asked about these people that needed to be taken care of, are they middle distributors, why are they buying from the first distributor, and how many of these people are there?

SEN. WARDNER Stated he talked to some of these people in his area who did not want the rack tax. He did state the federal government has gone to tax at the rack. The supplier he visited with stated he has lost three jobbers because they have gone to someone else.

REP. TIMM Stated if you have a market, they will move the fuel right away. They will pass the collection of the tax on right away. They might have fuel in their tanks for only a day.

SEN. URLACHER Stated that South Dakota indicated their biggest funds were from the "buy-rite" concept. According to South Dakota, it was quite substantial. At this point in time, "buy-rite" is the vehicle we chose.

REP. TIMM Submitted amendments to the conference committee members. In his explanation he stated they left the "buy-rite" concept in, put the tax at the rack and left the dyed fuel enforcement in.

REP. TIMM Made a motion to adopt the amendments as he presented them.

REP. MICKELSON Second the motion.

During discussion, REP. TIMM asked SEN. URLACHER if there was a lot of testimony from people who were affected by the tax at the rack.

SEN. URLACHER Stated there was considerable testimony regarding that.

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SEN. WARDNER Stated three people testified from the industry and someone testified from the national level. He stated "there is 2.7% shrinkage some years and some years there isn't."

He stated if you are the first level distributor, you don't lose that much, but if you are the second and third level, they lose. He again related to the Mom & Pop bulk station who stated they had some people that only paid once or twice a year.

REP. TIMM Stated if we add the "buy-rite" in, that person won't have to pay the tax.

JOHN WALSTAD, LEGAL COUNCIL WITH THE LEGISLATIVE COUNCIL, appeared before the conference committee to answer questions and explained how the Senate amendments tied into the engrossed bill. He stated the Tax Department also suggested some changes which were added in.

REP. TIMM Stated this is the way we can beef up the highway funds up to the two million dollars, so that they can be matched by federal funding.

SEN. WARDNER Stated that was also the goal of the Senate. He felt the "buy-rite" concept would have more of an impact than was shown on the fiscal note.

SEN. KINNOIN Gave an explanation of discussions in the Senate committee. He felt that maybe this should be studied a couple of years.

SEN. URLACHER Stated the committee allowed extensive time to work on this.

REP. WARNER Stated he would resist the Timm Amendments and go along with the Senate issues.

The motion to adopt the Timm Amendments failed.

REP. TIMM Made a motion to adjourn the meeting.

SEN. WARDNER Second the motion.

CONFERENCE COMMITTEE ACTION 4-7-99, Tape #1, Side A, Meter #.0

REP. MICKELSON Called the conference committee meeting to order with all members present.

SEN. WARDNER Presented a visual aid chart which he explained to committee members to help make his point regarding the suppliers, distributors and jobbers' relation to each other. He stated maybe there is a misconception on his part to not institute the rack tax at this time. He stated that if the rack tax was instituted at this time, the primary distributors would feel no effect, in fact, it might even be better. However, the secondary and third level distributors are the ones who get pitched. He stated there are approximately nine hundred dealers. There are about five hundred and thirty licensed distributors in the state, which includes the primary and secondary distributors (jobbers and sub-jobbers). There are approximately two hundred and forty jobbers, and 290 sub-jobbers. Unless these people can sell 2.2 million gallons of fuel for Amoco, Amoco will not let them go to the rack. Conoco requires 3 million gallons annually. These people have to go to the primary distributor or jobber, they don't have a choice in this. They are forced into a second tier. There will be a difference under the rack tax as far as their float time, which is a legitimate concern for them.

If we were to go with the rack concept, most of these primary distributors will say they want cash or you have ten days to pay me.

Gave an example of what would happen in different pay periods of the month.

Related to the inventory or "floor tax", stating this was a substantial hit for the secondary and third level distributors. He stated there are a lot of people out there on a slim margin.

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House Finance and Taxation Committee

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Relating to a prior statement made regarding the "buy-rite" concept, there is a 2% tax when you buy-rite. Even though you don't send in for the refund because you are buying rite, they still have a tax on which would be collected a lot earlier. Anything used off road, agriculture or contractors, they pay a two percent special fuel tax.

REP. TIMM intervened, stating this bill changed the two percent down to 1.2 cents.

REP. MICKELSON Asked in that level, what would be the average fiscal impact for the secondary distributors?

SEN. WARDNER The fiscal note says .2 million or \$200,000, the average distributor would pay about \$690, some would be smaller, some would be larger.

REP. TIMM It seems like your whole premise here is what you call the secondary distributors or sub-jobbers, they will be taking a big hit. What if we amend the bill and allow the distributor who is receiving the 2.5% credit allowance and pass part of that down to that sub-jobber?

SEN. KINNOIN Are you suggesting we make that mandatory?

REP. TIMM Yes, I would think that they would do that on their own, but since the feeling is that they won't, we can make it mandatory. I understand, under present law, it is mandatory - on the shrink.

JOAN GALSTER, STATE TAX DEPARTMENT, Answered, on the shrink, it is allowed to a retailer, it doesn't change anything. It changes to a collection allowance. They get an allowance of one percent on their actual losses.

REP. TIMM Asked what these amendments would do then?

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JOAN GALSTER The way the bill was written, there was only a pass down from the supplier to the first distributor. The amendment such as you suggest, would make it mandatory, that that distributor pass it down the chain.

REP. TIMM It wouldn't be any more mandatory then what is in present law, that they have to pass the shrinkage down?

JOAN GALSTER The difference would be that the mandatory pass down is from sales to a retailer.

REP. TIMM Presented prepared amendments and asked that John Walstad explain the amendments.

JOHN WALSTAD, LEGAL STAFF, LEGISLATIVE COUNCIL, Explained what the amendments would do. The changes relate to passing down percentage points of the credit allowance. The changes are on two places on page 1. The bill provides the two and a half percent credit, under current law, to a supplier or retailer, under the motor fuel tax and under the special fuel tax. Referred to page 9, line 20, the supplier shall pass 2.5% of the credit allowance onto the distributor or retailer. When that supplier passes on that 2.5% credit allowance, that is the end of the line as far as what the law requires. This amendment would require is that a distributor who has received that 2.5% credit allowance, has to pass on one percentage point of that credit allowance to a subsequent purchaser from that distributor. Otherwise, these amendments are the same as what the committee looked at on Monday.

SEN. KINNOIN If we were to add this language, that the passage of one percentage point to the purchaser, going by Sen. Wardner's chart, the primary distributor buys at the rack, he get the 2.5%, that is passed on to the secondary distributor or sub-jobber, at that point, what happens

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House Finance and Taxation Committee

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when it goes from the jobber to the retailer or to the third level distributor. They get nothing under this?

JOHN WALSTAD That is right, this would not require that that one percent be passed from that second level distributor. If that is the committee's choice, we can alter the language to provide that it gets passed right on down to the retail level.

REP. TIMM I don't know the business, I don't know how many times these people resell and buy the fuel, are we talking third level distributor and fourth and fifth level distributors sometimes?

REP. MICKELSON Asked Ron Ness to explain how this applied.

RON NESS, NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION Explained, that a supplier is anyone who owns fuel in the pipeline, such as Amoco, etc. He used Farstead Oil, a primary distributor, or sometimes a supplier, they may buy fuel from the pipeline, they could resell it to a smaller jobber such as Mutch Oil or Froelich Oil, who might resell it again to a Neuberger Oil or some smaller company who doesn't have their own transport line. It could be sold two, three or four times.

REP. TIMM Wouldn't that third level be a retailer?

RON NESS They all could be a distributor and a retailer.

REP. TIMM I really think you are making it sound more difficult than it is.

RON NESS I think Sen. Wardner sized up where the real concern is.

REP. TIMM Would it help your industry if we passed it way down the line?

RON NESS The question then, is how would you trail that? In the current system, they can sell it tax free, until you finally get to a point where a small dealer might determine that he

doesn't want to do the tax work, so he pays it to the Mutch Oil Company, then he will take care of it.

SEN. WARDNER Gave clarification, stating it would only affect the secondary or third level distributors.

SEN. URLACHER Stated that in the western part of the state, there were a considerable amount of third level distributors. A lot of them have gone out of business due to the EPA inspections, I don't know if they can handle anymore kicks.

SEN. KINNOIN Stated that is a concern in all of the areas. He stated in his area, the secondary distributors did not qualify to go buy at the rack at the 2.2 million and the 3 million that they have to purchase at. They are dependent on the primary distributor, they are at their mercy. We need these distributors, speaking from the agricultural producers. If we go to the rack, we will lose these distributors.

SEN. URLACHER Stated that 2.5 million isn't froze either, that has been climbing.

REP. TIMM Would it help if we took away another five tenths percentage. It seems like whether they stay in business or not, depends on this particular issue, not whether they sell a lot of gallons or not. I can't see that happening.

SEN. KINNOIN Stated I don't think you will see the primary distributor going out of business. It is the smaller businesses.

REP. TIMM Maybe it is poor business practices, maybe allowing too much credit. I can't see saying somebody will go out of business just because they haven't got a float to depend upon to keep them in business.

SEN. WARDNER I don't think the float is the only thing, there is a combination of the inventory and EPA regulations and the credit thing, it may or may not be poor business practices.

He referred to his visual aid chart, stating that the primary distributors would not give up the 1.5%, they would not sell to the secondary distributors. He stated he kind of liked the rack tax, but not at this time. They have proposed amendments to study this over the interium.

REP. TIMM Stated he didn't know what there was to study, we have facts and figures now, and we need money now.

SEN. KINNOIN TO JOAN GALSTER Asked what two tenths percent brings in, wanted to know the total of gallons that are purchased at the rack in the state of North Dakota.

JOAN GALSTER She stated she didn't know the total at the rack. Everything that isn't imported comes off of the rack. It would be a large amount.

SEN. KINNOIN It seems that is a lot of money to ETF to the State Tax Department, just on the three cents. He asked what the rack was.

JOAN GALSTER Explained that the rack is what the truck pulls up to fuel. The position holders at a terminal such as Amoco, etc., own product in that terminal, they have product coming in from a pipeline, they exchange within terminals, the terminal operator keeps inventory as to whose product is being used.

DAVE FROELICH Intervened, stating the product is additized in the holding tank, if it is a Cenex product they add their own additives, Amoco has their additives. It is basically the same fuel until additives are added and identified.

REP. MICKELSON Stated that in Joan's testimony before the House Finance & Tax Committee, she had stated that Wyoming and South Dakota had gone to the rack, in your research on those

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cases, what the Senators are alluding to is we are going to put these secondary distributors out of business, has that occurred in those states?

JOAN GALSTER In any of the material I have gotten from the states that moved to the rack, I have not gotten information on that. I think before the Senate committee, we had people come in from South Dakota, and to her knowledge, it did not put anyone out of business.

REP. TIMM In South Dakota, there is no allowance?

JOAN GALSTER Stated she thought they did.

REP. TIMM Stated maybe that was the solution, if we don't allow any allowances, nobody has anything to fight over.

JOAN GALSTER Referred to some of her notes regarding South Dakota, stating that any supplier, who was an out-of-state supplier, who properly remits the tax under this act, will be allowed to retain an amount not to exceed 2 1/4 % of the tax required. The supplier passes two thirds to the wholesale distributor.

REP. MICKELSON Asked whether any of the people who testified in the Senate committee, stated that anyone went out of business because of the rack tax.

SEN. KINNOIN Stated no, that was not brought out. The bulk of the funds that came in was due to the "buy-rite", not necessarily the tax at the rack. That is where we are coming from, we think the "buy-rite" concept is the way to go for now. I think starting in the second year, you will see quite a bump.

SEN. URLACHER Stated that thirteen percent of the vehicles in violation coming in to South Dakota were from North Dakota.

JOAN GALSTER Stated the South Dakota law took effect January 1, 1996. They had a 3.42% increase in tax dollars from the prior year.

REP. MICKELSON What was the initial bump from the "buy-rite" and dyed fuel, what was that increase that they saw?

JOAN GALSTER They didn't break it down. She stated the increase was a combination of everything.

REP. TIMM Made a motion to adopt the amendments he had prepared and presented to the conference committee, Amendment #.308.

REP. MICKELSON Second the motion.

The Senators all stated they did not feel that this was the time to put the tax at the rack.

REP. TIMM stated now was the time to get as much money into the highway trust funds to get as much federal matching funds as we could. In two years, maybe we won't need it.

SEN. KINNOIN Stated that HB 1183 is not settled yet, so there is a possibility things could change in the next few days.

REP. WARNER Felt that the second and third level distributors needed our support at this time.

SEN. WARDNER Stated he would support higher registration fees or a one cent tax to build the money needed.

The roll call vote failed 4 No 2 Yes.

REP. TIMM Suggested that maybe this conference committee should be dissolved if they can't come up with an agreement.

SEN. KINNOIN Stated he thought they could come up with a solution, but needed a little time to work things out.

The conference committee meeting was adjourned to another day.

CONFERENCE COMMITTEE ACTION 4-8-99, Tape #1, Side A, Meter #0.5

REP. MICKELSON Called the conference committee meeting to order with all members present.

REP. TIMM Presented a summary of the New Fuel Tax Laws for all committee members.

See attached copy.

REP. MICKELSON Submitted a letter from Joan Galster from the Office of the State Tax Commissioner relating to a survey of other states who have moved the taxation of motor fuel to the rack. See attached copy.

SEN. WARDNER Made a statement - when the Senate put the "buy-rite" in, that became our compromise, we took out the rack and put in the "buy-rite" concept. It is difficult to find a compromise on this rack situation. It is almost like you either have the rack or you don't have the rack. I know the concerns out there are for the money. Under the bill, the way it is now, the Senate version, we have two million dollars, under the House version, there is 3.5 million dollars. The difference is this 1.5 million. We still feel, there is a group of small businessmen, who would have to come up with an additional 2.7 million if you put the rack in. We still feel maybe this is not the time for the rack tax.

There is one other area which is of some concern, and that is, tax evasion by the jobbers, the primary distributor. In SB 2177, we did close up some of the loop holes. There is also a section where terminal operators are required to file reports, which they didn't do before, so we can keep

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House Finance and Taxation Committee

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track of it. Also, if you have diverted loads, they have to report that. Plus, North Dakota and South Dakota are sharing their records back and forth, to close that loop hole. I believe we will have more than a two million dollar bump, with the way the bill is.

We are looking for ways to compromise, we just can't come up with anything that would make sense, it is either the rack or not the rack.

REP. TIMM The highway fund needs extra funds, all of these things you have brought up to us in the last couple of days, all the fears of people dealing with this bill, I don't know if that is real or not. Yesterday, we offered some amendments to allow the people you are talking about, who are going to be hurt the most, giving them a share of the percentage allowance. The House feels they want the rack tax passed. It has been proven by the memorandum to Rep. Mickelson regarding states who say they have no problems with it. We offered one percent to the Mom & Pop businesses, we can increase that.

REP. MICKELSON Agreed with Rep. Timm, based on the memorandum received from the Office of the State Tax Commissioner.

SEN. KINNOIN Asked that the conference committee accept the Senate's compromise and send it to the House to see how they feel about it. If they reject it, bring it back to committee.

REP. TIMM Stated if they take it to the House, they will ask them to reject it.

REP. MICKELSON Stated the House did vote on the tax at the rack and they is why you got the bill. The majority of the House stated they do want the tax at the rack.

SEN. URLACHER Asked whether the House has a fear that this money can't be raised?

REP. MICKELSON Our position is that the majority has extended the gas tax, we have already amended the registration fees, where we think we have gone far enough. We are short, this is the

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next proposal to spread that around. I have a problem with raising registration fees. The Governor has said he doesn't want any more taxation on fuel. To say we can get it from gas tax, will not fly.

REP. WARNER Stated he would prefer the Senate version.

SEN. WARDNER Stated the impact on the "floor tax" was a concern. He stated he would rather see several people share in this, than just a small group of businessmen.

REP. TIMM TO JOAN GALSTER Asked if the shrinkage is passed on now in present law.

JOAN GALSTER, OFFICE OF THE STATE TAX COMMISSIONER Explained how current shrinkage allowance works. In motor fuel, they take a one percent allowance off the top and pass it on to the retailer. Whoever is licensed, on their own, they get an actual shrinkage allowance up to one percent. If they have more than that, they owe us money. On special fuels it works the same except there is no automatic pass on. There isn't that one percent to retailers. On special fuels, you have your people licensed clear down to the retail level.

SEN. WARDNER If a distributor sells it to a farmer, then they would get the shrinkage, if they sell it to a filling station

JOAN GALSTER The consumer never gets the allowance, it is only when you sell it to a retailer, who doesn't have a license, who gets the one percent. The intent was that if you were only a retailer, you could elect not to be licensed, and you pay your tax to whomever you buy it from. That way, they were guaranteed some kind of an allowance in the event that they would have shrinkage.

REP. TIMM Asked if Joan knew of anybody who went out of business because they had to do this extra work?

JOAN GALSTER The retailers I am talking about, were probably never licensed with us, so that didn't affect them in any way.

REP. TIMM Asked whether the Senators would agree on enlarging the one percent, and pass it down. Right now 2 1/2 percent can be kept by the first distributor, if he is a good businessman, he will pass some of that down, that is what they are doing now. We could make it mandatory that they have to pass it down.

SEN. WARDNER It does restrict the free trade of those people to do that. That is probably not as big of an issue as the inventory. That is where the big kicker comes. They say, who else pays their tax before they sell their product.

REP. TIMM Stated, they have to pay it to the Federal Government now.

SEN. WARDNER They aren't too happy about that. Two of them said they lost their sub-jobbers when the feds taxed at the rack.

After more discussion between committee members with nothing resolved,

REP. TIMM Made a motion that they adjourn.

SEN. WARDNER Second the motion.

CONFERENCE COMMITTEE ACTION 4-9-99, Tape #1, Side A, Meter 0.3

REP. MICKELSON called the conference committee to order with all members present.

REP. MICKELSON Presented a letter to the committee members from LeRoy Ernst, ND Motor Carriers Association, Curt Peterson, Associated General Contractors of ND, Mark Johnson, ND Association of Counties, and Lowell Ridgeway, ND Petroleum Council. All committee members were asked to read the letter. See attached copy.

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REP. TIMM Stated that yesterday, it was brought up by one of the Senators, that the House should take their proposal to the full House because we have never voted on the proposed amendments. We don't think the Senate has voted on the rack tax.

SEN. WARDNER Stated they were not excited about voting on the one percent. He related to documents which he presented to the committee. See attached copy. Related to the point of taxation on the handout.

ALLEN KNUTSON, LEGISLATIVE COUNCIL Attended the committee meeting to answer questions regarding the fiscal note. He stated when they put the numbers together for the House originally, the version of 1462 was the one from the Governor's recommendation, the same revenue was in there that the Governor had in. The House did change it after that point, so the number should be \$800,000 less. He stated he would update the change.

SEN. WARDNER Asked if they considered the floor tax when they updated it.

ALLEN KNUTSON In the narrative, it says the revenues could be up to two million dollars, similar to what the Senate version is now, there would be the potential for additional revenue.

REP. TIMM Asked what the point was.

SEN. WARDNER The point is, that we have been talking that we need money to balance this out. It looks to me like we have more than met that. We are only \$283,000 away, and there is a good chance we will generate up to two million dollars in the Senate version of the bill.

REP. TIMM Asked Allen Knutson if the increased ethanol subsidy was figured in.

ALLEN KNUTSON Stated yes, about the third of the way down the page.

REP. TIMM Asked a question of KATHRYN STROMBECK, TAX DEPARTMENT

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Related to the fiscal note, which didn't have an actual amount on there, just a narrative. The fiscal note states that the positive revenues could be between zero and 2.0 million dollars for the 1999-2001 biennium. That is quite a range.

KATHRYN STROMBECK, STATE TAX DEPARTMENT Stated there is a lot of uncertainty.

Some of these provisions could seek to enhance, but there is some uncertainty. We are grasping at straws, there are broad ranges of experience that other states have reported. That is what we are trying to capture with these ranges.

REP. TIMM Asked how firm the numbers are on the rack tax.

KATHRYN STROMBECK The states have experienced a myriad of sorts of gains in that area also. We know the positive revenues are likely, we think we have captured the likelihood in those ranges, but where they will fall, we really don't know.

SEN. URLACHER Stated, in testimony, south Dakota had estimated two million dollars.

REP. MICKELSON Asked JOAN GALSTER, STATE TAX DEPT. relate to what this could do if some dates were changed.

JOAN GALSTER Stated that the bill started out with a January 25 due date for a December return, it was amended to February 25, but if that time period isn't long enough, you could extend it another thirty days.

REP. TIMM Asked if it could be extended ninety days.

JOAN GALSTER Stated that could help to ease their burden. The other hit they would take along with that, they would have to pay the tax on the fuel they were purchasing, which until their business activities leveled out, it would be normal.

SEN. WARDNER Explained the amounts of the inventory that the dealers stored in their tanks, and the problems that would result if their inventory was run down.

JOAN GALSTER Added, that this law would not become effective until January 1, 2000, the dealers do have the option of running out their tax free fuel, then start buying tax paid fuel.

REP. TIMM Then it really wouldn't cost them anything.

SEN. KINNOIN Stated it will cost them up front right away.

REP. TIMM Stated they would pass it along though.

REP. WARNER Stated this will be an on-going tax forever.

REP. TIMM Stated he would not back down on the rack tax, and the Senators won't back down on their proposal. He stated the increase in ethanol payments hinges on passing HB 1462, without this bill, the increase in the ethanol subsidy will pass the House.

SEN. WARDNER Stated he would make one final statement, then move to dissolve the conference committee.

REP. MICKELSON Related to a letter from four major groups of people who favor the rack tax. He asked if the Senate would take the bill with the House amendments attached to the full Senate.

SEN. WARDNER Stated he needed to visit with other conferees about that.

The meeting was adjourned until a later date.

CONFERENCE COMMITTEE April 12, 1999, Tape #1, Side A, Meter #0.2

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REP. MICKELSON Called the conference committee meeting to order with all members present.

REP. TIMM Stated that Kathryn Strombeck of the Tax Department informed them that the numbers which the Senators were talking about on the Senate side, Buy-Rite, etc., there is no fiscal note for it. Nothing can be figured into the budget legally. From what I understand, if we pass the rack tax, and get it into a bill, then those figures can be figured into the fiscal note and the actual budget.

SEN. WARDNER Presented a handout with updated figures which the Legislative Council prepared.

RICK CLAYBURGH, STATE TAX COMMISSIONER, Related to the narrative on the handout which Sen. Wardner presented. He stated it was their speculation that the point of taxation, the Buy-Rite, and the dyed fuel enforcement in the House version, excluding the \$806,000 difference, would bring an additional amount up to 4.5 million dollars. With the Buy-Rite and the dyed fuel enforcement in the Senate version, it would be up to a 2 million dollar benefit. He added one caveat, that everybody has gone to the maximum numbers, I don't think you should maximum numbers, use the average. These numbers are assumptions we have made.

SEN. WARDNER Asked where the extra million came from on the handout.

RICK CLAYBURGH You talked about the 3.5 million, but you excluded the Buy-Rite numbers.

Considerable discussion took place among the committee members.

JOAN GALSTER, STATE TAX DEPARTMENT, Again attended the committee meeting,

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she presented a handout to committee members which gave motor fuel records for dealers as to inventory, shrinkage, tax owed, etc. See attached handout. Joan answered several questions regarding this handout. She explained how a dealer sends in his tax return, and what he approximately pays in taxes.

REP. MICKELSON Again asked the Senators to take the House amendments to the Senate floor.

SEN. KINNOIN Proposed that the Representatives take it to the House floor.

SEN. WARDNER Made a motion that the House accede to the Senate amendments.

SEN. KINNOIN Second the motion. MOTION FAILED.

REP. MICKELSON Made a motion that the Senate recede from the Senate amendments and further amend the bill by adding the Timm .0308 amendments.

REP. TIMM Second the motion.

In discussion, the Senators stated this would not pass their full Senate.

Rep. Mickelson and Rep. Timm withdrew their motions, and it was suggested that they meet again later in the day.

The meeting was adjourned.

CONFERENCE COMMITTEE ACTION later in the day, April 12, 1999, Tape 1, Side B,

REP. MICKELSON called the conference committee to order with all members present.

A short discussion was held, and the conference committee was scheduled for another time.

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CONFERENCE COMMITTEE ACTION 4-13-99, Tape #1, Side A, Meter #0.2

REP. MICKELSON Called the conference committee meeting to order with all members present.

REP. TIMM Made a motion that the Senate recede from the Senate amendments and that the committee further amend by adopting the Timm Amendments #.0306.

REP. MICKELSON Second the motion.

These amendments put the bill back the way the House sent it to the Senate, the only difference being, that it leaves in the Buy-Rite provision which the Senate put in. The amendment reinstates the rack tax.

ROLL CALL VOTE CARRIED WITH 5 MEMBERS VOTING YES, ONE MEMBER NO

CONFERENCE COMMITTEE April 14, 1999, Tape #1, Side A, Meter 0.2

The conference committee report did not pass on the House floor.

REP. MICKELSON Called the conference committee to order with all members present.

He informed the committee members that he just met with Rep. Dorso, and we need to come up with 2.2 million dollars.

Rep. Mickelson submitted to sets of amendments .0309 and .0310.

JOAN GALSTER, STATE TAX DEPARTMENT, Appeared before the committee to explain what each set of amendments would do. She presented a handout to the committee which she used to explain how the amendments worked with her handout.

The amendment numbered .0309, would change the commission from the current 2% across the board to 2% with a cap on it, with a maximum of \$300 per month. Referred to the handout with the cap of \$300 and what the savings would be to the state. The June 1998, fiscal year was used to compute the handout. See attached copy.

Amendment numbered .0310, instead of putting on a cap, it cuts the commission in half from 2% to 1% , again referred to the handout what the revenue would be if you do that.

The difference between the two amendments, is when you are cutting the commission from 2% to 1%, it affects every dealer out there, whereas, the \$300 cap, affects only those who have been getting high commissions. The revenue you would gain is fairly close.

REP. TIMM Felt that if we go with the .0309 amendments, it would protect the smaller dealers who we thought would get hurt the most.

JOAN GALSTER Stated there would be some out-of-state dealers in this category.

REP. MICKELSON Asked what the state gives to other retailers, for instance at Kirkwood Mall, for collecting the tax, such as a Hallmark store?

JOAN GALSTER Stated it would be approximately \$85 or \$87.

SEN. WARDNER Asked how many dealers do not reach the \$300 cap?

JOAN GALSTER Stated it would be the difference between the 13% on her handout and the \$300 dealers.

SEN. URLACHER Asked if the variation on commission was purely on volume.

JOAN GALSTER The commission is based on your tax liability. It has to do with the volume.

REP. MICKELSON Asked the Senators what their feeling was regarding the amendments presented.

SEN. WARDNER Asked that they recess until 11:00 to discuss the amendments with the Senate conferees.

RECESS

REP. MICKELSON Re-opened the conference committee meeting.

SEN. WARDNER Asked Joan Galster a question. Referred to a document which had been submitted to the conference committee several days ago regarding shrinkage.

SEN. WARDNER Proposed that the dealer/retailer only get 2/3 of a percent, not 1%, for the biennium.

REP. TIMM questioned that, stating the shrink is allowed because of the loss of fuel, supposedly. He stated from talking to people, with the regulations now, a lot of people don't have any shrink anymore, with the tightening up of tanks, no leakage from underground tanks anymore. They take the shrink, but they really don't have shrink.

JOAN GALSTER Intervened, stating the allowance was a giveaway right off the top, it was not based on actual losses.

REP. TIMM Asked why the Senators thought it was fairer by capping the commissions.

SEN. WARDNER Because of the way it is regulated, they probably don't get the one percent shrink, but they get credit for it. I really feel, if we are going to make a judgement and come up with some money, this would be the fairest place to do it. There is a lot of paperwork, a lot of companies put in computers, etc., when it comes to the shrink, everyone shares in it. The only

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concern I have is in small towns, where they don't move the fuel in stock, they could actually have shrink. What we are doing here, is making a compromise. This would be the money we are looking for for the highway funds, and it would be the smallest hit on the industry.

REP. MICKELSON Asked Joan Galster if the retailers would be impacted by what the Senators are proposing.

JOAN GALSTER Yes.

REP. MICKELSON Stated he would have a problem with that in the eastern part of the state, as retailers are already screaming about raising gas tax, people go to Moorhead and East Grand Forks to buy their gas. If you propose this, they will be further impacted.

He referred to the Highway Department spread sheet which Tom Freier had presented to committee members. Stating, the .0309 amendments would fit the best.

He stated, the smartest and best investment government can make is infrastructure.

REP. WARNER Stated he would resist Sen. Wardner's proposed amendment to bring the shrink issue in. He stated shrink is a very real issue, and varies from dealer to dealer, we are protecting the most vulnerable ones. If we have to do something, I think we need to go with the .0309 amendments.

There was considerable discussion regarding the shrinkage.

REP. TIMM Made a motion that the Senate recede from the Senate amendments and further amend by adopting the 90711.0309 amendments as presented.

REP. MICKELSON Second the motion.

Again considerable discussion was held. ROLL CALL VOTE WAS 5 yes and 1 No

Sen. Wardner voted No.

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CONFERENCE COMMITTEE ACTION April 14, 1999, Tape #1, Side A, Meter 0.2

REP. MICKELSON Made a motion to reconsider the action by which the bill was passed out of the conference committee. SEN. URLACHER Second the motion. Motion carried by voice vote.

SEN. WARDNER Made a motion that the House recede from its amendments and adopt further amendments which would be the collection at two percent and the shrinkage would be changed from one percent back to .6% of one percent. SEN. KINNOIN Second the motion.

After a short discussion, ROLL CALL VOTE WAS TAKEN WITH 6 VOTING YES.

SEN. WARDNER Suggested that the amendments be drafted, then the committee come back in the morning to make sure the amendments were agreeable to all committee members.

Meeting adjourned until April 15, 1999.

CONFERENCE COMMITTEE ACTION April 15, 1999 Tape #1, cont'd. from April 14, 1999

Meter #5.8

REP. MICKELSON Called the conference committee meeting to order with all members present.

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REP. TIMM Made a motion to reconsider the action by which the bill was passed out of committee on April 14, 1999. SEN. WARDNER Second the motion. MOTION CARRIED BY VOICE VOTE.

JOHN WALSTAD, LEGAL STAFF, LEGISLATIVE COUNCIL Attended the committee meeting to explain the amendments 90711.0313 which he had drafted.

The amendments provide that the Senate recede from the Senate amendments but these amendments put back most everything that was in the Senate amendments. The Buy-rite is in, the enhancements are in, the rack tax is out, the three hundred dollar cap allowance is out.

The new provision relates to the shrink allowance for the supplier/distributor. There are two places in the section where it changes the one percent to one half of one percent.

In Section 2, covers the shrink allowance that passes to the retailer, which is one half of one percent.

Under the special fuels, which was covered in SB 2177, to be consistent with that, Subsection 3, provides for the shrinkage allowance, first one is two percent for LPG, which will be left alone, then one half of one percent for all other special fuels.

The other significant change is that the Legislative Council to consider studying, during the next interium, application, enforcement and administration under the fuel tax laws.

On the last line of the amendments, the bill, all along has had a January 1, 2000, effective date, this was changed to July 1, 1999.

RICK CLAYBURGH, STATE TAX COMMISSIONER Attended the conference committee meeting to explain the new fiscal note which goes with the new amendments.

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Estimating, based on the new start date of July 1, 1999, that approximately \$600,000 each on both programs can be brought in. This will have a 1.2 million dollar positive effect for the highway distribution fund. Total fiscal note would be 1.95 million dollars.

REP. TIMM Asked whether these figures could go down, or could they go up?

RICK CLAYBURGH Stated they used conservative numbers and believe we will be above the numbers quoted when all is said and done. The problem with all of this is, we will not be able to look back with hindsight, to say we got so much from buy-rite, etc., it will be very difficult to break out what each will mean to the budget in the future, but we are confident that all of the changes will at least hit the 1.95 million dollars. The numbers are based on the 21 cent fuel tax.

SEN. WARDNER Made a motion that the Senate recede from the Senate amendments and adopt further amendments 90711.0313 as prepared by John Walstad.

REP. TIMM Second the motion. MOTION CARRIED WITH SIX MEMBERS VOTING YES

Conference committee adjourned.

REPORT OF CONFERENCE COMMITTEE

HB 1462, as engrossed: Your conference committee (Sens. Wardner, Urlacher, Kinnoin and Reps. Mickelson, Timm, Warner) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 986-989, adopt amendments as follows, and place HB 1462 on the Seventh order:

That the Senate recede from its amendments as printed on pages 986-989 of the House Journal and pages 823-826 of the Senate Journal and that Engrossed House Bill No. 1462 be amended as follows:

Page 1, line 1, replace "sections 57-43.1-02.2, 57-43.1-12.1, 57-43.2-03.1," with "section"

Page 1, line 2, remove "57-43.2-04.4," and remove ", 57-43.3-02.2, 57-43.3-09, 57-43.3-14, 57-43.3-18, 57-43.3-28, and"

Page 1, line 3, remove "chapter 57-43.4" and replace "collection by the supplier of" with "use of dyed special fuel in a licensed motor vehicle and penalties"

Page 1, remove line 4

Page 1, line 5, remove "administration, enforcement, and penalties" and remove "57-43.1-02,"

Page 1, line 6, remove "57-43.1-14, 57-43.1-16, 57-43.1-24," after "57-43.1-26" insert ", 57-43.1-27", remove "57-43.2-02," and after the seventh comma insert "and 57-43.2-21"

Page 1, line 7, remove "57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-11, 57-43.2-21, and 57-43.3-02"

Page 1, line 8, replace "collection by suppliers of motor vehicle, special fuels, aviation" with "definitions for special fuels tax purposes and inventory gains and losses for motor vehicle fuels and special fuels tax purposes"

Page 1, remove line 9

Page 1, line 10, remove "penalties" and replace "sections 57-43.1-27 and 57-43.3-24" with "section 57-43.2-02.2"

Page 1, line 11, replace "motor vehicle fuels tax imposition and credit for losses and aviation fuel" with "refunds of special fuels" and after "taxes" insert "; to provide for a legislative council study"

Page 1, line 12, remove "collection allowances"

Page 1, replace lines 14 through 24 with:

"SECTION 1. AMENDMENT. Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank,

railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.

2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same manner as motor vehicle fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one-half of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.
4. For purposes of this chapter, it is presumed that all motor vehicle fuel received by each dealer above ~~this~~ the one-half of one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of each calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the ~~dealer~~ supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

SECTION 2. AMENDMENT. Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one-half of one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due."

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 31

Page 10, remove lines 1 through 20

Page 13, line 11, remove the overstrike over "~~compressed natural gas~~" and insert immediately thereafter an underscored comma

Page 13, line 17, remove "alternative fuels as defined in section 57-43.4-01."

Page 13, remove lines 28 through 30

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 30

Page 16, remove lines 1 through 10

Page 16, line 14, remove the overstrike over "~~two percent~~"

Page 16, line 15, remove "one and two-tenths cents per gallon [3.79 liters]"

Page 16, line 16, remove "For a"

Page 16, remove lines 17 through 19

Page 16, line 20, overstrike "~~The special excise tax applies to all special fuels taxed under section 57-43.2-02~~"

Page 16, overstrike line 21

Page 16, line 22, overstrike "3."

Page 16, line 25, overstrike "4." and insert immediately thereafter "3."

Page 17, line 1, overstrike "5." and insert immediately thereafter "4."

Page 17, line 2, remove the overstrike over "~~identify the consumer to whom the sale was made,~~"

Page 17, line 3, remove the overstrike over "~~specify the purpose for which the special fuel was sold, and~~"

Page 17, line 5, overstrike "6." and insert immediately thereafter "5." and remove "The tax imposed by this section does not apply on sales by a supplier to another"

Page 17, remove line 6

Page 17, line 7, remove "7.", remove the overstrike over "~~The dealer~~", remove "A supplier", and remove the overstrike over "~~on all sales to a~~"

Page 17, line 8, remove "and shall pass the tax on to the distributor, retailer, or" and remove "A distributor"

Page 17, replace lines 9 through 30 with:

"SECTION 5. AMENDMENT. Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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

commissioner and based on proof of the loss as required by the commissioner."

Page 18, remove lines 1 through 30

Page 19, remove lines 1 through 29

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 31

Page 23, remove lines 1 through 30

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, line 3, replace "Penalties" with "Administrative fees"

Page 26, line 10, replace "civil penalties" with "administrative fees"

Page 26, line 11, replace "one" with "two", after "hundred" insert "fifty", and replace "fine" with "fee"

Page 26, line 12, replace "fine" with "fee"

Page 26, line 14, replace "fine" with "fee"

Page 26, line 16, replace "fine" with "fee"

Page 27, line 5, after "hearing" insert "before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing"

Page 27, after line 13, insert:

"6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund."

Page 27, remove lines 14 through 29

Page 28, remove lines 1 through 31

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 31

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 30

Page 33, remove lines 1 through 29

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 30

Page 37, remove lines 1 through 30

Page 38, remove lines 1 through 30

Page 39, remove lines 1 through 31

Page 40, remove lines 1 through 30

Page 41, remove lines 1 through 30

Page 42, remove lines 1 through 31

Page 43, remove lines 1 through 31

Page 44, remove lines 1 through 31

Page 45, remove lines 1 through 31

Page 46, remove lines 1 through 30

Page 47, remove lines 1 through 31

Page 48, remove lines 1 through 31

Page 49, remove lines 1 through 31

Page 50, remove lines 1 through 31

Page 51, remove lines 1 through 31

Page 52, remove lines 1 through 31

Page 53, remove lines 1 through 19

Page 53, line 20, replace "57-43.1-27" with "57-43.2-02.2", after "the" insert "1997 Supplement to the", and replace "and" with "is repealed."

Page 53, replace lines 21 and 22 with:

"SECTION 8. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1999-2000 interim the application, enforcement, and administration under the fuels tax laws."

Page 53, line 24, replace ", and taxable inventories held on, December 31" with "June 30"

Renumber accordingly

Engrossed HB 1462 was placed on the Seventh order of business on the calendar.

HB1462

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

House Finance & Tax Committee - February 3, 1999

This bill is a companion bill to SB2177 and does not stand alone.

SB2177, which has passed the Senate, covers technical changes to delete obsolete language, restate and reorganize existing provisions for purposes of clarity, to add provisions lacking under current law, and to create or amend definitions. This bill is a companion to SB2177. Only those provisions which alter the language of SB2177 are included in this bill.

Terms such as "supplier," "distributor," and "retailer" created in SB2177 for the motor vehicle fuel and special fuel tax chapters are used throughout this bill. Definitions for those terms can be found in the newly created alternative fuel tax chapter found in SECTION 25, page 30 of this bill. For discussion purposes, those terms can be summarized as follows:

A "supplier" is a refiner or major oil company which distributes fuel from a terminal. A terminal being a fuel storage and distribution facility supplied by a refinery or pipeline.

A "distributor" is a person, other than a retailer, who acquires fuel from a refiner or supplier for wholesale distribution.

A "retailer" is a person who acquires fuel from a supplier or distributor for resale to a consumer at a retail location.

This bill does four specific things SB2177 does not do:

1. It moves the point at which motor vehicle fuel and special fuel taxes are collected and remitted from anywhere in the fuel distribution chain (supplier, distributor, or retailer level) to the "supplier" level.
2. It changes the special excise tax imposed in Section 57-43.2-03 from a two percent tax on the cost of the fuel to a one and one-half cent per gallon tax.
3. It creates enforcement and penalty provisions for misuse of dyed special fuel.
4. It creates a separate tax chapter for taxation of compressed natural gas and liquefied petroleum gases under the heading of "alternative fuel."

The copy of my testimony handed out to you concludes with a SECTION by SECTION explanation of the bill. I will not go over each SECTION but I would like to outline specific portions which I feel are important to understanding the intent of this bill.

I. Tax imposition. The following SECTIONS of this bill change the point of tax collection and remittance:

SECTION 1, p. 1 - Section 57-43.1-02 for motor vehicle fuels.
SECTION 9, p. 13 - Section 57-43.2-02, and SECTION 10, p. 15 - Section 57-43.2-03 for special fuels.
SECTION 19, p. 26 - Section 57-43.3-02 for aviation fuel.

A. On in-state sales:

The point at which motor vehicle fuel and special fuel taxes are collected and remitted moves from anywhere in the fuel distribution chain (supplier, distributor, or retailer level) to the "supplier" level.

Only a supplier could make tax free exchanges and tax free purchases, could import fuel tax free, and could maintain a tax free inventory. The supplier would collect the tax from a distributor or a retailer and remit it to the Tax Commissioner. The supplier would also collect the tax from any nonlicensed exporter.

Only a supplier would be required to file detailed monthly tax reports. A distributor who is not also an importer or exporter would have no filing requirement. A retailer would have no filing requirement.

This would reduce the motor vehicle fuel and special fuel taxpayers from about 581 each to approximately 30 each.

C. On fuel imported into the state:

A distributor who is an "importer" would be required to remit the tax directly to the Tax Commissioner upon import. In other words, the tax on fuel imported into the state in February would be due from the "importer" on or before the due date of the February report.

The "importer" would be required to file modified monthly tax reports.

The current number of importers is approximately 100.

D. On fuel exported out of the state:

A person licensed with the Tax Commissioner as an "exporter" would be allowed to purchase fuel destined for resale outside the state tax free from a supplier. The provisions also allow for a tax refund to an exporter who purchases fuel from a supplier or from a distributor tax paid.

The current number of exporters is approximately 100.

II. Inventory tax. The following SECTIONS of this bill impose an inventory tax:

SECTION 2, p. 3 - Section 57-43.1-02.2 for motor vehicle fuels.

SECTION 11, p. 17 - Section 57-43.2-03.1 for special fuels.
SECTION 20, p. 27 - Section 57-43.3-02.2 for aviation fuel.

Tax free purchases, tax free inventories, and monthly reporting requirements for those distributors and retailers who are currently licensed with the Tax Commissioner would cease to exist. Therefore, an inventory tax would be levied on all untaxed motor vehicle fuel and special fuel in a distributor or retailer's inventory on the effective date of this bill.

III. Tax credit allowances. The following SECTIONS of this bill provide for tax credit allowances:

SECTION 6, p. 8 - Section 57-43.1-24 for motor vehicle fuel.
SECTION 12, p. 17 - Section 57-43.2-04.1 for special fuel.

Changing the point of tax collection and remittance to the "supplier" level changes the administration of commissions and shrinkage or evaporation allowances. Current law provides for separate commissions for collecting the tax and separate shrinkage or evaporation allowances. This bill would delete those provisions and create a "tax credit allowance" which is a combination of the two. The percentages for the tax credits are based on an average of combined commissions and shrinkage allowances taken by suppliers, distributors, and retailers during the past three fiscal years. The intent is to apply a percentage which would render the change relatively revenue neutral to the state.

A. SECTION 6, p. 8 - Section 57-43.1-24 - Tax credit allowance.

This amendment creates a motor vehicle fuel tax credit allowance of two and seven-tenths percent of the amount of tax due and payable. The supplier would take the credit on its tax return and would be required to pass two and five-tenths of the allowance on to the distributor.

The tax credit allowance would replace both the two percent commission provided for in current 57-43.1-24 and the shrinkage allowances currently provided for in 57-43.1-26 and 57-43.1-27.

B. SECTION 12, p. 17 - Section 57-43.2-04.1 - Tax credit allowance.

This amendment creates a special fuel tax credit allowance of seven-tenths percent of the amount of tax due and payable. The supplier would take the credit on its tax return and would be required to pass five-tenths of the allowance on to the distributor.

The tax credit allowance would replace both the two percent commission provided for in current 57-43.2-04.1 and the shrinkage allowances currently provided for in 57-43.2-21.

C. Under current law, there are no commission or shrinkage allowances for aviation fuels. In order to maintain revenue neutrality to the state, this bill also does not provide for a tax credit allowance for aviation fuel taxes. An allowance was created in SB2177 as Section 57-43.3-24. This bill would repeal that provision in the event SB2177 is passed.

IV. Licensing, bonding, reporting, inventories. SECTIONS 5, 7, 13,14,15,16,17,21,22,23, and 24, cover changes in licensing, bonding, and reporting requirements.

No retailer would be required to be licensed. Distributors or retailers would no longer be required to be bonded or to file tax reports. Inventory requirements would hold suppliers accountable for tax on unexplained losses and would hold all persons selling fuel accountable for tax on product gains sold.

V. Dyed fuel enforcement - special fuels. SECTION 18, p. 24 - creates dyed fuel penalties and enforcement as 57-43.2-38 - Dyed special fuel - Penalties - Inspections.

In 1997, the Legislature enacted law providing that the \$.20 per gallon tax imposed under 57-43.2-02 applies on all sales of special fuel not dyed for federal fuel tax exemption purposes, and providing that the 2% special excise tax imposed under 57-43.2-03 applies on all sales of special fuel dyed for federal fuel tax exemption purposes. The undyed special fuel is assumed for use in licensed vehicles. Dyed fuel is for use exclusively in nonlicensed equipment for an agricultural, industrial, or railroad purpose, or as heating fuel. [Consumers who purchase undyed special fuel and use it in nonlicensed equipment for an agricultural, industrial or railroad purposes or as heating fuel may file a claim with the Tax Commissioner for a refund of the \$.20 per gallon tax. When the refund is granted, the consumer is assessed the 2% tax which is deducted from the refund.]

The 1997 legislation did not include penalty and enforcement provisions for policing the use of dyed fuel to assure that it is not used in licensed vehicles. This SECTION creates such penalties and enforcement provisions. It provides for the Highway Patrol, by agreement with the Tax Commissioner, to be the enforcer. The provisions are in line with those enacted by the Federal Government and by other states which have similar statutes.

VI. Alternative Fuels. SECTION 25, pp. 30 - 51 creates a new tax Chapter covering taxation of alternative fuels.

With a few exceptions, the proposed provisions for this Chapter are uniform with the special fuel and motor vehicle fuel tax chapters based on existing law and based on the changes to those chapters in SB2177.

- A. What are alternative fuels and why segregate them from the special fuel tax chapter.
1. Alternative fuels are those special fuels commonly known as compressed natural gas (CNG) and liquefied petroleum gases (propane).
 2. Alternative fuels are subject to the same tax imposition as other special fuels. However, alternative fuels are not dyed for purposes of determining which tax rate applies. This means that the tax rate cannot be determined until the product is sold to a consumer.
 3. A sale to a consumer can occur anywhere in the sales distribution chain and occurs most often at the retail level. This means that the tax cannot be applied at the "supplier" level but must remain with the person ultimately

selling the product to the consumer.

4. Because the tax imposition cannot be backed up to the supplier level, all persons in the sales distribution chain would acquire the products tax free and would, therefore, need to be licensed and bonded, and subject to reporting requirements.

B. Elimination of tax collection and remittance by a person not in the motor fuel sales business but who sells small containers of propane.

1. Under current law any person who sells propane is required to be licensed with the Tax Commissioner and to file tax reports. This includes such entities as camp grounds, hardware stores, mini marts, discount stores, and the like. This provision is impossible to enforce and is, at best, a voluntary system. The Tax Commissioner currently has approximately 35 licensees which fall under this category. The tax revenue from these 35 companies is very minimal with some of them reporting as little as \$5.00 - \$30.00 per quarter.
2. The provisions in this Chapter are designed to eliminate this type of business from the tax reporting and remittance requirements but cutting the requirements off at the "retail fuel dealer" level. These companies would become consumers who would pay the tax to the seller and who would be able to pass the tax they paid on to their customers in whatever manner they choose.

C. Section 57-43.4-06 - Tax credit allowance - p. 37 would provide for a tax credit allowance uniform with that provided in the motor vehicle fuel and special fuel tax chapters. The allowance would be one percent of the tax due and would be taken by the person charging and remitting the tax.

PROPOSED AMENDMENT TO THE BILL:

I handed out a proposed amendment to this bill for your consideration. The provisions for "lien of tax - Collection - Action authorized" in the newly created 57-43.4-25, for alternative fuels, page 49, line 26 should read "the commissioner shall file a notice of the lien with the secretary of state" rather than with "the register of deeds of the county in which the property is located." The error was a drafting error on my part.

Other amendments may be required to make the provisions of this bill workable for the fuel industry.

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. 1 - AMENDMENT:**

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

The intent of this amendment is to:

◆◆ Require that the tax be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆ 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.

(For comparable provisions in the bill for the Special Fuel tax chapter see SECTIONS 9, p. 13, and 10, p. 15, and for the Aviation Fuel tax chapter see SECTION 19, p. 26.)

[In SB2177, see SECTION 2, p.7.]

2. **SECTION 2 - p. 3 - CREATE NEW SECTION:**

57-43.1-02.2 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 11, p.17, and for the Aviation Fuel tax chapter see SECTION 20 p. 27.)

3. **SECTION 3 - p. 4 - CREATE NEW SECTION:**

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

◆◆ SB2177 (in SECTION 84, p. 76) requests the repeal of section 57-43.1-42.1 where the provisions now appear. This SECTION reenacts those provisions in a more

appropriate place within the tax chapter. The amendments provide a tax credit for suppliers only. Other persons are entitled to a refund.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 13, p. 17, and for the Aviation Fuel tax chapter see SECTION 23, p. 29.)

[In SB2177, see SECTION 8, p.6.]

4. SECTION 4 - p 4 - AMENDMENT:

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

The intent this amendment is to:

◆◆ Limit the bonding requirement to suppliers and importers.

◆ 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 of SB2177 for 57-43.1-13.)

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 15, p. 19, and for the Aviation Fuel tax chapter see SECTION 21, p. 27.)

5. SECTION 5 - p. 7 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit reporting requirements to a refiner, supplier, importer, or exporter. a distributor or retailer would no longer be required to file a report.

◆ 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 in this bill for the Special Fuel tax chapter see SECTION 16, p. 21, and for the Aviation Fuel tax chapter see SECTION 22, p. 28.)

6. SECTION 6 - p. 8 - AMENDMENT:

Section 57-43.1-24 - Tax credit allowance.

◆◆ The intent of this amendment is to provide the supplier with a tax credit equal to two and seven-tenths percent of the tax due. The supplier is required to pass two and five-tenths percent of the allowance on to the distributor. The credit is for the purpose of covering costs of collecting the tax and for covering product shrinkage or evaporation.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 12, p. 17.)

7. SECTION 7 - p. 9 - AMENDMENT:

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

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Provide for tax for suppliers on fuel not accounted for.
- ◆ Provide for tax on gains sold.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 17, p. 23, and for the Aviation Fuel tax chapter see SECTION 24, p. 29.)

[In SB2177, see SECTION 23, p.25.]

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

8. SECTION 8 - p. 10 - AMENDMENT:

Section 57-43.2-01. Definitions.

◆ **Current Subsection 10:** Defining "kerosene" is deleted. Kerosene is specifically defined as a special fuel under the amended definition of "special fuel" found in SB2177. a separate definition is not needed.

◆◆ **Subsection 17:** Compressed natural gas is deleted from the definition of a special fuel. It and liquefied petroleum gases become part of the "alternative fuel" definition in the newly created Alternative Fuel tax chapter.

◆ Other amendments to the definitions are found in SECTION 31, p. 29 of SB2177.

9. **SECTION 9 - p. 13 - AMENDMENT:**

Section 57-43.2-02 - Tax imposed.

The intent of this amendment is to:

◆◆ Require that the tax be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆ 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.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 1, p.1, and for the Aviation Fuel tax chapter see SECTION 19, p. 26.)

[In SB2177, see SECTION 32, p.34.]

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

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

The intent of this amendment is to:

◆◆ Require that the special excise tax imposed in lieu of that in 57-43.2-02 be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer. In order that this tax can be collected at the supplier level, this SECTION also changes the tax from two percent of the price of the fuel to one and one-half cents per gallon.

◆ 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.

[In SB2177, see SECTION 34, p.36.]

11. **SECTION 11 - p. 17 - CREATE NEW SECTION:**

57-43.2-03.1 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 3, and for the Aviation Fuel tax chapter see SECTION 20 p. 27.)

12. SECTION 12 - p. 17 - AMENDMENT:

Section 57-43.2-04.1 - Tax credit allowance.

◆◆ The intent of this amendment is to provide the supplier with a tax credit equal to seven-tenths percent of the tax due. The supplier is required to pass five-tenths percent of the allowance on to the distributor. The credit is for the purpose of covering costs of collecting the tax and for covering product shrinkage or evaporation.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 6, p. 8.)

13. SECTION 13 - p. 17 - CREATE NEW SECTION:

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

◆◆ SB2177 (in SECTION 84, p. 76) requests the repeal of section 57-43.1-42.1 where the provisions now appear. This SECTION reenacts those provisions in a more appropriate place within the tax chapter. The amendments provide a tax credit for suppliers only. Other persons are entitled to a refund.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 17, and for the Aviation Fuel tax chapter see SECTION 23, p. 29.)

[In SB2177, see SECTION 38, p.39.]

14. SECTION 14 - p. 18 - 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:

◆◆ Clarify who must be licensed. The amendment specifically excludes retailers from the licensing requirements.

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

◆ 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.

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

[In SB2177, see SECTION 39, p.15.]

15. SECTION 15 - p. 19 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit the bonding requirement to suppliers and importers.

◆ 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 4, and for the Aviation Fuel tax chapter see SECTION 21, p. 27.)

[In SB2177, see SECTION 40, p.40.]

16. SECTION 16 - p. 21 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit reporting requirements to a refiner, supplier, importer, or exporter. a distributor or retailer would no longer be required to file a report.

◆ 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 7, and for the Aviation Fuel tax chapter see SECTION 22, p. 28.)

[In SB2177, see SECTION 46, p.45.]

17. SECTION 17 - p. 23 - AMENDMENT:

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

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Provide for tax for suppliers on fuel not accounted for.
- ◆ Provide for tax on gains sold.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 7, p. 9, and for the Aviation Fuel tax chapter see SECTION 24, p. 29.)

18. SECTION 18 - p. 24 - CREATE NEW SECTION:

Section 57-43.2-38 - Dyed special fuel - Penalties - Inspections.

The intent of the new section is to:

- ◆ Provide for enforcement for existing dyed fuel provisions.
- ◆ Provide penalties for use of dyed fuel in licensed vehicles.
- ◆ Provide authority for the Highway Patrol, by agreement with the Tax Commissioner, to be the enforcer.

19. SECTION 19 - p. 26 - AMENDMENT:

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

The intent of this amendment is to:

- ◆◆ Require that the tax be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆ 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 1, p. 1, and for the Special Fuel tax chapter see SECTIONS 9, p. 13, and 10, p. 15.)

[In SB2177, see SECTION 60, p.60.]

20. SECTION 20 - p. 27 - CREATE NEW SECTION:

57-43.3-02.2 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 3, and for the Special Fuel tax chapter see SECTION 11, p. 17.)

21. SECTION 21 - p. 27 - CREATE NEW SECTION:

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

The intent of the new section is to:

◆◆ Limit the bonding requirements to suppliers and importers.

◆ 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 4, and for the Special Fuel tax chapter see SECTION 15, p. 19.)

[In SB2177, see SECTION 64, p.63.]

22. SECTION 22 - p. 28 - CREATE NEW SECTION:

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

The new section is intended to:

◆◆ Create a reporting requirement for aviation fuel but limit it to a refiner, supplier, importer, or exporter.

◆ 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 7, and for the Special Fuel tax chapter see SECTION 16, p. 21.)

[In SB2177, see SECTION 69, p.65.]

23. SECTION 23 - p. 29 - CREATE NEW SECTION:

Section 57-43.3-18 (should be 57-43.3-17 as 3-18 already exists in SB2177 as Commissioner to audit reports and assess tax) - 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. Credits are provided for suppliers. All other persons are entitled to a refund.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 3, p. 4, and for the Special Fuel tax chapter see SECTION 13, p. 17.)

[In SB2177, see SECTION 72, p.70.]

24. SECTION 24 - p. 29 - CREATE NEW SECTION:

Section 57-43.3-28 (should be 57-43.3-26 as 3-28 already exists in SB2177 as Erroneously or illegally collected taxes)- 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..

◆ Require physical inventories.

◆ Provide for tax for suppliers on fuel not accounted for.

◆ Provide for tax on gains sold.

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

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 7, p. 9, and for the Special Fuel tax chapter see SECTION 17, p. 23.)

25. SECTION 25 - p. 30 - CREATE NEW CHAPTER:

Chapter 57-43.4 - Alternative Fuels.

This SECTION of the bill creates a new tax chapter covering taxation of "Alternative Fuels." Except as pointed out below, the provisions for this Chapter are identical to existing language in the Special Fuel tax Chapter and not amended or repealed in SB2177 or identical to the Special Fuel tax provisions as amended in SB2177. The following are exceptions:

57-43.4-01 - Definitions.

- ◆ Subsection 2: Defines "alternative fuels" as compressed natural gas (CNG) and liquefied petroleum gases (propane/butane).

- ◆ The remaining definitions are identical to those proposed for special fuels in SB2177, SECTION 31, p. 29.)

57-43.4-02 - Tax imposed.

- ◆ The tax imposed is identical to 57-43.2-02 in the Special Fuels tax Chapter (as amended in SB2177) except that the collection of the tax remains at the supplier, distributor, importer, or retailer level.

57-43.4-05 - Special excise tax levied.

- ◆ The tax imposed is identical to 57-43.2-03 in the Special Fuels tax Chapter (as amended in SB2177) except that the collection of the tax remains at the supplier, distributor, importer, or retailer level.

57-43.4-06 - Tax credit allowance.

- ◆ The tax credit allowance for alternative fuels is one percent of tax due rather than seven-tenths percent for special fuel. The reason is that there is a greater potential for shrinkage or evaporation. Whichever person is liable for remitting the tax on alternative fuel is entitled to this allowance; therefore, there is no provision for passing it on to a person purchasing it for resale.

57-43.4-10 - Refiner, supplier, distributor, importer, exporter, terminal operator, or retailer required to secure license - License fees.

- ◆ The tax imposed is identical to 57-43.2-05 in the Special Fuels tax Chapter (as amended in SB2177) except that the licensing requirement includes a retailer.

57-43.4-13 - Bond or letter of credit.

◆ The tax imposed is identical to 57-43.2-07 in the Special Fuels tax Chapter (as amended in SB2177) except that the bonding requirement includes a distributor or retailer.

57-43.4-16 - Report by refiner, supplier, distributor, importer, exporter, or retailer required.

◆ The tax imposed is identical to 57-43.2-11 in the Special Fuels tax Chapter (as amended in SB2177) except that the reporting requirement includes a distributor or retailer.

57-43.4-27 - Inventory gains - Losses.

◆ Requires physical inventories.

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

◆ Provides for the same inventory gain and loss procedures as the motor vehicle fuel and special fuel tax chapters.

26. **SECTION 26 - p. 51 - REPEAL:**

◆ This section provides for the repeal of an obsolete section and of a section created in SB2177 which would no longer apply should this bill be adopted.

27. **SECTION 27 - p. 51 - EFFECTIVE DATE:**

◆ In order to allow sufficient time for the Tax Commissioner and the persons in the fuel industry to develop an appropriate understanding of the changes made, to administratively provide for those changes, and to accomplish data processing changes and forms design needed, it is requested that the effective date of this bill be delayed to taxable events occurring after December 31, 1999.

Dick Johnson

Testimony on HB 1462

ND Motor Carriers Association, Inc.

February 3, 1999

Before the House Finance and Taxation Committee

Chairman Belter and members of the committee, thank you for the opportunity to express the trucking industry's input regarding HB 1462.

The North Dakota Motor Carriers Association is the state trade association of the trucking industry representing every type of motor carrier in the state. Combined with NDMCA's allied members, we are an association of several hundred members-- most of which are small businesses.

The trucking industry plays a central role in our state's economy -- employing one out of every 11 workers and paying more than \$563.9 million in salaries a year. Trucks move 85.8% or 89,281 tons of essential manufactured freight each business day and projections are that we will transport 9.1% more goods by the year 2000 -- serving every community in North Dakota.

We support the principle of highway user taxes and the highway trust fund, because truck operators believe it is an equitable method of allowing those who benefit from the use of the highway system to pay for it. North Dakota truckers are big customers of that system, contributing over \$105.8 million in 1996 in state and federal taxes and fees -- this equates to a weekly tax bill of \$2.3 million.

Mr. Chairman, those who work in the trucking industry would strongly agree that we must invest in our infrastructure if we are going to ensure that our state remain competitive in the coming decade. But, increasing highway user fees and fuel taxes is not always a painless way to pay for such improvements. NDMCA is, however, on record supporting HB 1183, which increases vehicle registration fees.

A number of states have changed the point of taxation in recent years to mirror the structure of the federal fuel tax system which moved the point of taxation effective January 1, 1994.

It would seem that taxing fuels at "higher levels" in the distribution chain reduces the number of taxpayers and the number of potential audits.

We have put together a chart from the Western Highway Institute showing which states have moved fuel tax collections to the terminal rack and the reported increases in the tax collection:

Fuel Tax Collection at Terminal Rack, as of 1/1/98

Michigan	1/1/93	21% increase
Indiana	10/1/93	16% increase
Florida	1/1/96	9% increase
Iowa	1/1/96	23% increase
Nevada	1/1/96	25% increase
South Dakota	1/1/96	19% increase
North Carolina	1/1/96	10% increase
Montana	1/1/96	20% increase
California	7/1/96	19% increase

South Carolina, Oklahoma, Idaho, and Wyoming have also changed their point of collection in 1996 and 1997, but we have no reports on their percentage (increase or decrease) of fuel tax collections.

Mr. Chairman and committee members, we at NDMCA support HB 1462 and request your favorable consideration of this legislation which we feel will streamline the fuel tax collection and auditing process in addition to possibly increasing highway funding revenues.

EXHIBIT C

* MONTANA *

Diesel - Distributor's report

	Old Tax	New Tax
	CY93	CY94
	Gallons	Gallons
Jan	8,972,341	10,269,044
Feb	11,428,340	8,662,038
Mar	13,163,030	14,198,610
Apr	9,207,682	13,434,525
May	9,417,336	12,833,612
Jun	8,611,200	13,416,076
Jul	7,191,865	14,569,478
Aug	12,976,329	12,098,821
Sep	10,964,471	14,340,690
Oct	10,918,949	12,924,742
Nov	13,370,725	13,928,594
Dec	11,139,450	13,100,968
Total	127,361,778	153,777,198

Percent Change from Prior Year

20.74%

NORTH DAKOTA PETROLEUM MARKETERS ASSOCIATION

1025 N. 3rd St. • P.O. Box 1956 • Bismarck, ND 58502
Telephone 701-223-3370 • WATS 1-800-472-0512 • FAX 701-223-5004

REPRESENTING:

Bulk Oil Jobbers
Convenience Stores
Service Stations
Truck Stops

HB 1462

House Finance and Taxation

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the ND Petroleum Marketers Association. I appear before you in opposition to HB 1462.

Petroleum Marketers recognize the concern of the legislature in trying to find the needed federal highway matching funds without increasing taxes. We applaud this effort and support the majority of ideas being considered to locate the needed funds. However, petroleum marketers are extremely concerned about HB1462 and the dangers that coincide with changing the point of taxation.

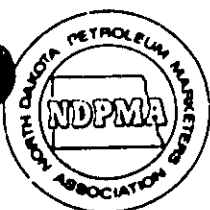
We believe that if tax evasion is occurring the violators should be caught and punished. Currently there is little or no enforcement mechanism in place. The changes made to dyed diesel in the 1997 legislative session has increased the amount of taxes collected but has led to a huge increase in refunds being claimed by consumers.

The majority of states that report increases in motor fuel revenues say the increase is due to strict dyed diesel enforcement. Kansas has not moved their point of taxation to the rack but reported huge revenue increases due to a new dyed diesel enforcement program. We have also heard reports about the effectiveness of the dyed diesel enforcement efforts in SD.

To address tax evasion we suggest that legislature consider the following options instead of moving the point of taxation:

- Provide the Tax Department the resources to perform audits on marketers tax reports, dyed diesel refund requests, and cross-checks on imports and exports of loads of fuel with other states.
- Adopt the dyed diesel provisions of this bill.
- Empower the Highway Patrol and DOT to enforce the laws.

The revenue impact of changing the point of taxation is unknown. The attached documents show that moving the point taxation does not guarantee the "golden egg" that every state is searching for as the answer to finding the needed highway funds.



Changing the point of taxation does not guarantee more revenue.

- 16 states have moved their tax collection to the rack.
- Of course, there is going to be jump in revenues the first year because the state will collect more than 2.7 million inventory taxes from marketers once the law takes effect.
- Many states including South Dakota have not seen increases in subsequent years after the change.
- On the other hand, 10 states that did not change reported increases in excess of 10% in 1996.
- Factors that cause increases in revenues might include:
 - Growth in the economy
 - Enforcement
 - Tax increases
- New Jersey moved their point of taxation down to the retailer and experienced larger gains than any state.
- Evasion usually occurs on the importing & exporting of fuel, moving to the rack does not change this ability to cheat unless the states coordinate their information – currently not done well.
- Ohio, recently defeated a rack tax bill but got tough on enforcement -- their recent increase was one of the highest in the nation.
- ND's taxable gallons are a fraction of most other states whose taxation point has been moved up – ND cannot expect the same types of revenue increases even if cheating is occurring and is stopped as a result of the move.
- Minnesota and Montana do not tax at the rack.

Moving the point of taxation to the rack does not stop cheaters. Cheaters find a ways to cheat – more and new enforcement is the answer. Changing the current system may only disrupt the business operations of honest business people who are following the rules.

The changes that will occur in the industry as a result of this lengthy bill could drastically impact marketers across the state. Many of whom are already struggling to survive in a time of business closings, mergers, costly government regulations, and low margins in the industry. We urge the committee to keep and enhance the enforcement provisions of this bill and leave the taxation point at the current location.

Thank you, I would be happy to answer any questions.



**PETROLEUM
MARKETERS
ASSOCIATION OF
AMERICA**

1901 N. FORT MYER ST. ■ SUITE 1200 ■ ARLINGTON, VA 22209 ■ 703-351-8000

E-99-2

MEMORANDUM

DATE: January 14, 1999
TO: State Association Executives
Motor Fuels Committee
FROM: John J. Huber
SUBJECT: State Tax Collection Procedures

Attached is an updated chart analyzing the collection procedures for diesel. Many states continue to examine whether moving their point of collection to the rack will increase revenues. The attached data does not show a strong correlation between increased collections and a movement in the point of collection.

Attached to the chart and after discussions with different state associations, it appears that there are a number of items identified as being factors in increased collections. First, most believe that adoption of the dye system for diesel is helpful in collections. Second, enforcement plays a major role, and accurate and thorough information gathering is vital to an efficient and effective system. Third, actions in other states and the regional economy appear to be important to an effective system.

I believe that the assertion's of the state agencies that movement of the point of collection will yield significant revenue gains is unsupported, and I am unaware of any comprehensive study to validate such a claim. In the states where such information has been requested during consideration, the information does not materialize.

I will be circulating the attached tables to some of the state taxing authorities for comment. If you have any questions or need further information, please feel free to call me.

MEMORANDUM

To: John Huber
From: Ethel Hornbeck
Subject: Updated Diesel Fuel Sales Data by State
Date: December 9, 1998

Attached please find updated information on state-level sales of diesel fuel. As discussed previously (see memos prepared on 1/96 and 9/97), the data continue to show *no discernible pattern* in states that have changed their point of taxation compared with those that have not.

Of particular interest are the five states that made a collection procedure change in 1996. In each case but one, the increase in sales was actually below the national average increase of 7.8 percent: Iowa's sales increased 4.4 percent, North Carolina 5 percent; South Carolina 5.7 percent; while South Dakota's sales declined. Florida's increase of 9.4 percent was somewhat higher than the national average.

As in previous years, there are a number of states that made *no change*, that experienced larger than average sales increases. Fourteen states registered increases of 10 percent or more (although in some cases data reporting may account for some of the changes).

TESTIMONY OF JOHN HUBER
VICE PRESIDENT AND CHIEF COUNSEL
PETROLEUM MARKETERS ASSOCIATION OF AMERICA

- I. Background on Federal Tax Changes
 - a) Widespread Evasion and Lack of Enforcement
 - b) Uncertain System with Problems

- II. Review of State Collection Problems
 - a) Border Issues
 - b) Lack of Enforcement
 - c) Lack of Clarity in Rules





- III. Review of Tax Collection Results in States
 - a) States that Have Changed
 - b) States with Significant Collection Gains
 - c) What does Data Mean- Lack of Baseline Analysis

- IV. Need to Determine the Problem and Develop Solutions
 - a) Border Issue
 - b) Inadvertent Non-Compliance
 - c) Criminal Non-Compliance

- V. Global Needs for All Systems
 - a) Information from All Levels of Distribution
 - b) Real Time Analysis of Information
 - c) Strong Voluntary Compliance
 - d) Meaningful Enforcement

- VI. Rack System
 - a) Limited Number of Payers
 - b) Difficult to Ensure Tax Free Sales

- VII. Justification for Change and Alternatives

STATE A	STATE B
1. Export w/o tax but no export	
2. Import no tax collection	
3. No identified export but actually imported	  <div data-bbox="459 493 571 785" style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Terminal</div>

Rack System Targeted at Pre-collection of Taxes → No Impact on These Problems

SALES OF SPECIAL FUELS BY STATE, 1993-1997 (000000 Gallons)

	1993	1994	1995	1996	1997	%CH94	%CH95	%CH96	%CH97	%CH93-97	Explanation
AL	587.4	659.0	696.4	650.7	659.9	12.2	5.7	-6.6	1.4	12.3	
AK	142.5	30.4	63.8	67.9	48.4	-78.7	109.9	6.4	-26.7	-66.0	
AZ	474.8	463.5	478.3	620.3	688.9	-2.3	3.2	10.7	30.2	46.2	
CA	428.0	472.2	490.8	497.7	534.7	10.3	3.9	1.4	7.4	24.9	
CO	1,853.3	2,035.6	2,109.7	2,133.9	2,297.8	9.8	3.8	1.1	7.7	24.0	
CT	263.5	289.4	285.8	280.6	292.7	2.2	6.1	-1.8	4.3	11.1	
DE	197.3	166.5	200.7	222.7	244.9	-5.5	7.6	11.0	10.0	24.1	
DC	55.1	62.3	63.4	59.7	63.5	13.1	1.8	-5.8	6.4	15.2	
FL-7/96	20.9	21.9	21.4	21.1	21.7	4.8	-2.3	-1.4	2.8	3.6	
GA	932.5	963.4	1,008.8	1,038.6	1,136.0	3.3	4.7	3.0	9.4	21.8	
HI	1,003.7	1,050.2	1,115.8	1,173.3	1,192.3	4.6	6.2	5.2	1.6	18.8	
IA	26.0	31.7	27.5	30.8	28.8	21.9	-13.2	12.0	-6.5	10.8	
ID	164.5	160.4	160.1	160.0	220.9	22.5	5.4	11.8	20.8	21.2	
IL	1,012.3	916.5	1,124.6	1,139.5	1,469.5	-6.5	22.7	-1.3	22.0	41.2	
IN-10/93	855.5	937.7	875.0	941.6	1,017.6	9.6	-6.7	7.6	6.1	18.9	
IA-1/96	348.3	390.6	413.9	440.6	480.1	9.0	8.7	6.5	4.4	29.7	
KS	321.4	300.4	345.9	355.3	381.0	-6.5	15.1	2.7	7.2	16.5	
KY	689.0	590.6	582.1	598.5	684.6	-14.3	-1.4	2.8	14.4	-0.6	
LA	409.7	448.7	484.9	511.6	528.7	9.0	8.6	5.5	3.3	29.0	
ME	115.5	129.5	130.7	136.2	139.3	12.1	0.9	4.2	2.3	20.6	
MD	343.3	310.9	326.0	357.7	418.0	-9.4	4.9	9.7	16.9	21.8	
MA	271.4	297.7	317.0	315.8	345.4	9.7	6.5	-0.4	9.4	27.3	
MI-1/93	726.7	731.5	742.7	778.4	818.9	0.7	1.5	4.8	4.9	12.4	
MN	374.9	422.1	467.3	486.2	523.1	12.8	6.3	8.1	3.7	34.2	
MS	349.1	362.2	378.2	403.7	434.7	3.8	4.4	6.7	7.7	24.5	
MO	691.1	736.6	743.4	772.2	881.7	6.6	0.9	3.9	14.2	27.6	
MT	139.4	156.7	159.0	154.6	175.7	12.4	1.9	-3.1	13.6	26.0	
NE	260.5	285.8	314.4	338.9	318.3	9.7	10.0	7.8	-6.1	22.2	
NV	176.3	174.7	176.7	220.1	223.9	-0.9	1.1	24.6	1.7	27.0	
NH	53.9	56.6	63.6	61.3	116.4	5.0	12.4	-3.6	8.9	116.0	
NJ	460.6	601.9	601.9	600.6	662.6	22.0	7.1	-0.2	13.7	48.2	
NY	241.5	228.1	300.5	317.1	342.9	-6.4	32.9	5.5	8.1	42.0	
NC-1/96	863.2	917.3	921.8	931.0	906.5	6.3	0.5	1.0	-2.4	5.2	
ND	666.3	772.0	780.5	817.6	858.8	15.9	1.1	4.8	5.0	28.9	
OH	111.5	131.5	134.4	137.1	138.7	17.9	2.2	2.0	1.2	24.4	
OK	1,000.3	1,115.3	1,203.5	1,245.2	1,408.2	11.5	7.9	3.5	13.1	40.8	
OR	433.0	478.3	497.6	511.9	563.3	10.5	4.0	2.9	10.0	30.1	
PA	349.1	340.5	371.1	388.7	400.7	-2.5	9.0	4.7	3.1	14.8	
RI	1,092.5	1,155.8	1,204.7	1,189.3	1,241.1	5.8	4.2	-2.9	6.1	13.6	
SC-5/96	38.4	42.2	44.5	44.6	43.6	9.9	5.5	0.2	-2.2	13.5	
SD-1/96	410.0	524.4	463.6	461.2	487.4	27.9	-11.6	-0.5	5.7	18.9	
TN	114.5	137.4	137.6	143.1	141.6	20.0	0.1	4.0	-1.0	23.7	
TX	648.2	678.4	730.1	755.8	778.1	4.7	7.6	3.5	3.0	20.0	
UT	1,705.5	1,864.4	2,036.0	2,269.5	2,273.6	15.2	3.8	11.5	3.2	33.3	
VT	191.1	211.4	260.1	256.8	295.0	10.6	23.0	-1.3	14.8	64.4	
VA	106	74.0	63.9	96.1	77.9	4.8	-13.6	50.4	-18.9	10.3	
WA	629.6	682.2	690.9	780.7	836.6	8.4	1.3	10.1	10.0	32.9	
WI	352.7	465.3	466.6	462.3	489.4	31.9	0.3	3.3	-2.7	33.1	
WV	212.6	212.6	222.0	188.2	253.1	0.0	4.4	-15.2	34.5	19.0	
WI-4/94	522.6	565.6	589.9	594.9	635.1	8.2	4.3	0.6	6.8	21.5	
WY	207.8	198.6	214.9	239.2	260.1	-4.3	8.1	11.3	6.7	25.2	
US	23,610.2	25,098.8	26,302.6	27,318.1	29,442.4	6.3	4.8	3.8	7.8	24.7	

Gross sales volumes of special fuels, primarily diesel fuel, reported by state motor fuel tax agencies. Data reflect retail sales except in a few states where taxes are applied at the wholesale level. Effective dates are indicated for states that have changed their point of taxation.

Source: Federal Highway Administration, Office of Information Management. Most recent available data as of 12/98.

Explanation is on the following page

Arizona

Arizona's taxes are collected at the rack and this has been very effective as far as an increase in the collection and a decrease in evasion. Also they stopped charging tax based on ton-per-mile standards.

Ohio

The point of taxation change has increased the amount of revenue collected and reduced evasion.

Illinois

Illinois changed their reporting requirements so it is not as easy to evade; also the distributor collects the tax.

Iowa

As of January 1996, Iowa moved to a rack collection system. The increase appears to be attributed to the dyed diesel requirements enabling the state department of revenue see that the evasion was taking place in the agricultural sector and allowing revenue collectors to tighten up their system.

Minnesota

Minnesota attributes their increase to the dyed fuel requirements.

New Jersey

In 1993 the tax collection point was changed to the retail level, which could account for some of the increase. New Jersey is also corridor state and is currently enjoying a healthy economy.

New Mexico

There have been a lot of audits going on in the state and that seems to be the only available explanation for the increase in the amount of taxes collected.

Ohio

Ohio is also enjoying a healthy economy, the dyed diesel requirements and a tightening up of the enforcement has caused the increase.

Texas

The strong economy in Texas and the fact that the state department of revenue is doing a good job of collecting the taxes are the reasons for the increase in the amount of revenue collected.

Virginia

Virginia is a corridor state and has a relatively low tax rate of .16 they have not increased their rate since 1986 while the surrounding states have. Virginia also has a very efficient tax collection system.

Ron Ness
HB 1462

State Motor Fuel Tax Legislation

(Updated 4/30/98)

State	Collection Point		Dyed Fuel Penalties	Effective Date
	Gasoline	Diesel		
Alabama	Distributor	Distributor	Yes	10/01/95
Alaska	Distributor	Distributor		
Arizona	Terminal	Terminal	Yes	1/01/98
Arkansas ^d	Distributor	Distributor	Yes	4/06/95
California	Refinery	Terminal	Yes	7/01/95
Colorado	Distributor	Distributor	No	
Connecticut	Distributor	Distributor		
Delaware	Distributor	Distributor		
District of Columbia	Distributor	Distributor		
Florida ^d	Terminal	Terminal	Yes	7/01/96
Georgia ^d	Distributor	Distributor	Yes	7/01/95
Hawaii	Distributor	Distributor		
Idaho ^{del}	Terminal	Terminal	No ^b	1/01/96
Illinois ^d	Distributor	Distributor		
Indiana ^d	Distributor	Terminal	Yes	10/01/93
Iowa ^{del}	Terminal	Terminal	Yes	1/01/96
Kansas ^d	Distributor	Distributor	Yes ^d	7/01/95
Kentucky	Distributor	Distributor		
Louisiana	Distributor	Distributor	Yes	10/01/95
Maine	Distributor	Distributor	Yes	6/23/95
Maryland	Distributor	Distributor		
Massachusetts	Distributor	Distributor/ Bulk User		
Michigan	Terminal	Terminal	No ^d	1/01/93
Minnesota ^d	Distributor	Distributor	Yes	1/01/95
Mississippi	Distributor	Distributor	Yes	7/01/95
Missouri ^d	Distributor	Distributor	Yes	1/01/94
Montana ^d	Distributor	Distributor	Yes	7/01/94
Nebraska ^d	Distributor	Distributor	Yes	1/01/96
Nevada	Distributor	Distributor	Yes	1/01/96
New Hampshire	Distributor	Distributor	Yes	1/01/97
New Jersey	Distributor	Retailer		
New Mexico	Distributor	Distributor		
New York	1st Receipt	1st Receipt		
North Carolina ^d	Terminal	Terminal	Yes ^d	1/01/96
North Dakota	Distributor	Distributor	No ^b	4/01/97
Ohio ^d	Distributor	Distributor	Yes	10/01/96
Oklahoma ^d	Terminal	Terminal	Yes	10/01/96
Oregon	Distributor	Retailer		
Pennsylvania	Distributor	Distributor	Yes	10/01/97
Rhode Island	Distributor	Distributor		

TERMINAL (e)
TERMINAL (e)

9/1/95

State Motor Fuel Tax Legislation

State	Collection Point		Dyed Fuel Penalties	Effective Date
	Gasoline	Diesel		
South Carolina ^d	<u>Terminal</u>	<u>Terminal</u>	Yes	<u>5/01/96</u>
South Dakota ^d	<u>Terminal</u>	<u>Terminal</u>	Yes	<u>1/01/96</u>
Tennessee ^d	1st Receipt	<u>Terminal</u>	Yes ^e	<u>1/01/98</u>
Texas ^d	Distributor	Distributor		
Utah ^f	Distributor	<u>Terminal</u>	No ^b	<u>7/01/97</u>
Vermont	Distributor	Distributor/ Bulk User		
Virginia	Distributor	Distributor	Yes	<u>7/01/95</u>
Washington	Distributor	Retailer		
Washington ^{d,f}	<u>Terminal</u>	<u>Terminal</u>	Yes	<u>1/01/99</u>
West Virginia	Distributor	Distributor	Yes	<u>6/15/96</u>
Wisconsin ^d	<u>Terminal</u>	<u>Terminal</u>	Yes	<u>4/01/94</u>
Wyoming ^d	<u>Terminal</u>	<u>Terminal</u>	Yes	<u>1/01/97</u>
Total				
Terminal or higher	14	16		
Below Terminal	37	35		
With dye provisions			28	

Underlining indicates items changed on effective date shown.

The term "distributor" includes "suppliers" and "wholesalers".

^aNorth Carolina dyed fuel penalties effective 1/01/95.

^bDyed fuel when used for highway purposes is assessed the highway tax rate.

^cTennessee dyed fuel penalties effective 1/01/96.

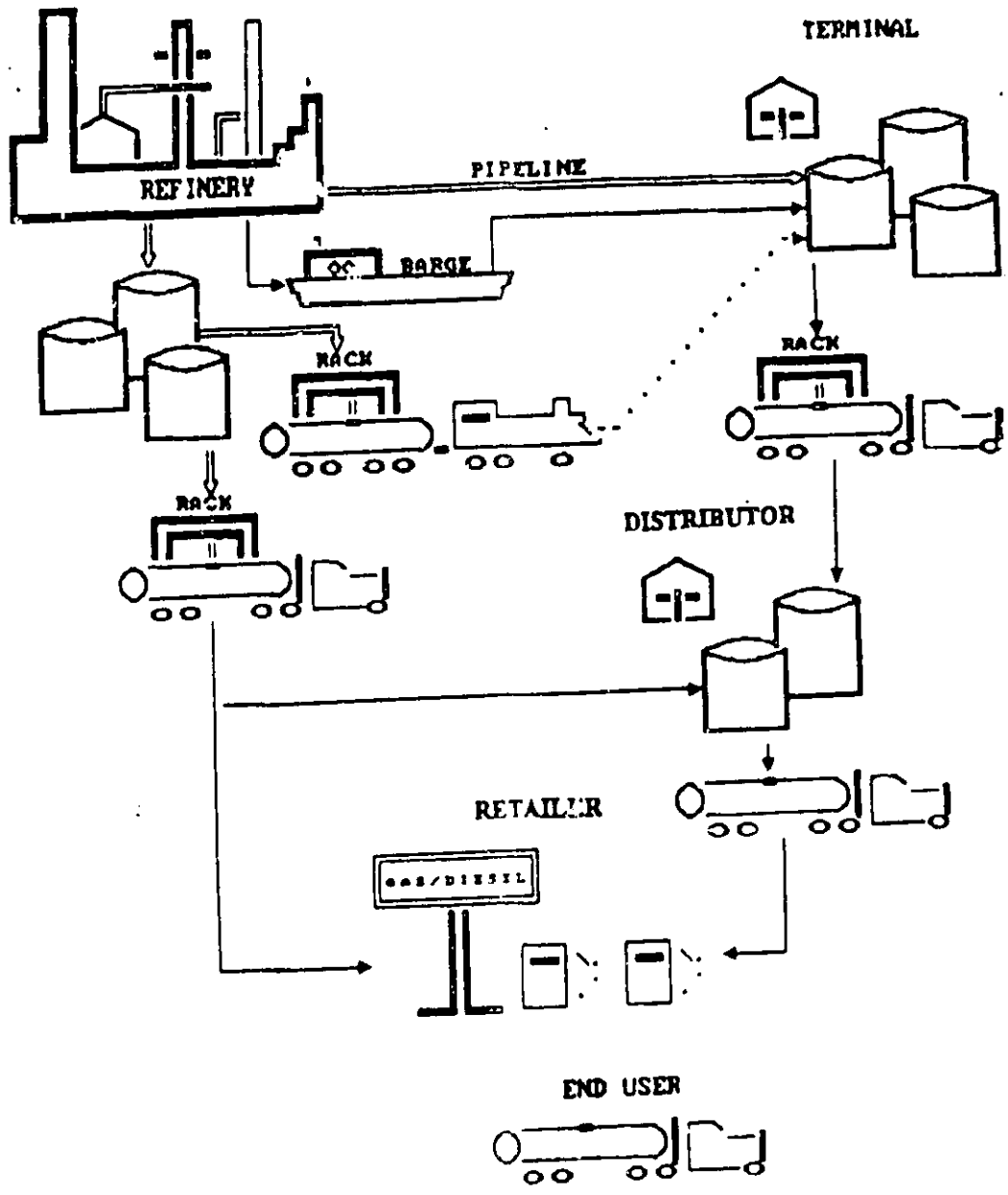
^dDestination State required on shipping documents (effective 1/01/98 for Tennessee).

^eThe distributor first receiving taxable product is responsible for remitting the tax.

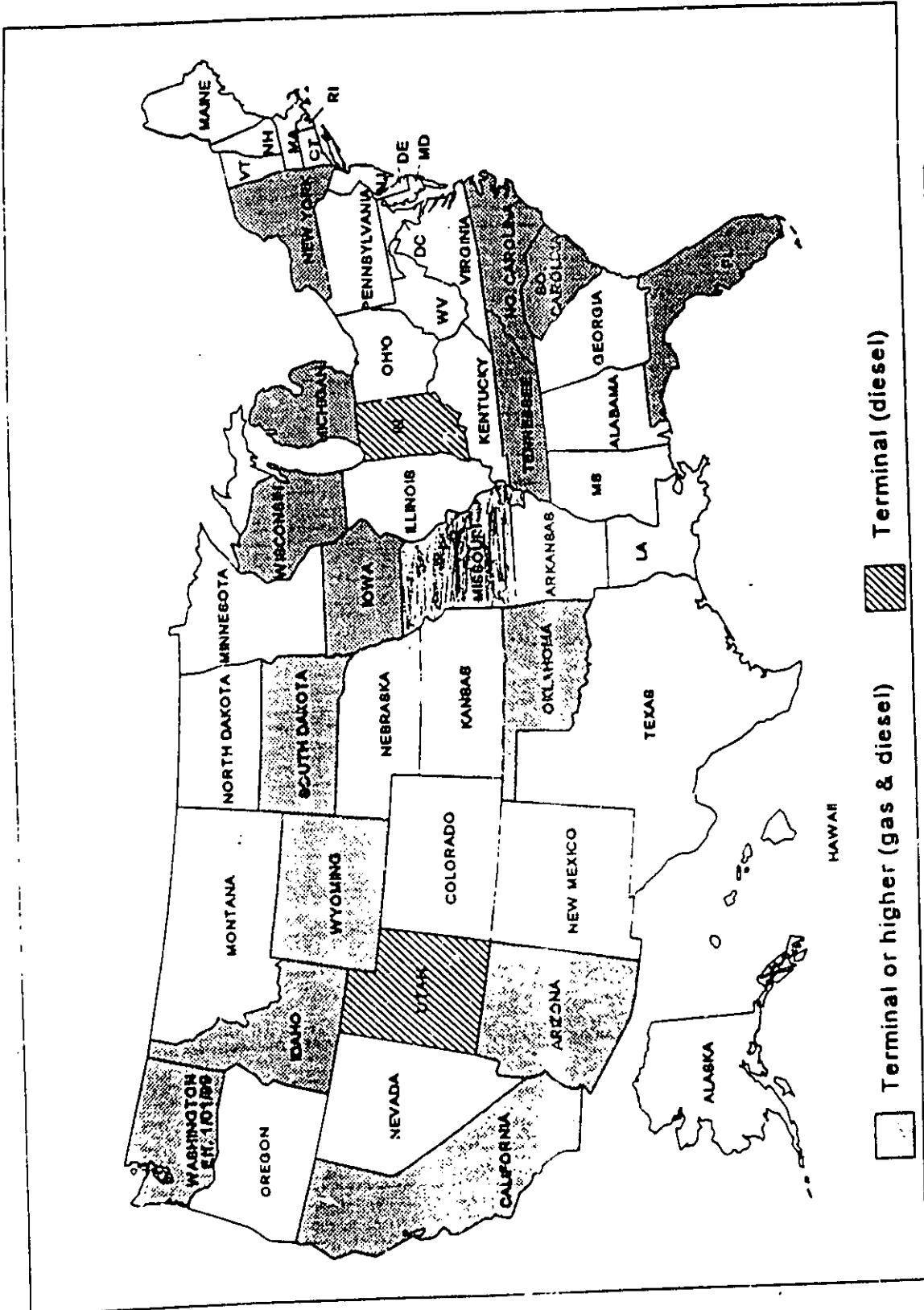
^fContrary to the Federal rule, farmers must purchase dyed fuel to be exempt from State diesel fuel tax.

Prepared by Federal Highway Administration (FHWA). Contact Stephen Baluch (202-366-9243) or Linda Morris (202-366-9234) to report updates or corrections.

FHAPPT10 1/15/95 8:05 STATELAN.MXD

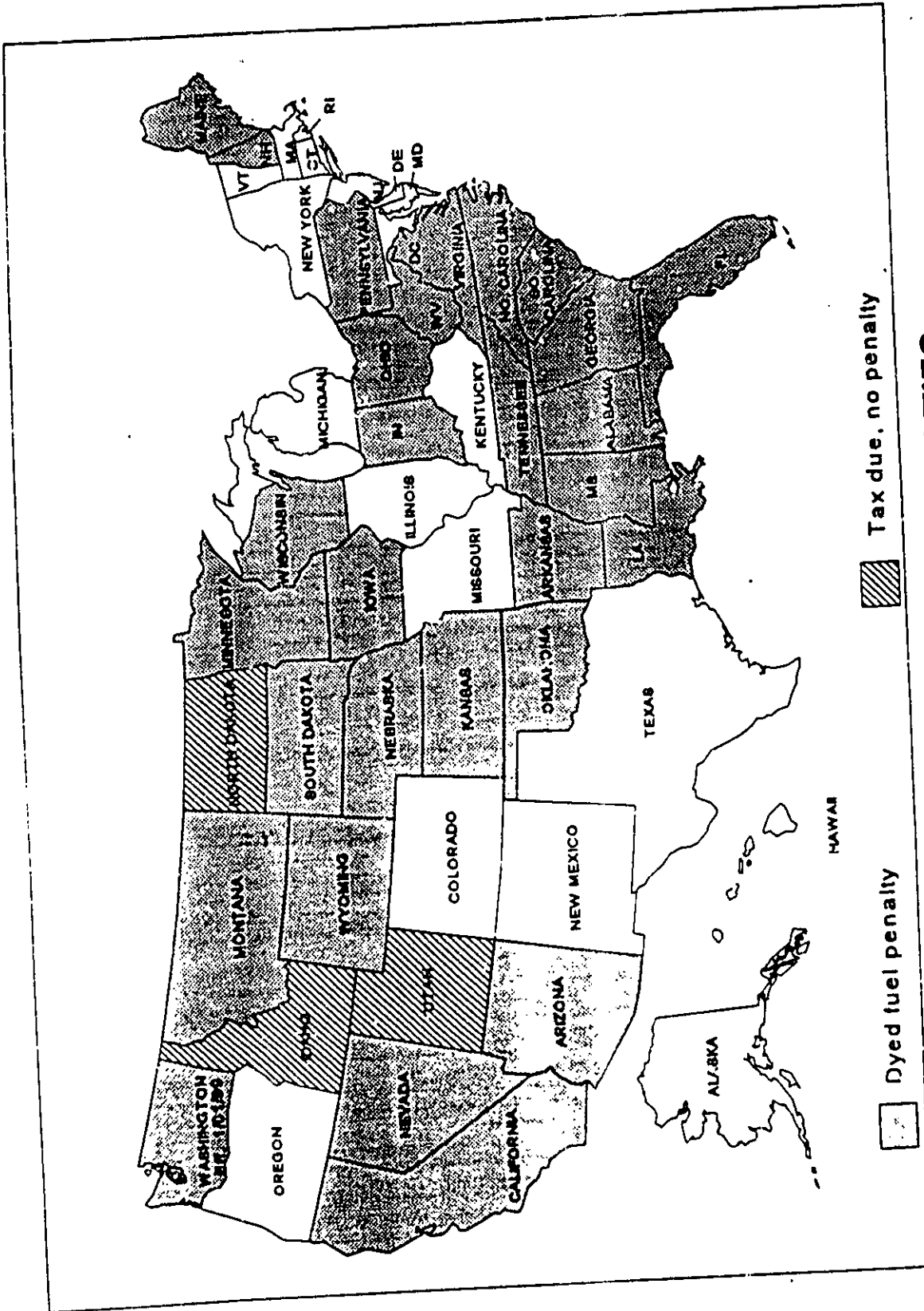


MOTOR FUEL DISTRIBUTION SYSTEM



STATE MOTOR FUEL TAX--COLLECTION POINT

(April 30, 1998, STATETAX.US)



STATE DYED FUEL PENALTIES

(April 30, 1998. STATETAX.US)

**Tax Collection Allowance
Revenue Effect**

Motor Fuels

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Commissions/ Shrink	Revenue Effect
69,943,360.95 X	3.50% =	2,448,017.63 -	1,901,746.82 =	(546,270.81)
69,943,360.95 X	3.00% =	2,098,300.83 -	1,901,746.82 =	(196,554.01)
69,943,360.95 X	2.90% =	2,028,357.47 -	1,901,746.82 =	(126,610.64)
69,943,360.95 X	2.80% =	1,958,414.11 -	1,901,746.82 =	(56,667.28)
69,943,360.95 X	2.70% =	1,888,470.75 -	1,901,746.82 =	13,276.08
69,943,360.95 X	2.60% =	1,818,527.38 -	1,901,746.82 =	83,219.44
69,943,360.95 X	2.50% =	1,748,584.02 -	1,901,746.82 =	153,162.80
69,943,360.95 X	2.00% =	1,398,867.22 -	1,901,746.82 =	502,879.60
69,943,360.95 X	1.50% =	1,049,150.41 -	1,901,746.82 =	852,596.41
69,943,360.95 X	1.00% =	699,433.61 -	1,901,746.82 =	1,202,313.21
69,943,360.95 X	0.50% =	349,716.80 -	1,901,746.82 =	1,552,030.02

Special Fuels

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Average Commissions	Revenue Effect
35,106,090.71 X	3.50% =	1,228,713.17 -	235,385.92 =	(993,327.25)
35,106,090.71 X	3.00% =	1,053,182.72 -	235,385.92 =	(817,796.80)
35,106,090.71 X	2.50% =	877,652.27 -	235,385.92 =	(642,266.35)
35,106,090.71 X	2.00% =	702,121.81 -	235,385.92 =	(466,735.89)
35,106,090.71 X	1.50% =	526,591.36 -	235,385.92 =	(291,205.44)
35,106,090.71 X	1.00% =	351,060.91 -	235,385.92 =	(115,674.99)
35,106,090.71 X	0.70% =	245,742.63 -	235,385.92 =	(10,356.71)
35,106,090.71 X	0.50% =	175,530.45 -	235,385.92 =	59,655.47

Liquefied Petroleum

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Average Commissions	Revenue Effect
1,605,648.43 X	3.50% =	56,197.70 -	16,763.84 =	(39,433.86)
1,605,648.43 X	3.00% =	48,169.45 -	16,763.84 =	(31,405.61)
1,605,648.43 X	2.50% =	40,141.21 -	16,763.84 =	(23,377.37)
1,605,648.43 X	2.00% =	32,112.97 -	16,763.84 =	(15,349.13)
1,605,648.43 X	1.50% =	24,084.73 -	16,763.84 =	(7,320.89)
1,605,648.43 X	1.00% =	16,056.48 -	16,763.84 =	707.36

**Special Fuels
2% Special Fuel Excise Tax**

**Gallons Sold - 2% Excise Tax
By Type**

Fiscal Year	Heating	Agricultural	Industrial	Railroad	Total Excise Gallons
1996	117,654,128	120,683,986	37,905,828	69,210,464	345,454,406
1997	117,189,928	128,897,056	35,287,393	64,580,910	345,955,287
1998	95,847,855	114,474,441	44,559,335	79,751,897	334,633,528
Total	330,691,911	364,055,483	117,752,556	213,543,271	1,026,043,221

**2% Tax Revenue
Gallons Sold X Average Price Per Gallon**

Fiscal Year	Heating	Agricultural	Industrial	Railroad	Total Excise Tax
1996	1,129,009.01	2,046,800.40	652,814.17	870,113.95	4,698,737.54
1997	2,228,952.43	2,070,086.72	531,710.44	889,666.62	5,720,416.20
1998	1,708,775.56	1,594,400.01	539,257.07	895,773.31	4,738,205.95
Total	5,066,737.00	5,711,287.14	1,723,781.68	2,655,553.88	15,157,359.69

Average Price Per Gallon Paid (Without Tax)

Fiscal Year	Heating	Agricultural	Industrial	Railroad	Average
1996	0.4798	0.8480	0.8611	0.6286	0.6801
1997	0.9510	0.8030	0.7534	0.6888	0.8268
1998	0.8914	0.6964	0.6051	0.5616	0.7080
Average	0.7661	0.7844	0.7320	0.6218	0.7386

MFYPER2

MOTOR VEHICLE FUEL TAX COLLECTED

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT INCREASE OR -DECREASE OVER PRIOR FISCAL YEAR

NOTE: Data does not include license fees, aviation fuel taxes, inspection fees, and petroleum cleanup fund tariffs, or cash bonds.

FISCAL YEAR	MOTOR VEHICLE FUEL TAX GASOLINE		MOTOR VEHICLE FUEL TAX GASOLINE		MOTOR VEHICLE FUEL TAX GASOLINE/ALCOHOL AGRI. PERMIT HOLDERS		MOTOR VEHICLE FUEL TAX COLLECTED		PERCENT INCREASE -DECREASE	
	MOTOR VEHICLE FUEL TAX GASOLINE	PERCENT INCREASE -DECREASE	MOTOR VEHICLE FUEL TAX GASOLINE	PERCENT INCREASE -DECREASE	MOTOR VEHICLE FUEL TAX GASOLINE/ALCOHOL AGRI. PERMIT HOLDERS	PERCENT INCREASE -DECREASE	TOTAL MOTOR VEHICLE FUEL TAX COLLECTED	PERCENT INCREASE -DECREASE	TOTAL MOTOR VEHICLE FUEL TAX COLLECTED	PERCENT INCREASE -DECREASE
July 1980 - June 1981	27,829,108.14	No Starts	503,784.23	No Starts	0.347 40	No Starts	28,332,892.37	No Starts	28,332,892.37	No Starts
July 1981 - June 1982	29,236,348.09	5.09%	350,725.01	-30.98%	168,470.34	-30.98%	29,587,117.41	704.28%	29,587,117.41	704.28%
July 1982 - June 1983	28,883,175.13	2.21%	193,212.14	-44.91%	169,704.28	-44.91%	29,052,879.65	0.14%	29,052,879.65	0.14%
July 1983 - June 1984	43,884,605.59	43.85%	368,242.00	90.59%	204,360.54	90.59%	44,148,965.13	21.14%	44,148,965.13	21.14%
July 1984 - June 1985	44,063,890.35	0.45%	588,245.13	59.74%	191,025.69	-6.89%	44,652,115.77	-6.89%	44,652,115.77	-6.89%
July 1985 - June 1986	38,015,899.15	-13.78%	2,884,495.37	390.34%	173,275.70	-6.87%	40,890,670.22	6.47%	40,890,670.22	6.47%
July 1986 - June 1987	37,244,146.20	-2.03%	3,995,247.25	38.51%	178,785.39	0.27%	41,218,178.84	7.82%	41,218,178.84	7.82%
July 1987 - June 1988	51,066,997.11	37.11%	5,128,150.17	26.30%	158,745.26	-11.25%	56,353,892.54	33.25%	56,353,892.54	33.25%
July 1988 - June 1989	50,299,048.34	-1.50%	5,393,784.26	5.19%	128,263.60	18.86%	55,621,096.20	-9.44%	55,621,096.20	-9.44%
July 1989 - June 1990	51,438,040.98	2.20%	5,752,983.59	7.40%	118,913.47	69.85%	57,199,937.04	2.80%	57,199,937.04	2.80%
July 1990 - June 1991	49,828,376.92	-3.07%	7,028,494.38	21.33%	260,024.65	18.78%	56,856,895.75	-0.54%	56,856,895.75	-0.54%
July 1991 - June 1992	47,487,284.13	-4.70%	9,352,922.18	33.07%	490,573.58	69.44%	57,116,800.89	-0.53%	57,116,800.89	-0.53%
July 1992 - June 1993	48,853,293.10	2.39%	9,031,514.65	-3.44%	367,964.20	-9.87%	57,252,771.95	0.23%	57,252,771.95	0.23%
July 1993 - June 1994	50,354,638.48	3.69%	9,813,552.72	8.44%	380,581.01	4.37%	60,148,772.21	1.75%	60,148,772.21	1.75%
July 1994 - June 1995	51,610,794.37	2.89%	10,498,392.61	9.19%	345,281.37	-9.24%	62,064,468.35	3.15%	62,064,468.35	3.15%
July 1995 - June 1996	54,810,085.85	6.20%	11,220,439.31	8.90%	316,610.43	-7.94%	66,030,525.59	6.42%	66,030,525.59	6.42%
July 1996 - June 1997	60,449,880.82	10.29%	1,391,442.28	-7.38%	219,684.42	-31.24%	71,050,897.12	7.10%	71,050,897.12	7.10%
July 1997 - June 1998	62,865,933.07	4.00%	9,553,108.19	-8.07%	0.00	-8.07%	72,419,041.26	1.91%	72,419,041.26	1.91%

MOTOR VEHICLE FUEL PENALTY AND INTEREST COLLECTED

TAX PLUS PEN. & INT.

FISCAL YEAR	MOTOR VEHICLE FUEL PENALTIES		MOTOR VEHICLE FUEL INTEREST		MOTOR VEHICLE FUEL TAX PLUS PENALTY & INTEREST		TOTAL MOTOR VEHICLE FUEL TAX PLUS PENALTY & INTEREST		PERCENT INCREASE -DECREASE	
	MOTOR VEHICLE FUEL PENALTIES	PERCENT INCREASE -DECREASE	MOTOR VEHICLE FUEL INTEREST	PERCENT INCREASE -DECREASE	MOTOR VEHICLE FUEL TAX PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE	TOTAL MOTOR VEHICLE FUEL TAX PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE	TOTAL MOTOR VEHICLE FUEL TAX PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE
July 1980 - June 1981	No Starts	No Starts	No Starts	No Starts	8,985.18	No Starts	8,985.18	No Starts	8,985.18	No Starts
July 1981 - June 1982	No Starts	No Starts	No Starts	No Starts	13,988.12	155.98%	13,988.12	155.98%	22,973.30	155.98%
July 1982 - June 1983	No Starts	No Starts	No Starts	No Starts	13,031.05	-6.84%	13,031.05	-6.84%	26,004.25	-13.68%
July 1983 - June 1984	No Starts	No Starts	No Starts	No Starts	22,064.92	69.46%	22,064.92	69.46%	48,069.17	84.84%
July 1984 - June 1985	No Starts	No Starts	No Starts	No Starts	52,064.53	140.86%	52,064.53	140.86%	100,133.70	107.78%
July 1985 - June 1986	No Starts	No Starts	No Starts	No Starts	49,323.92	-4.92%	49,323.92	-4.92%	149,457.62	49.98%
July 1986 - June 1987	No Starts	No Starts	No Starts	No Starts	51,482.85	4.24%	51,482.85	4.24%	200,940.47	14.05%
July 1987 - June 1988	No Starts	No Starts	No Starts	No Starts	42,109.03	-18.21%	42,109.03	-18.21%	242,831.44	-8.87%
July 1988 - June 1989	No Starts	No Starts	No Starts	No Starts	28,946.78	-31.26%	28,946.78	-31.26%	271,884.66	-11.55%
July 1989 - June 1990	No Starts	No Starts	No Starts	No Starts	50,510.05	76.46%	50,510.05	76.46%	322,394.71	19.32%
July 1990 - June 1991	No Starts	No Starts	No Starts	No Starts	25,541.35	-48.45%	25,541.35	-48.45%	347,936.06	-7.32%
July 1991 - June 1992	No Starts	No Starts	No Starts	No Starts	70,294.26	178.10%	70,294.26	178.10%	418,230.32	19.78%
July 1992 - June 1993	No Starts	No Starts	No Starts	No Starts	119,970.74	69.99%	119,970.74	69.99%	538,200.58	28.92%
July 1993 - June 1994	No Starts	No Starts	No Starts	No Starts	53,656.10	-53.75%	53,656.10	-53.75%	591,846.68	-9.23%
July 1994 - June 1995	No Starts	No Starts	No Starts	No Starts	32,381.71	-2.48%	32,381.71	-2.48%	624,228.39	-1.87%
July 1995 - June 1996	No Starts	No Starts	14,730.36	45.19%	33,947.87	26.15%	66,329.23	10.70%	690,557.62	3.85%
July 1996 - June 1997	31,376.27	63.27%	17,229.15	-16.98%	48,605.62	43.16%	71,061.81	7.15%	761,619.43	7.15%

MOTOR VEHICLE FUEL

TAXABLE GALLONS - SALES

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT INCREASE OR DECREASE OVER PRIOR FISCAL YEAR

FISCAL YEAR	GALLONS MOTOR VEHICLE FUEL SOLD FOR RETAIL	PERCENT INCREASE/DECREASE	GALLONS MOTOR VEHICLE FUEL EXPORTED	PERCENT INCREASE/DECREASE	GALLONS MOTOR VEHICLE FUEL FEDERAL GOVERNMENT	PERCENT INCREASE/DECREASE	GALLONS MOTOR VEHICLE FUEL MONTANABLE BURNING	PERCENT INCREASE/DECREASE	TOTAL MOTOR VEHICLE FUEL MONTANABLE GALLONS	PERCENT INCREASE/DECREASE
July 1980 - June 1981	No State	No State	44,998,615	No State	3,000,018	No State	2,148,064	No State	50,146,265	No State
July 1981 - June 1982	No State	No State	84,470,863	43.20%	3,349,547	11.65%	2,370,718	10.29%	70,191,213	28.97%
July 1982 - June 1983	No State	No State	98,244,867	9.88%	3,235,884	-3.60%	2,145,548	-9.24%	83,725,688	-8.21%
July 1983 - June 1984	No State	No State	77,831,214	-33.60%	3,512,253	8.65%	2,119,013	-8.81%	65,668,483	-21.12%
July 1984 - June 1985	No State	No State	66,675,018	-11.88%	3,124,449	-11.04%	2,066,038	-7.66%	73,868,505	-11.89%
July 1985 - June 1986	No State	No State	66,500,086	-45.02%	3,204,558	2.56%	2,116,342	0.82%	69,820,986	-4.19%
July 1986 - June 1987	No State	No State	108,214,200	19.71%	3,086,174	-3.89%	2,072,361	-2.06%	114,372,735	18.59%
July 1987 - June 1988	No State	No State	108,019,884	-11.08%	2,707,842	-12.28%	1,830,511	-11.67%	110,558,237	-11.11%
July 1988 - June 1989	No State	No State	105,438,387	-2.44%	2,615,181	-3.42%	1,863,510	1.82%	107,917,058	-2.30%
July 1989 - June 1990	No State	No State	98,829,374	-14.67%	2,861,967	1.78%	1,797,608	-3.46%	99,288,949	-13.46%
July 1990 - June 1991	No State	No State	91,077,869	-7.42%	2,300,948	-11.29%	1,516,718	-19.51%	94,895,535	-1.66%
July 1991 - June 1992	No State	No State	105,982,232	16.37%	2,276,238	3.56%	1,563,540	2.80%	109,822,010	16.68%
July 1992 - June 1993	No State	No State	118,700,412	10.11%	2,400,543	5.46%	1,602,608	3.80%	122,703,563	8.82%
July 1993 - June 1994	No State	No State	113,223,289	-2.89%	2,380,567	-0.42%	1,544,548	-3.49%	117,148,385	-3.69%
July 1994 - June 1995	No State	No State	107,829,737	-4.66%	2,132,105	-10.81%	1,443,230	-6.16%	111,405,072	-4.76%
July 1995 - June 1996	No State	No State	110,845,840	2.70%	2,213,640	3.82%	1,624,437	3.86%	114,683,917	2.75%
July 1996 - June 1997	No State	No State	108,077,128	-2.49%	2,048,560	-7.46%	1,722,389	7.36%	111,848,077	-2.25%
July 1997 - June 1998	No State	No State	126,747,356	20.33%	1,500,051	-22.24%	1,702,267	-1.19%	129,949,674	27.91%

TAXABLE PLUS MONTANABLE

MOTOR VEHICLE FUEL TAXABLE GALLONS - SALES

FISCAL YEAR	GALLONS MOTOR VEHICLE FUEL GASOLINE	PERCENT INCREASE/DECREASE	GALLONS MOTOR VEHICLE FUEL GASOLINE	PERCENT INCREASE/DECREASE	GALLONS MOTOR VEHICLE FUEL AGRI PERMIT INC. JUDS GASOLINE/GALCOL	PERCENT INCREASE/DECREASE	TOTAL MOTOR VEHICLE FUEL GALLONS	PERCENT INCREASE/DECREASE	TOTAL MOTOR VEHICLE FUEL TAXABLE & MONTANABLE	PERCENT INCREASE/DECREASE
July 1980 - June 1981	358,548,078	No State	12,902,750	No State	18,094,366	No State	387,554,647	No State	437,700,843	No State
July 1981 - June 1982	377,829,439	4.00%	8,245,822	-36.95%	15,140,980	-5.75%	397,017,242	2.44%	497,204,431	2.44%
July 1982 - June 1983	380,804,607	2.14%	4,818,733	-45.01%	14,203,828	-6.19%	400,028,168	0.78%	483,734,137	0.74%
July 1983 - June 1984	380,638,467	-5.32%	4,743,957	-4.24%	13,480,122	-4.24%	378,862,546	-3.54%	482,400,858	-2.39%
July 1984 - June 1985	345,278,469	-4.20%	8,015,538	68.89%	12,518,813	-8.99%	365,811,348	-3.44%	439,709,854	-4.87%
July 1985 - June 1986	297,709,308	-13.78%	55,418,485	591.95%	10,186,254	-18.56%	363,334,047	-0.86%	468,231,029	8.49%
July 1986 - June 1987	290,267,041	-2.47%	78,311,890	43.11%	12,273,318	20.30%	381,043,249	6.15%	508,328,274	8.14%
July 1987 - June 1988	314,305,105	8.25%	41,312,086	-47.81%	10,814,998	-11.58%	366,432,187	-4.04%	478,880,410	8.14%
July 1988 - June 1989	344,105,041	8.25%	42,132,884	1.99%	8,788,782	-10.82%	345,026,697	-3.12%	462,626,789	2.65%
July 1989 - June 1990	304,789,236	0.22%	35,863,382	-15.28%	8,844,002	0.86%	348,496,620	-1.81%	422,865,188	-2.05%
July 1990 - June 1991	285,215,228	-3.15%	41,828,358	17.47%	8,819,500	-0.32%	345,863,086	-0.86%	440,816,770	1.05%
July 1991 - June 1992	285,764,048	3.20%	56,011,327	33.96%	7,740,478	-12.20%	348,516,851	0.78%	456,338,911	1.39%
July 1992 - June 1993	282,860,341	-2.52%	54,258,110	-3.15%	7,742,098	0.16%	345,360,549	-0.86%	476,574,124	1.59%
July 1993 - June 1994	288,428,028	2.31%	55,787,170	2.82%	7,432,098	-4.00%	351,647,296	1.59%	478,784,787	0.46%
July 1994 - June 1995	282,549,801	-2.38%	56,688,922	1.61%	6,748,344	-8.69%	345,986,071	-0.56%	470,481,789	-1.87%
July 1995 - June 1996	287,884,825	1.81%	56,778,402	0.17%	6,181,274	-8.47%	344,845,501	-0.28%	478,528,418	1.86%
July 1996 - June 1997	308,871,843	3.70%	53,084,191	-12.86%	5,136,187	-16.34%	366,144,221	7.25%	477,867,488	-0.35%
July 1997 - June 1998	316,867,464	2.59%	48,731,524	-9.20%	1,362,317	-103.25%	366,961,305	-0.19%	504,988,374	8.40%

MOTOR VEHICLE FUEL (GASOLINE/GASOHOL) TAX REFUNDS TO CONSUMERS

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT OF INCREASE OR -DECREASE OVER PRIOR FISCAL YEAR

FISCAL YEAR	TAX				AGRICULTURAL				INDUSTRIAL			
	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	REFUNDED PER AGRICULTURAL	PERCENT INCREASE -DECREASE	GALLONS PER REFUND AGRICULTURAL	PERCENT INCREASE -DECREASE	NUMBER REFUNDS % \$USD	PERCENT INCREASE -DECREASE	TAX REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE	GALLONS REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE
July 1960 - June 1961	22,896	No Stats	3,377,111.68	No Stats	42,870,284	No Stats	335	No Stats	122,166.10	No Stats	1,646,112	No Stats
July 1961 - June 1962	22,268	-2.75%	3,019,393.00	-10.59%	40,370,456	-5.63%	292	-12.84%	101,195.50	-17.17%	1,330,878	-13.97%
July 1962 - June 1963	20,224	-8.19%	2,568,480.13	-14.93%	34,778,443	-8.90%	265	-8.25%	81,330.86	-18.62%	1,155,174	-13.20%
July 1963 - June 1964	19,442	-3.87%	2,876,631.95	12.00%	33,781,124	6.19%	265	0.00%	129,966.07	59.60%	1,509,708	30.69%
July 1964 - June 1965	18,681	-3.91%	3,376,900.94	17.39%	31,504,309	-6.74%	278	4.81%	122,876.48	-6.36%	1,134,103	-24.89%
July 1965 - June 1966	18,153	-2.83%	3,397,594.96	0.61%	30,368,152	3.61%	283	1.80%	198,709.83	11.17%	1,189,781	4.81%
July 1966 - June 1967	16,584	-8.64%	3,187,434.52	-6.19%	26,296,284	-8.82%	236	-16.81%	119,673.06	-13.19%	1,033,853	-13.12%
July 1967 - June 1968	16,944	2.17%	3,504,497.96	4.69%	27,563,873	-2.59%	216	-8.47%	119,141.60	0.39%	916,478	-11.46%
July 1968 - June 1969	15,789	-6.82%	3,349,648.48	-4.69%	22,991,505	-16.95%	202	-6.48%	165,246.04	36.70%	1,107,602	20.69%
July 1969 - June 1970	14,812	-6.19%	3,101,068.70	-7.17%	21,300,577	-6.95%	210	3.26%	159,877.96	-3.25%	1,039,951	-6.97%
July 1970 - June 1971	14,315	-2.95%	2,948,013.07	-4.94%	21,030,772	-1.27%	207	-1.43%	235,538.19	47.32%	1,540,968	49.57%
July 1971 - June 1972	14,314	-0.47%	2,531,230.05	-14.14%	20,568,487	-2.20%	196	-10.14%	196,295.93	-20.91%	1,201,810	-21.98%
July 1972 - June 1973	13,148	-8.15%	2,303,951.68	-8.90%	19,753,780	-3.95%	204	9.80%	153,230.40	-17.70%	889,230	-17.90%
July 1973 - June 1974	12,348	-6.09%	2,257,888.14	-2.08%	19,173,038	-2.94%	155	-24.00%	139,180.19	-11.16%	869,548	-12.10%
July 1974 - June 1975	11,843	-4.09%	2,255,638.99	-0.10%	18,645,316	-2.75%	176	14.84%	147,181.92	8.08%	901,439	3.87%
July 1975 - June 1976	11,071	-6.52%	2,118,839.05	-6.08%	17,311,455	-7.15%	150	-15.72%	82,241.45	-44.12%	498,496	-44.71%
July 1976 - June 1977	10,417	-5.91%	2,185,343.31	3.13%	15,242,213	-11.95%	154	2.67%	85,199.14	3.56%	476,622	-4.49%
July 1977 - June 1978	11,759	12.86%	2,390,762.22	9.40%	19,096,855	25.30%	196	26.57%	100,596.33	18.13%	543,784	14.09%

TOTALS ALL CATEGORIES

FISCAL YEAR	GOVERNMENT				INDUSTRIAL							
	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TAX REFUNDED GOVERNMENT	PERCENT INCREASE -DECREASE	GALLONS REFUNDABLE GOVERNMENT	PERCENT INCREASE -DECREASE	TOTAL NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TOTAL TAX REFUNDED ALL CATEGORIES	PERCENT INCREASE -DECREASE	TOTAL GALLONS REFUNDED ALL CATEGORIES	PERCENT INCREASE -DECREASE
July 1960 - June 1961	99	No Stats	66,840.63	No Stats	1,121,615	No Stats	23,332	No Stats	3,538,120.71	No Stats	43,981,689	No Stats
July 1961 - June 1962	114	15.15%	103,304.66	16.28%	1,293,402	15.32%	22,674	-2.87%	3,223,993.19	-10.15%	41,663,890	-5.20%
July 1962 - June 1963	101	-11.40%	83,385.42	-19.40%	1,042,500	-19.40%	20,590	-6.19%	2,733,196.90	-16.22%	37,620,843	-8.22%
July 1963 - June 1964	113	11.86%	136,147.51	65.67%	1,396,293	32.98%	19,820	-3.74%	3,144,144.43	19.90%	36,167,468	-7.60%
July 1964 - June 1965	110	-2.65%	134,722.06	-2.48%	1,079,485	-22.13%	19,069	-2.77%	3,634,696.44	15.85%	32,583,794	-7.85%
July 1965 - June 1966	104	-5.45%	128,125.00	-4.90%	965,842	-8.67%	18,540	-2.77%	3,062,430.29	0.77%	31,353,924	-3.17%
July 1966 - June 1967	121	16.35%	143,099.58	11.69%	1,100,964	11.68%	16,941	-8.62%	3,449,207.18	-6.62%	29,897,238	-4.20%
July 1967 - June 1968	107	-16.55%	127,685.11	-10.77%	890,170	-19.15%	17,261	1.69%	3,751,324.97	8.76%	28,453,843	-3.21%
July 1968 - June 1969	94	-6.93%	121,518.90	-4.99%	773,506	-13.11%	16,095	-8.81%	3,927,213.43	-3.31%	23,683,013	-18.69%
July 1969 - June 1970	101	7.45%	125,516.74	3.46%	784,833	1.46%	15,123	-6.96%	3,366,491.49	-6.45%	22,083,699	-6.90%
July 1970 - June 1971	96	-34.65%	73,322.60	-41.59%	463,727	-40.91%	14,648	-3.14%	3,256,874.46	-3.85%	21,494,699	-3.94%
July 1971 - June 1972	82	-9.00%	90,366.30	9.61%	502,400	8.34%	4,562	-0.69%	2,797,981.98	-14.99%	21,079,687	-1.87%
July 1972 - June 1973	88	9.66%	94,942.52	9.69%	530,593	9.61%	4,562	-7.84%	2,644,224.80	-6.97%	20,244,853	-3.23%
July 1973 - June 1974	81	-10.20%	80,095.56	-5.71%	498,636	-6.02%	12,564	-8.39%	2,474,173.69	-2.70%	18,871,878	-3.60%
July 1974 - June 1975	64	4.82%	74,602.12	-6.68%	441,099	-11.54%	2,069	-3.81%	2,477,431.63	0.13%	19,098,412	-2.99%
July 1975 - June 1976	62	-3.13%	78,240.12	4.89%	460,236	4.34%	1,263	-7.95%	2,279,420.62	-7.95%	17,771,061	-8.89%
July 1976 - June 1977	62	0.00%	85,181.47	8.87%	453,155	-1.54%	10,633	-6.70%	2,355,984.52	3.35%	18,998,989	11.89%
July 1977 - June 1978	141	127.42%	103,656.47	21.92%	546,618	20.62%	12,098	13.76%	2,965,248.03	10.17%	19,643,668	28.17%

57TYPER

SPECIAL FUELS

TAX PLUS PEN. & INT.

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT INCREASE OR -DECREASE OVER PRIOR FISCAL YEAR

NOTE: Data does not include license fees, aviation fuel taxes, inspection fees, petroleum cleanup fund levies, or cash bonds

FISCAL YEAR	PER GALLON TAX SPECIAL FUELS (EXCEPT LP)	PER GALLON TAX LP	PER GALLON TAX IMPORTERS	PER GALLON TAX SPECIAL FUELS TOTAL	PERCENT INCREASE -DECREASE	2% EXCISE SPECIAL FUELS (EXCEPT LP)	2% EXCISE TAX LP	TOTAL EXCISE TAX SPECIAL FUEL	PER GALLON PLUS 2% TAX SPECIAL FUELS	PERCENT INCREASE -DECREASE	TOTAL TAXES PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE
July 1980 - June 1981	7,711,117.16	In SF Data	In SF Data	7,711,117.16	No Data	6,390,079.20	In SF Data	6,390,079.20	14,101,196.36	No Data	14,101,196.36	No Data
July 1981 - June 1982	8,733,473.71	In SF Data	In SF Data	8,733,473.71	13.26%	7,639,319.19	In SF Data	7,639,319.19	16,371,792.90	16.10%	16,371,792.90	16.10%
July 1982 - June 1983	8,449,569.31	In SF Data	In SF Data	8,449,569.31	-3.25%	6,324,924.49	In SF Data	6,324,924.49	14,749,493.98	-9.76%	14,749,493.98	-9.76%
July 1983 - June 1984	12,028,539.13	In SF Data	In SF Data	12,028,539.13	42.36%	6,064,200.75	In SF Data	6,064,200.75	18,092,740.88	23.96%	18,092,740.88	23.96%
July 1984 - June 1985	12,568,502.10	In SF Data	In SF Data	12,568,502.10	4.49%	5,751,403.34	In SF Data	5,751,403.34	18,319,905.44	1.14%	18,319,905.44	1.14%
July 1985 - June 1986	11,203,003.63	In SF Data	In SF Data	11,203,003.63	-10.20%	3,965,150.68	In SF Data	3,965,150.68	16,142,040.83	-11.87%	16,142,040.83	-11.87%
July 1986 - June 1987	11,878,298.15	In SF Data	In SF Data	11,878,298.15	5.92%	2,764,531.94	In SF Data	2,764,531.94	16,943,990.77	4.96%	16,943,990.77	4.96%
July 1987 - June 1988	14,981,482.94	In SF Data	In SF Data	14,981,482.94	25.50%	3,189,800.28	In SF Data	3,189,800.28	20,871,289.46	22.00%	20,871,289.46	22.00%
July 1988 - June 1989	18,393,091.06	In SF Data	In SF Data	18,393,091.06	22.12%	2,968,256.84	In SF Data	2,968,256.84	21,400,089.62	2.44%	21,400,089.62	2.44%
July 1989 - June 1990	17,025,864.39	In SF Data	In SF Data	17,025,864.39	-7.28%	3,186,378.37	In SF Data	3,186,378.37	20,209,058.68	-5.60%	20,209,058.68	-5.60%
July 1990 - June 1991	19,163,848.96	In SF Data	In SF Data	19,163,848.96	12.56%	3,635,598.40	In SF Data	3,635,598.40	23,800,548.58	18.27%	23,800,548.58	18.27%
July 1991 - June 1992	19,548,156.25	In SF Data	In SF Data	19,548,156.25	2.00%	3,560,078.08	In SF Data	3,560,078.08	23,108,236.36	-3.00%	23,108,236.36	-3.00%
July 1992 - June 1993	20,621,582.97	In SF Data	In SF Data	20,621,582.97	5.57%	3,340,186.82	In SF Data	3,340,186.82	24,968,723.18	8.47%	24,968,723.18	8.47%
July 1993 - June 1994	23,156,143.16	In SF Data	In SF Data	23,156,143.16	12.34%	3,158,015.08	In SF Data	3,158,015.08	26,316,158.24	5.37%	26,316,158.24	5.37%
July 1994 - June 1995	25,882,674.41	In SF Data	In SF Data	25,882,674.41	11.51%	3,004,387.20	In SF Data	3,004,387.20	28,886,545.40	9.77%	28,886,545.40	9.77%
July 1995 - June 1996	29,531,331.50	In SF Data	In SF Data	29,531,331.50	14.11%	3,542,940.68	In SF Data	3,542,940.68	33,074,272.18	11.04%	33,074,272.18	11.04%
July 1996 - June 1997	31,710,432.56	In SF Data	In SF Data	31,710,432.56	7.36%	4,156,781.68	In SF Data	4,156,781.68	35,871,013.86	8.47%	35,871,013.86	8.47%
July 1997 - June 1998	33,687,919.96	In SF Data	In SF Data	33,687,919.96	6.24%	3,983,010.58	In SF Data	3,983,010.58	37,670,024.44	5.01%	37,670,024.44	5.01%

*NOTE: "Importers" means motor carriers based on fuel purchased in another jurisdiction and used in MO

SPECIAL FUELS PENALTY AND INTEREST COLLECTED

FISCAL YEAR	PENALTY SPECIAL FUELS (EXCEPT LP)	INTEREST SPECIAL FUELS (EXCEPT LP)	PENALTY PLUS INTEREST IMPORTERS (CARRIERS)	PENALTY PLUS INTEREST SPECIAL FUELS (EXCEPT LP)	PENALTY PLUS INTEREST SPECIAL FUELS (EXCEPT LP)	INTEREST SPECIAL FUELS LP	PENALTY PLUS INTEREST SPECIAL FUELS LP	TOTAL TAXES PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE	TOTAL INTEREST SPECIAL FUELS	TOTAL TAXES PLUS PENALTY & INTEREST	PERCENT INCREASE -DECREASE
July 1980 - June 1981	No Data	No Data	In SF Data	5,780.53	5,780.53	In SF Data	5,780.53	14,101,196.36	No Data	No Data	14,101,196.36	No Data
July 1981 - June 1982	No Data	No Data	In SF Data	10,302.55	10,302.55	In SF Data	10,302.55	16,371,792.90	16.10%	No Data	16,371,792.90	16.10%
July 1982 - June 1983	No Data	No Data	In SF Data	16,156.18	16,156.18	In SF Data	16,156.18	14,749,493.98	-9.76%	No Data	14,749,493.98	-9.76%
July 1983 - June 1984	No Data	No Data	In SF Data	21,873.09	21,873.09	In SF Data	21,873.09	18,092,740.88	23.96%	No Data	18,092,740.88	23.96%
July 1984 - June 1985	No Data	No Data	In SF Data	33,628.29	33,628.29	In SF Data	33,628.29	18,319,905.44	1.14%	No Data	18,319,905.44	1.14%
July 1985 - June 1986	No Data	No Data	In SF Data	20,390.56	20,390.56	In SF Data	20,390.56	16,142,040.83	-11.87%	No Data	16,142,040.83	-11.87%
July 1986 - June 1987	No Data	No Data	In SF Data	38,371.55	38,371.55	In SF Data	38,371.55	16,943,990.77	4.96%	No Data	16,943,990.77	4.96%
July 1987 - June 1988	No Data	No Data	In SF Data	30,915.98	30,915.98	In SF Data	30,915.98	20,871,289.46	22.00%	No Data	20,871,289.46	22.00%
July 1988 - June 1989	No Data	No Data	In SF Data	27,411.91	27,411.91	In SF Data	27,411.91	21,400,089.62	2.44%	No Data	21,400,089.62	2.44%
July 1989 - June 1990	No Data	No Data	In SF Data	17,216.81	17,216.81	In SF Data	17,216.81	20,209,058.68	-5.60%	No Data	20,209,058.68	-5.60%
July 1990 - June 1991	No Data	No Data	In SF Data	46,910.19	46,910.19	In SF Data	46,910.19	23,800,548.58	18.27%	No Data	23,800,548.58	18.27%
July 1991 - June 1992	No Data	No Data	In SF Data	54,575.14	54,575.14	In SF Data	54,575.14	23,108,236.36	-3.00%	No Data	23,108,236.36	-3.00%
July 1992 - June 1993	No Data	No Data	In SF Data	41,756.59	41,756.59	In SF Data	41,756.59	24,968,723.18	8.47%	No Data	24,968,723.18	8.47%
July 1993 - June 1994	No Data	No Data	In SF Data	68,146.31	68,146.31	In SF Data	68,146.31	26,316,158.24	5.37%	No Data	26,316,158.24	5.37%
July 1994 - June 1995	No Data	No Data	In SF Data	88,146.31	88,146.31	In SF Data	88,146.31	28,886,545.40	9.77%	No Data	28,886,545.40	9.77%
July 1995 - June 1996	No Data	No Data	In SF Data	40,266.52	40,266.52	In SF Data	40,266.52	33,074,272.18	11.04%	No Data	33,074,272.18	11.04%
July 1996 - June 1997	No Data	No Data	In SF Data	53,003.13	53,003.13	In SF Data	53,003.13	35,871,013.86	8.47%	No Data	35,871,013.86	8.47%

SFTYPER2

SPECIAL FUELS

TAXABLE GALLONS

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT INCREASE OR -DECREASE OVER PRIOR FISCAL YEAR

FISCAL YEAR	GALLONS SPECIAL FUEL PER GALLON TAXABLE	GALLONS LP PER GALLON TAXABLE	GALLONS IMPORTERS PER GALLON TAXABLE	GALLONS SPECIAL FUELS TOTAL TAXABLE	PERCENT INCREASE -DECREASE	GALLONS SPECIAL FUEL 7% EXCESS TAXABLE	GALLONS LP 2% EXCESS TAXABLE	GALLONS SPECIAL FUELS TOTAL 7% TAXABLE	PERCENT INCREASE -DECREASE	GALLONS PER GALLON 8 2% EXCESS TOTAL TAXABLE	PERCENT INCREASE -DECREASE
	No State	Not Separated	Not Separated	Not Separated		No State	Not Separated	Not Separated		No State	
July 1980 - June 1981	96,440,653	Not Separated	Not Separated	96,440,653	No State	357,926,968	Not Separated	357,926,968	No State	484,247,481	No State
July 1981 - June 1982	110,282,801	Not Separated	Not Separated	110,282,801	14.37%	400,279,329	Not Separated	400,279,329	11.84%	510,541,910	12.27%
July 1982 - June 1983	105,662,309	Not Separated	Not Separated	105,662,309	-4.17%	354,171,187	Not Separated	354,171,187	-11.82%	459,833,456	-8.97%
July 1983 - June 1984	96,361,536	Not Separated	Not Separated	96,361,536	-9.91%	353,355,254	Not Separated	353,355,254	-0.23%	451,718,790	-1.77%
July 1984 - June 1985	97,698,000	Not Separated	Not Separated	97,698,000	0.97%	328,613,914	Not Separated	328,613,914	-7.07%	428,311,974	-8.67%
July 1985 - June 1986	85,699,799	Not Separated	Not Separated	100,174,811	2.89%	233,567,171	100,409,819	333,976,990	1.82%	434,081,400	1.82%
July 1986 - June 1987	91,838,070	2,743,484	8,571,415	103,252,969	3.17%	224,217,340	92,688,828	316,906,168	-8.11%	426,163,097	-3.71%
July 1987 - June 1988	90,531,622	2,771,923	8,169,838	101,473,383	-1.72%	230,078,970	93,015,469	323,094,439	1.89%	424,937,819	1.56%
July 1988 - June 1989	86,808,598	2,736,425	7,237,300	105,886,383	4.35%	200,080,063	86,173,378	286,253,441	-10.76%	384,139,861	-7.17%
July 1989 - June 1990	100,540,295	2,447,200	6,770,469	106,707,964	3.61%	211,937,533	84,131,424	300,068,957	8.18%	416,178,680	8.49%
July 1990 - June 1991	107,912,630	2,400,423	6,829,808	115,142,861	7.52%	218,279,467	82,081,478	299,360,945	2.82%	410,513,798	-3.27%
July 1991 - June 1992	115,318,332	2,287,700	693,628	118,309,660	5.88%	207,557,488	79,988,236	287,545,724	-3.70%	403,841,276	-1.54%
July 1992 - June 1993	121,806,178	2,876,344	848,654	125,531,176	3.63%	225,938,041	100,282,106	326,220,147	13.83%	481,787,803	11.94%
July 1993 - June 1994	134,759,069	3,198,628	221,173	138,878,869	10.43%	224,367,068	98,578,450	322,945,518	-1.07%	481,819,434	2.23%
July 1994 - June 1995	147,455,842	2,657,821	680,360	150,793,653	8.48%	211,528,368	98,348,270	311,876,638	-1.87%	488,872,609	1.89%
July 1995 - June 1996	152,946,467	3,039,516	97,565	153,065,538	3.24%	247,238,844	98,218,882	345,457,726	8.87%	501,159,844	8.39%
July 1996 - June 1997	160,552,768	1,771,501	35,691	162,359,948	4.29%	248,688,721	97,385,888	346,074,609	0.19%	508,316,228	1.46%
July 1997 - June 1998	169,031,291	1,590,845	0	169,591,978	4.45%	247,151,269	97,482,129	334,633,398	-3.27%	504,228,804	-3.87%

NOTE: "Importers" means motor carriers based on fuel purchased in another jurisdiction and used in MO.

SPECIAL FUELS

NONTAXABLE GALLONS (Include Liquefied Petroleum)

FISCAL YEAR	GALLONS SPECIAL FUEL SOLD FOR REBATE	GALLONS SPECIAL FUEL EXPORTED	GALLONS SPECIAL FUEL FEDERAL GOVERNMENT	GALLONS SPECIAL FUEL NATIVE AMERICAN	TOTAL GALLONS SPECIAL FUEL NONTAXABLE	PERCENT INCREASE -DECREASE
	No State	No State	No State	In Fed. Gov. In Fed. Gov. In Fed. Gov.	No State	
July 1980 - June 1981	No State	65,037,640	36,538,200	0	100,575,840	No State
July 1981 - June 1982	No State	60,010,346	33,384,775	0	123,395,120	22.89%
July 1982 - June 1983	No State	102,178,018	23,573,742	0	125,751,760	1.79%
July 1983 - June 1984	No State	103,774,942	24,967,241	199,313	127,941,496	1.91%
July 1984 - June 1985	No State	122,893,895	30,444,332	0	154,148,227	20.50%
July 1985 - June 1986	No State	128,113,563	32,407,669	644,539	160,565,761	8.38%
July 1986 - June 1987	No State	126,879,297	46,582,407	1,393,243	174,855,947	8.64%
July 1987 - June 1988	No State	91,059,917	32,821,858	922,480	144,804,255	-18.11%
July 1988 - June 1989	No State	79,848,721	35,431,568	1,544,398	136,814,715	-8.52%
July 1989 - June 1990	No State	122,132,631	42,511,044	1,630,515	166,274,190	21.53%
July 1990 - June 1991	No State	141,233,404	31,771,864	2,730,515	175,735,813	5.09%
July 1991 - June 1992	No State	153,457,113	42,542,368	2,748,567	198,748,048	13.74%
July 1992 - June 1993	No State	179,912,378	33,823,470	3,261,033	224,108,881	12.76%
July 1993 - June 1994	No State	146,826,278	33,874,142	3,484,575	184,185,995	-18.29%
July 1994 - June 1995	No State	147,415,238	9,460,344	3,582,934	160,458,516	-12.81%
July 1995 - June 1996	No State	133,272,723	6,540,230	4,091,310	143,904,263	-10.83%
July 1996 - June 1997	No State	147,329,113	5,427,897	3,907,897	156,664,907	8.43%
July 1997 - June 1998	No State	186,189,444	5,474,443	3,685,442	195,349,329	28.98%

TAXABLE PLUS NONTAXABLE

TOTAL GALLONS SPECIAL FUELS TAXABLE PLUS NONTAXABLE	PERCENT INCREASE -DECREASE
641,851,281	No State
633,867,066	-12.29%
684,363,288	7.89%
678,468,288	-0.88%
683,278,781	0.14%
696,887,191	2.17%
688,988,054	-0.07%
808,371,664	4.82%
830,561,898	4.79%
882,069,870	6.62%
988,548,809	11.94%
933,867,448	-5.65%
971,884,484	11.79%
646,033,426	-4.37%
828,941,023	3.86%
844,044,307	2.68%
681,580,083	-2.31%

SFTYPER4

**SPECIAL FUELS - DIESEL, LPG, ETC.
REFUNDS TO CONSUMERS**

FISCAL YEAR COMPARISON SUMMARY WITH PERCENT INCREASE OR -DECREASE OVER PRIOR FISCAL YEAR

FISCAL YEAR	AGRICULTURAL				INDUSTRIAL							
	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TAX REFUNDED AGRICULTURAL	PERCENT INCREASE -DECREASE	GALLONS REFUNDED AGRICULTURAL	PERCENT INCREASE -DECREASE	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TAX REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE	GALLONS REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE
July 1980 - June 1981	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	128	No Stats	175,641.17	No Stats	2,798,724	No Stats
July 1981 - June 1982	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	130	No Stats	196,331.91	-1.96%	2,798,724	-10.96%
July 1982 - June 1983	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	114	-12.31%	106,967.58	-12.31%	2,182,039	-31.56%
July 1983 - June 1984	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	120	6.26%	120,820.28	6.26%	1,831,828	13.01%
July 1984 - June 1985	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	113	-6.82%	131,642.92	-6.82%	1,423,323	8.07%
July 1985 - June 1986	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	125	10.62%	172,670.41	10.62%	1,728,141	21.04%
July 1986 - June 1987	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	111	-11.26%	124,179.30	-11.26%	1,285,748	-28.04%
July 1987 - June 1988	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	137	23.42%	172,394.39	23.42%	1,463,798	14.63%
July 1988 - June 1989	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	185	42.34%	423,455.54	42.34%	2,982,979	104.10%
July 1989 - June 1990	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	191	-2.05%	329,230.64	-2.05%	2,948,982	-2.28%
July 1990 - June 1991	No Stats	No Stats	No Stats	No Stats	No Stats	No Stats	171	-10.47%	363,584.05	-10.47%	2,528,261	-14.56%
July 1991 - June 1992	15	No Stats	7,940.46	No Stats	55,474	No Stats	151	-11.70%	350,631.38	-11.70%	2,432,533	-3.59%
July 1992 - June 1993	29	93.33%	15,973.20	101.16%	109,863	98.04%	184	21.85%	481,965.27	21.85%	3,110,347	27.62%
July 1993 - June 1994	25	-13.79%	15,900.87	-1.06%	107,554	-2.10%	157	-14.67%	440,420.84	-14.67%	3,020,486	-2.46%
July 1994 - June 1995	27	8.00%	14,141.78	-10.50%	81,473	-14.86%	196	28.75%	473,538.78	28.75%	3,110,266	3.35%
July 1995 - June 1996	22	-18.52%	11,900.08	-15.83%	60,468	-33.80%	203	3.02%	489,634.34	3.02%	3,183,727	4.87%
July 1996 - June 1997	40	81.82%	21,984.04	84.74%	130,836	116.36%	235	14.65%	732,117.59	14.65%	4,444,537	47.71%
July 1997 - June 1998	828	2220.00%	880,483.10	3950.59%	5,078,140	3,779.77%	340	44.66%	648,433.38	44.66%	3,720,079	-11.70%

TOTAL ALL CATEGORIES

FISCAL YEAR	GOVERNMENT				INDUSTRIAL							
	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TAX REFUNDED GOVERNMENT	PERCENT INCREASE -DECREASE	GALLONS REFUNDED GOVERNMENT	PERCENT INCREASE -DECREASE	NUMBER REFUNDS ISSUED	PERCENT INCREASE -DECREASE	TAX REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE	GALLONS REFUNDED INDUSTRIAL	PERCENT INCREASE -DECREASE
July 1977 - June 1981	36	No Stats	136,498.06	No Stats	2,043,725	No Stats	167	No Stats	312,139.23	No Stats	4,837,822	No Stats
July 1981 - June 1982	76	94.87%	176,397.83	29.23%	2,204,873	7.89%	206	23.36%	332,729.74	6.49%	8,001,707	6.49%
July 1982 - June 1983	78	0.00%	181,991.28	3.17%	2,274,991	3.17%	190	-7.77%	284,948.98	-7.77%	4,428,800	-13.19%
July 1983 - June 1984	81	6.56%	272,051.4	49.49%	2,631,706	15.25%	201	5.76%	362,971.90	35.96%	4,483,831	35.96%
July 1984 - June 1985	86	6.17%	325,410.55	19.81%	2,231,587	-14.85%	189	-1.00%	457,063.47	-1.00%	3,680,680	-18.31%
July 1985 - June 1986	74	-13.95%	338,449.74	4.01%	2,603,457	16.35%	199	0.00%	511,020.15	11.81%	4,332,588	11.81%
July 1986 - June 1987	84	27.03%	375,142.58	10.93%	3,143,800	20.75%	205	3.02%	498,521.98	2.23%	4,427,348	2.23%
July 1987 - June 1988	81	-13.83%	361,981.76	-1.64%	2,735,125	-12.99%	218	6.34%	545,978.18	10.88%	4,198,480	10.88%
July 1988 - June 1989	90	9.86%	442,332.20	15.92%	2,663,977	-1.50%	284	30.26%	869,787.83	54.26%	5,068,968	54.26%
July 1989 - June 1990	80	1.12%	472,459.87	6.81%	2,852,912	6.81%	281	-1.09%	801,690.81	-7.40%	5,188,584	-7.40%
July 1990 - June 1991	88	-2.22%	417,219.74	-11.69%	2,607,823	-11.69%	256	-7.83%	780,803.79	-2.61%	5,134,474	-2.61%
July 1991 - June 1992	76	-13.64%	356,250.04	-14.61%	2,228,919	-14.61%	242	-4.56%	714,830.93	-4.56%	4,714,628	-4.56%
July 1992 - June 1993	87	27.63%	464,230.01	30.31%	2,801,849	30.31%	310	28.10%	931,898.43	30.37%	5,121,779	30.37%
July 1993 - June 1994	91	-6.19%	486,207.19	-4.36%	3,045,516	4.86%	275	-11.94%	845,438.00	-11.94%	5,172,586	-11.94%
July 1994 - June 1995	103	13.19%	582,144.50	18.00%	3,453,249	13.30%	329	20.81%	1,069,825.04	13.19%	6,854,827	13.19%
July 1995 - June 1996	95	-7.17%	449,734.41	-22.26%	2,644,845	-22.19%	322	-2.18%	967,288.83	-10.67%	6,898,498	-10.67%
July 1996 - June 1997	104	9.47%	547,980.70	21.76%	2,840,782	11.21%	379	17.70%	1,301,682.33	35.96%	7,874,468	35.96%
July 1997 - June 1998	212	103.86%	604,907.84	21.43%	3,653,630	24.24%	1,480	290.50%	2,201,824.30	68.15%	12,443,848	68.15%

HB1462 - First Engrossment

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

Senate Finance & Tax Committee - March 16, 1999

This bill is a companion bill to SB2177 and does not stand alone.

The following testimony and explanation of the bill are based on the First Engrossment as amended and passed by the House.

The tax chapters involved are "Motor Vehicle Fuel" (gasoline/gasohol) Chapter 57-43.1, starting on page 1, "Special Fuel" (heating, diesel, kerosene) Chapter 57-43.2, starting on page 10, "Aviation Fuel" (aviation gasoline, jet fuel) Chapter 57-43.3, starting on page 17, and the newly created "Alternative Fuels" (liquefied petroleum, compressed natural gas) Chapter 57-43.4, starting on page 32.

SB2177, which has passed the Senate and the House, covers technical changes to delete obsolete language, restate and reorganize existing provisions for purposes of clarity, to add provisions lacking under current law, and to create or amend definitions. This bill is a companion to SB2177. Only those provisions which contain alterations to the language of SB2177 are included in this bill.

Terms such as "supplier," "distributor," and "retailer" created in SB2177 for the motor vehicle fuel and special fuel tax chapters are used throughout this bill. A complete set of those definitions can also be found in the newly created alternative fuel tax chapter found in SECTION 25, page 32 of the engrossed version of this bill. For discussion purposes, those terms can be summarized as follows:

A "supplier" is a refiner or major oil company which distributes fuel from a terminal. A terminal being a fuel storage and distribution facility supplied by a refinery or pipeline.

A "distributor" is a person, other than a retailer, who acquires fuel from a refiner or supplier for wholesale distribution.

360 A "retailer" is a person who acquires fuel from a supplier or distributor for resale to a consumer at a retail location.

This bill does four specific things SB2177 does not do:

- 370 1. It moves the point at which motor vehicle fuel, special fuel, and aviation fuel taxes are collected and remitted from anywhere in the fuel distribution chain (supplier, distributor, or retailer level) to the "supplier" level.
2. It changes the special excise tax imposed in Section 57-43.2-03 from a two percent tax on the cost of the fuel to a one and two-tenths cents per gallon tax. [In the original version of the bill, the tax imposition was one and one-half cents per gallon. The House amended it

- to one and two-tenths cents per gallon.]
3. It creates enforcement and penalty provisions for misuse of dyed special fuel.
 4. It creates a separate tax chapter for taxation of compressed natural gas and liquefied petroleum gases under the heading of "alternative fuel." 3-780

The purpose for the changes:

Reasons for changing the point of tax collection and remittance include:

1. To decrease the number of times fuel can exchange hands without the tax being collected and remitted.
2. To accelerate timely tax collections. Tax is collected and remitted when it leaves a terminal as opposed to when it is sold to a consumer meaning it reaches the Highway Distribution Fund sooner.
3. To improve compliance. Fewer companies remitting taxes means fewer tax returns to process on a monthly basis, and fewer tax returns means fewer errors.

The copy of my testimony handed out to you concludes with a SECTION by SECTION explanation of the bill. I will not go over each SECTION but I would like to outline specific portions which I feel are important to understanding the intent of this bill. 3890

- I. **Tax imposition.** The following SECTIONS of this bill change the point of tax collection and remittance:

SECTION 1, p. 1 - Section 57-43.1-02 for motor vehicle fuels.
SECTION 9, p. 13 - Section 57-43.2-02, and SECTION 10, p. 16 - Section 57-43.2-03 for special fuels.
SECTION 19, p. 27 - Section 57-43.3-02 for aviation fuel.

- A. On in-state sales:

The point at which motor vehicle fuel and special fuel taxes are collected and remitted moves from anywhere in the fuel distribution chain (supplier, distributor, or retailer level) to the "supplier" level.

Only a supplier could make tax free exchanges and tax free purchases, could import fuel tax free, and could maintain a tax free inventory. The supplier would collect the tax from a distributor or a retailer and remit it to the Tax Commissioner. The supplier would also collect the tax from any nonlicensed exporter.

[The original version of the bill allowed a supplier who is also a distributor or retailer to maintain a tax free inventory at the distributor or retailer level. This language gave the supplier an unfair advantage over distributors or retailers who are not also suppliers and was at cross purposes with the intent of this type of legislation. A House amendment requires remittance of the tax by the supplier

when the fuel leaves the terminal. The amendment is equitable and is in line with uniformity among other states and the Federal government who impose the tax at the supplier level.]

This bill also provides a tax float for distributors. Tax must be remitted by the supplier on or before the 25th of each month. For example, a report, and the tax due, covering business transactions during the month of March 1999 is due on or before April 25, 1999. This bill adds an additional provision allowing a distributor to delay the payment of the tax to a supplier until one day prior to the supplier's due date. 4055

Only a supplier would be required to file detailed monthly tax reports. A distributor who is not also an importer or exporter would have no filing requirement. A retailer would have no filing requirement.

This would reduce the motor vehicle fuel and special fuel taxpayers from about 581 each to approximately 30 each.

C. On fuel imported into the state:

A distributor who is an "importer" would be required to remit the tax directly to the Tax Commissioner upon import. In other words, the tax on fuel imported into the state in March would be due from the "importer" on or before the due date of the March report. 4200

The "importer" would be required to file modified monthly tax reports.

The current number of importers is approximately 100.

D. On fuel exported out of the state:

A person licensed with the Tax Commissioner as an "exporter" would be allowed to purchase fuel destined for resale outside the state tax free from a supplier. The provisions also allow for a tax refund to an exporter who purchases fuel from a supplier or from a distributor tax paid.

The current number of exporters is approximately 100.

II. **Inventory tax.** The following SECTIONS of this bill impose an inventory tax: 4265

SECTION 2, p. 3 - Section 57-43.1-02.2 for motor vehicle fuels.

SECTION 11, p. 17 - Section 57-43.2-03.1 for special fuels.

SECTION 20, p. 28 - Section 57-43.3-02.2 for aviation fuel.

Tax free purchases, tax free inventories, and monthly reporting requirements for those distributors and retailers who are currently licensed with the Tax Commissioner would cease to exist. Therefore, an inventory tax would be levied on all untaxed motor vehicle fuel and special fuel in a distributor or retailer's inventory on the effective date of this bill.

[The proposed effective date of this bill is January 1, 2000. The original version of the bill required that the tax on December 31, 1999 inventories be paid by January 25, 2000. A House amendment extends the deadline for the inventory tax to February 25, 2000.]

III. Tax credit allowances. The following SECTIONS of this bill provide for tax credit allowances:

1553 SECTION 6, p. 9 - Section 57-43.1-24 for motor vehicle fuel.
SECTION 12, p. 18 - Section 57-43.2-04.1 for special fuel.

Changing the point of tax collection and remittance to the "supplier" level changes the administration of commissions and shrinkage or evaporation allowances. Current law provides for separate commissions for collecting the tax and separate shrinkage or evaporation allowances. This bill would delete those provisions and create a "tax credit allowance" which is a combination of the two. The percentages for the tax credits are based on an average of combined commissions and shrinkage allowances taken by suppliers, distributors, and retailers during the past three fiscal years. The intent is to apply a percentage which would render the change relatively revenue neutral to the state.

A. SECTION 6, p. 9 - Section 57-43.1-24 - Tax credit allowance.

This amendment creates a motor vehicle fuel tax credit allowance of two and seven-tenths percent of the amount of tax due and payable. The supplier would take the credit on its tax return and would be required to pass two and five-tenths of the allowance on to the distributor.

The tax credit allowance would replace both the two percent commission provided for in current 57-43.1-24 and the shrinkage allowances currently provided for in 57-43.1-26 and 57-43.1-27.

B. SECTION 12, p. 18 - Section 57-43.2-04.1 - Tax credit allowance.

This amendment creates a special fuel tax credit allowance of seven-tenths percent of the amount of tax due and payable. The supplier would take the credit on its tax return and would be required to pass five-tenths of the allowance on to the distributor.

The tax credit allowance would replace both the two percent commission provided for in current 57-43.2-04.1 and the shrinkage allowances currently provided for in 57-43.2-21.

C. Under current law, there are no commission or shrinkage allowances for aviation fuels. In order to maintain revenue neutrality to the state, this bill also does not provide for a tax credit allowance for aviation fuel taxes. An allowance was created in SB2177 as Section 57-43.3-24. This bill would repeal that provision.

1755 **IV. Licensing, bonding, reporting, inventories.** SECTIONS 5, 7, 13, 14, 15, 16, 17, 21, 22, 23, and 24, cover changes in licensing, bonding, and reporting requirements.

No retailer would be required to be licensed or bonded. Inventory requirements would

hold suppliers accountable for tax on unexplained losses and would hold all persons selling fuel accountable for tax on product gains sold.

V. **Dyed fuel enforcement - special fuels.** SECTION 18, p. 26 - creates dyed fuel penalties and enforcement as 57-43.2-38 - Dyed special fuel - Penalties - Inspections.

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In 1997, the Legislature enacted law providing that the \$.20 per gallon tax imposed under 57-43.2-02 applies on all sales of special fuel not dyed for federal fuel tax exemption purposes, and providing that the 2% special excise tax imposed under 57-43.2-03 applies on all sales of special fuel dyed for federal fuel tax exemption purposes. The undyed special fuel is assumed for use in licensed vehicles. Dyed fuel is for use exclusively in nonlicensed equipment for an agricultural, industrial, or railroad purpose, or as heating fuel. [Consumers who purchase undyed special fuel and use it in nonlicensed equipment for an agricultural, industrial or railroad purposes or as heating fuel may file a claim with the Tax Commissioner for a refund of the \$.20 per gallon tax. When the refund is granted, the consumer is assessed the 2% tax which is deducted from the refund.]

The 1997 legislation did not include penalty and enforcement provisions for policing the use of dyed fuel to assure that it is not used in licensed vehicles. This SECTION creates such penalties and enforcement provisions. It provides for the Highway Patrol, by agreement with the Tax Commissioner, to be the enforcer. The provisions are in line with those enacted by the Federal Government and by other states which have similar statutes.

VI. **Alternative Fuels.** SECTION 25, pp. 30 - 51 creates a new tax Chapter covering taxation of alternative fuels.

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With a few exceptions, the proposed provisions for this Chapter are uniform with the special fuel and motor vehicle fuel tax chapters based on existing law and based on the changes to those chapters in SB2177.

- A. What are alternative fuels and why segregate them from the special fuel tax chapter?
1. Alternative fuels are those special fuels commonly known as compressed natural gas (CNG) and liquefied petroleum gases (propane).
 2. Alternative fuels are subject to the same tax imposition as other special fuels. However, alternative fuels are not dyed for purposes of determining which tax rate applies. This means that the tax rate cannot be determined until the product is sold to a consumer.
 3. A sale to a consumer can occur anywhere in the sales distribution chain and occurs most often at the retail level. This means that the tax cannot be applied at the "supplier" level but must remain with the person ultimately selling the product to the consumer.
 4. Because the tax imposition cannot be backed up to the supplier level, all persons in the sales distribution chain would acquire the products tax free and would, therefore, need to be licensed and bonded, and subject to

reporting requirements.

B. Elimination of tax collection and remittance by a person not in the motor fuel sales business but who sells small containers of propane.

1. Under current law any person who sells propane is required to be licensed with the Tax Commissioner and to file tax reports. This includes such entities as camp grounds, hardware stores, mini marts, discount stores, and the like. This provision is impossible to enforce and is, at best, a voluntary system. The Tax Commissioner currently has approximately 35 licenses which fall under this category. The tax revenue from these 35 companies is very minimal with some of them reporting as little as \$5.00 - \$30.00 per quarter.

2. The provisions in this Chapter are designed to eliminate this type of business from the tax reporting and remittance requirements but cutting the requirements off at the "retail fuel dealer" level. These companies would become consumers who would pay the tax to the seller and who would be able to pass the tax they paid on to their customers in whatever manner they choose.

C. Section 57-43.4-06 - Tax credit allowance - p. 37 would provide for a tax credit allowance uniform with that provided in the motor vehicle fuel and special fuel tax chapters. The allowance would be one percent of the tax due and would be taken by the person charging and remitting the tax.

PROPOSED AMENDMENTS TO THE BILL:

5/60 { SECTIONS 23 and 24, covering aviation fuel taxes, assign section numbers which are not compatible with those assigned in SB2177. These section numbers should be corrected through an amendment to this bill. However, if there are no other amendments to this bill, Legislative Council can correct the numbers when the legislation is consolidated.

SECTION 25 of the bill creates an alternative fuels tax chapter. The tax imposition Section 57-43.4-02 is based on current law copied from the "special fuel" tax Chapter. However, the Legislature has passed a separate bill - HB1130 which deletes the sunset of the \$.20 per gallon tax and makes the tax permanent. Those changes need to be applied to the provisions of 57-43.4-02 as well.

The Tax Commissioner's Office will work with the Committee on these issues.

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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. 1 - AMENDMENT:**

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

The intent of this amendment is to:

◆◆Require that the tax be collected and remitted by a supplier on direct sales to a distributor, on direct sales to a retailer, and on direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆◆Allow a tax float for distributors. Tax must be remitted by the supplier on or before the 25th of each month. For example, a report, and the tax due, covering business transactions during the month of March 1999 is due on or before April 25, 1999. This bill adds an additional provision allowing a distributor to delay the payment of the tax to a supplier until one day prior to the supplier's due date.

[The original version of the bill allowed a supplier who is also a distributor or retailer to maintain a tax free inventory at the distributor or retailer level and to remit the tax when the product was sold at either of those levels. Per a House amendment, the tax is to be remitted by the supplier when the fuel leaves a terminal destined for a distributor or retail location. The amendment is equitable and is in line with uniformity among other states and the Federal government who impose the tax at the supplier level.]

◆Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTIONS 9, p. 13, and 10, p. 16, and for the Aviation Fuel tax chapter see SECTION 19, p. 27.)

[In SB2177, see SECTION 2, p.7.]

2. **SECTION 2 - p. 3 - CREATE NEW SECTION:**

57-43.1-02.2 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status. [Per a House amendment, the payment of the inventory tax is deferred to February 25 rather than the original January 25 date.]

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 11, p.17, and for the Aviation Fuel tax chapter see SECTION 20 p. 28.)

3. SECTION 3 - p. 4 - CREATE NEW SECTION:

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

◆◆ A provision for a bad debt allowance existed as Section 57-43.1-42.1. That Section was repealed and reenacted as a NEW Section 57-43.1-12.1 in SB2177. That is why it is in this bill as a NEW Section. The intent of changes to the language in SB2177 are as follows:

◆ To provide a distributor or retailer, even though they are not the tax remitter under the provisions of this bill, with a right to file a claim with the Tax Commissioner for a refund of motor vehicle fuel taxes in the event that an account is written off as noncollectible. This is done to provide equity for all persons in the fuel distribution chain.

◆ To provide recourse for a supplier in the event that a distributor defaults on a payment of motor fuel taxes to the supplier. The supplier would receive a credit for unpaid taxes from the Tax Commissioner, and the Tax Commissioner would, in turn, pursue collection of the delinquent taxes directly from the distributor.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 13, p. 18, and for the Aviation Fuel tax chapter see SECTION 23, p. 31.)

[In SB2177, see SECTION 8, p.6.]

4. SECTION 4 - p 4 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit the bonding requirement to suppliers, distributors, and importers. [The original bill deleted distributors from the bonding requirements. A House amendment changed the requirement to include distributors due to the amendments to SECTION 3 which require the Tax Commissioner to collect delinquent taxes from distributors.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 of SB2177 for 57-43.1-13.)

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 15, p. 20, and for the Aviation Fuel tax chapter see SECTION 21, p. 28.)

5. SECTION 5 - p. 7 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit reporting requirements to a refiner, supplier, importer, or exporter. a distributor or retailer would no longer be required to file a report.

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 in this bill for the Special Fuel tax chapter see SECTION 16, p. 22, and for the Aviation Fuel tax chapter see SECTION 22, p. 29.)

6. SECTION 6 - p. 9 - AMENDMENT:

Section 57-43.1-24 - Tax credit allowance.

◆◆ The intent of this amendment is to provide the supplier with a tax credit equal to two and seven-tenths percent of the tax due. The supplier is required to pass two and five-tenths percent of the allowance on to the distributor. The credit is for the purpose of covering costs of collecting the tax and for covering product shrinkage or evaporation.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 12, p. 18.)

7. **SECTION 7 - p. 9 - AMENDMENT:**

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

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Provide for tax for suppliers on fuel not accounted for.
- ◆ Provide for tax on gains sold.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions in this bill for the Special Fuel tax chapter see SECTION 17, p. 24, and for the Aviation Fuel tax chapter see SECTION 24, p. 31.)

[In SB2177, see SECTION 23, p. 25.]

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

8. **SECTION 8 - p. 10 - AMENDMENT:**

Section 57-43.2-01. Definitions.

◆ **Current Subsection 10:** The definition of "kerosene" is deleted. Kerosene is specifically defined as a special fuel under the amended definition of "special fuel" found in SB2177. a separate definition is not needed.

◆◆ **Subsection 17:** Compressed natural gas is deleted from the definition of a special fuel. It and liquefied petroleum gases become part of the "alternative fuel" definition in the newly created Alternative Fuel tax chapter.

◆ Other amendments to the definitions are found in SECTION 31, p. 29 of SB2177.

9. **SECTION 9 - p. 13 - AMENDMENT:**

Section 57-43.2-02 - Tax imposed.

The intent of this amendment is to:

◆◆ Require that the tax be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆◆ **Allow a tax float for distributors.** Tax must be remitted by the supplier on or before the 25th of each month. For example, a report, and the tax due, covering business transactions during the month of March 1999 is due on or before April 25, 1999. This bill adds an additional provision allowing a distributor to delay the payment of the tax to a supplier until one day prior to the supplier's due date.

[The original version of the bill allowed a supplier who is also a distributor or retailer to maintain a tax free inventory at the distributor or retailer level and to remit the tax when the product was sold at either of those levels. Per a House amendment, the tax is to be remitted by the supplier when the fuel leaves a terminal destined for a distributor or retail location. The amendment is equitable and is in line with uniformity among other states and the Federal government who impose the tax at the supplier level.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 1, p.1, and for the Aviation Fuel tax chapter see SECTION 19, p. 27.)

[In SB2177, see SECTION 32, p.34.]

10. SECTION 10 - p. 16 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Require that the special excise tax imposed in lieu of that in 57-43.2-02 be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer. In order that this tax can be collected at the supplier level, this SECTION also changes the tax from two percent of the price of the fuel to one and one-half cents per gallon.

◆◆ **Allow a tax float for distributors.** Tax must be remitted by the supplier on or before the 25th of each month. For example, a report, and the tax due, covering business transactions during the month of March 1999 is due on or before April 25, 1999. This bill adds an additional provision allowing a distributor to delay the payment of the tax to a supplier until one day prior to the supplier's due date.

[The original version of the bill allowed a supplier who is also a distributor or retailer to maintain a tax free inventory at the distributor or retailer level and to remit the tax when

the product was sold at either of those levels. Per a House amendment, the tax is to be remitted by the supplier when the fuel leaves a terminal destined for a distributor or retail location. The amendment is equitable and is in line with uniformity among other states and the Federal government who impose the tax at the supplier level.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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.

[In SB2177, see SECTION 34, p.36.]

11. **SECTION 11 - p. 17 - CREATE NEW SECTION:**

57-43.2-03.1 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status. [Per a House amendment, the payment of the inventory tax is deferred to February 25 rather than the original January 25 date.]

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 3, and for the Aviation Fuel tax chapter see SECTION 20 p. 28.)

12. **SECTION 12 - p. 18 - AMENDMENT:**

Section 57-43.2-04.1 - Tax credit allowance.

◆◆ The intent of this amendment is to provide the supplier with a tax credit equal to seven-tenths percent of the tax due. The supplier is required to pass five-tenths percent of the allowance on to the distributor. The credit is for the purpose of covering costs of collecting the tax and for covering product shrinkage or evaporation.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 6, p. 9.)

13. **SECTION 13 - p. 18 - CREATE NEW SECTION:**

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

◆◆ A provision for a bad debt allowance existed as Section 57-43.2-35.1. That Section was repealed and reenacted as a NEW Section 57-43.2.04.4 in SB2177. That is why it is

in this bill as a NEW Section. The intent of changes to the language in SB2177 are as follows:

◆ To provide a distributor or retailer, even though they are not the tax remitters under the provisions of this bill, with a right to file a claim with the Tax Commissioner for a refund of special fuel taxes in the event that an account is written off as noncollectible. This is done to provide equity for all persons in the fuel distribution chain.

◆ To provide recourse for a supplier in the event that a distributor defaults on a payment of special fuel taxes to the supplier. The supplier would receive a credit for unpaid taxes from the Tax Commissioner, and the Tax Commissioner would, in turn, pursue collection of the delinquent taxes directly from the distributor.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 13, p. 17, and for the Aviation Fuel tax chapter see SECTION 23, p. 29.)

[In SB2177, see SECTION 38, p.39.]

14. SECTION 14 - p. 19 - 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:

◆◆ Clarify who must be licensed. The amendment specifically excludes retailers from the licensing requirements.

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended to:

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

◆ 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.

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

[In SB2177, see SECTION 39, p.15.]

15. SECTION 15 - p. 20 - AMENDMENT:

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

The intent this amendment is to:

◆◆ Limit the bonding requirement to suppliers, distributors, and importers. [The original bill deleted distributors from the bonding requirements. A House amendment changed the requirement to include distributors due to the amendments to SECTION 13 which require the Tax Commissioner to collect delinquent taxes from distributors.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 5, and for the Aviation Fuel tax chapter see SECTION 21, p. 28.)

[In SB2177, see SECTION 40, p.40.]

16. SECTION 16 - p. 22 - AMENDMENT:

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

The intent of this amendment is to:

◆◆ Limit reporting requirements to a refiner, supplier, importer, or exporter. A distributor or retailer would no longer be required to file a report.

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 7, and for the Aviation Fuel tax chapter see SECTION 22, p. 29.)

[In SB2177, see SECTION 46, p.45.]

17. **SECTION 17 - p. 24 - AMENDMENT:**

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

The intent of this amendment is to:

- ◆ Require physical inventories.
- ◆ Provide for tax for suppliers on fuel not accounted for.
- ◆ Provide for tax on gains sold.
- ◆ Provide for a tax credit on actual losses due to casualties.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 7, p. 9, and for the Aviation Fuel tax chapter see SECTION 24, p. 31.)

18. **SECTION 18 - p. 26 - CREATE NEW SECTION:**

Section 57-43.2-38 - Dyed special fuel - Penalties - Inspections.

The intent of the new section is to:

- ◆ Provide for enforcement for existing dyed fuel provisions.
- ◆ Provide penalties for use of dyed fuel in licensed vehicles.
- ◆ Provide authority for the Highway Patrol, by agreement with the Tax Commissioner, to be the enforcer.

19. **SECTION 19 - p. 27 - AMENDMENT:**

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

The intent of this amendment is to:

◆◆ Require that the tax be collected by a supplier all sales to a distributor, on direct sales to a retailer, and on all direct sales to a consumer. The tax would be passed on down the sales chain to the ultimate consumer (end user). Currently the tax is collected by a "licensed dealer" which can be any person in the fuels sales and distribution chain including a retailer.

◆◆ Allow a tax float for distributors. Tax must be remitted by the supplier on or before the 25th of each month. For example, a report, and the tax due, covering business

transactions during the month of March 1999 is due on or before April 25, 1999. This bill adds an additional provision allowing a distributor to delay the payment of the tax to a supplier until one day prior to the supplier's due date.

[The original version of the bill allowed a supplier who is also a distributor or retailer to maintain a tax free inventory at the distributor or retailer level and to remit the tax when the product was sold at either of those levels. Per a House amendment, the tax is to be remitted by the supplier when the fuel leaves a terminal destined for a distributor or retail location. The amendment is equitable and is in line with uniformity among other states and the Federal government who impose the tax at the supplier level.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 1, p. 1, and for the Special Fuel tax chapter see SECTIONS 9, p. 13, and 10, p. 16.)

[In SB2177, see SECTION 60, p. 60.]

20. SECTION 20 - p. 28 - CREATE NEW SECTION:

57-43.3-02.2 - Inventory Tax

◆◆ The new section provides that distributors and retailers currently licensed with the tax commissioner and who have tax free fuel in inventory at the time the new collection point for the tax becomes effective be required to pay the applicable tax on that inventory. The purpose is to collect the tax and place everyone except the supplier on a tax paid status. [Per a House amendment, the payment of the inventory tax is deferred to February 25 rather than the original January 25 date.]

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 2, p. 3, and for the Special Fuel tax chapter see SECTION 11, p. 17.)

21. SECTION 21 - p. 28 - CREATE NEW SECTION:

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

The intent this amendment is to:

◆◆ Limit the bonding requirement to suppliers, distributors, and importers. [The original bill excluded distributors from the bonding requirements. A House amendment changed the requirement to include distributors due to the amendments to SECTION 23 which require the Tax Commissioner to collect delinquent taxes from distributors.]

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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 in this bill for the Motor Vehicle Fuel tax chapter see SECTION 4, p. 5, and for the Special Fuel tax chapter see SECTION 15, p. 20.)

[In SB2177, see SECTION 64, p.63.]

22. SECTION 22 - p. 29 - CREATE NEW SECTION:

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

The new section is intended to:

◆◆ Create a reporting requirement for aviation fuel but limit it to a refiner, supplier, importer, or exporter.

◆ Because this Section was repeated in its entirety in this bill, the following amendments are identical to those made in SB2177 and are intended 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.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 5, p. 7, and for the Special Fuel tax chapter see SECTION 16, p. 22.)

[In SB2177, see SECTION 69, p.65.]

23. **SECTION 23 - p. 31 - CREATE NEW SECTION:**

Section 57-43.3-18 (should be 57-43.3-17 as in SB2177) - Credit for taxes paid on worthless accounts and refunds.

◆◆ This Section was created in SB2177 as Section 57-43.3.17. 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. Credits are provided for suppliers. All other persons are entitled to a refund. The intent of changes to the language in SB2177 are as follows:

◆ To provide recourse for a supplier in the event that a distributor defaults on a payment of aviation fuel taxes to the supplier. The supplier would receive a credit for unpaid taxes from the Tax Commissioner, and the Tax Commissioner would, in turn, pursue collection of the delinquent taxes directly from the distributor.

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 3, p. 4, and for the Special Fuel tax chapter see SECTION 13, p. 18.)

[In SB2177, see SECTION 72, p.70.]

24. **SECTION 24 - p. 31 - CREATE NEW SECTION:**

Section 57-43.3-28 (should be 57-43.3-26 as in SB2177)- 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..

◆ Require physical inventories.

◆ Provide for tax for suppliers on fuel not accounted for.

◆ Provide for tax on gains sold.

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

(For comparable provisions in this bill for the Motor Vehicle Fuel tax chapter see SECTION 7, p. 9, and for the Special Fuel tax chapter see SECTION 17, p. 24.)

25. **SECTION 25 - p. 32 - CREATE NEW CHAPTER:**

Chapter 57-43.4 - Alternative Fuels.

This SECTION of the bill creates a new tax chapter covering taxation of "Alternative Fuels." Except as pointed out below, the provisions for this Chapter are identical to existing language in the Special Fuel tax Chapter and not amended or repealed in SB2177 or identical to the Special Fuel tax provisions as amended in SB2177. The following are exceptions:

57-43.4-01 - Definitions.

◆ Subsection 2: Defines "alternative fuels" as compressed natural gas (CNG) and liquefied petroleum gases (propane/butane).

◆ The remaining definitions are identical to those proposed for special fuels in SB2177, SECTION 31, p. 29.)

57-43.4-02 - Tax imposed.

◆ The tax imposed is identical to 57-43.2-02 in the Special Fuels tax Chapter (as amended in SB2177) except that the collection of the tax remains at the supplier, distributor, importer, or retailer level.

57-43.4-05 - Special excise tax levied.

◆ The tax imposed is identical to 57-43.2-03 in the Special Fuels tax Chapter (as amended in SB2177) except that the collection of the tax remains at the supplier, distributor, importer, or retailer level.

57-43.4-06 - Tax credit allowance.

◆ The tax credit allowance for alternative fuels is one percent of tax due rather than seven-tenths percent for special fuel. The reason is that there is a greater potential for shrinkage or evaporation. Whichever person is liable for remitting the tax on alternative fuel is entitled to this allowance; therefore, there is no provision for passing it on to a person purchasing it for resale.

57-43.4-10 - Refiner, supplier, distributor, importer, exporter, terminal operator, or retailer required to secure license - License fees.

◆ The tax imposed is identical to 57-43.2-05 in the Special Fuels tax Chapter (as amended in SB2177) except that the licensing requirement includes a retailer.

57-43.4-13 - Bond or letter of credit.

◆ The tax imposed is identical to 57-43.2-07 in the Special Fuels tax Chapter (as amended in SB2177) except that the bonding requirement includes a distributor or retailer.

57-43.4-16 - Report by refiner, supplier, distributor, importer, exporter, or retailer required.

◆ The tax imposed is identical to 57-43.2-11 in the Special Fuels tax Chapter (as amended in SB2177) except that the reporting requirement includes a distributor or retailer.

57-43.4-27 - Inventory gains - Losses.

◆ Requires physical inventories.

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

◆ Provides for the same inventory gain and loss procedures as the motor vehicle fuel and special fuel tax chapters.

26. **SECTION 26 - p. 53 - REPEAL:**

◆ This section provides for the repeal of an obsolete section and of a section created in SB2177 which would no longer apply should this bill be adopted.

27. **SECTION 27 - p. 53 - EFFECTIVE DATE:**

◆ In order to allow sufficient time for the Tax Commissioner and the persons in the fuel industry to develop an appropriate understanding of the changes made, to administratively provide for those changes, and to accomplish data processing changes and forms design needed, it is requested that the effective date of this bill be delayed to taxable events occurring after December 31, 1999.

Tax Facts Motor Fuel Tax Collection



Office of State Tax Commissioner

Information on HB 1462 - Changing the point of taxation for motor fuel tax collection

◆ What does HB 1462 do?

It changes the point of motor fuel tax collection from anywhere in the distribution chain, to the supplier level. If adopted, the supplier would be responsible for collecting the tax, and then passing it down the chain - eventually to the consumer.

◆ What prompted this proposed change?

This has been studied nationally. Two main factors have contributed to it. First, during the mid-1980's the federal government and states began discovering major motor fuel tax evasion problems; individuals and organized crime were going into the fuel business specifically with the intent to make a profit from the evasion of motor fuel taxes. Second, states began to search for an easier way to administer motor fuel taxes. Many states had motor fuel tax compliance sections with the ability to do little more than process returns and issue refunds.

The two circumstances started the process of looking for a new way to collect the tax. One of the solutions which came out of that review is the one before the legislature today: moving the point of taxation up in the distribution chain so that the fuel cannot exchange hands so many times without the tax being collected and remitted.

Key Points

- Better compliance.
- The tax free transactions are limited to major oil companies and major marketers.
- Fewer reports to process (estimated drop from 1200 returns/month to 260 returns/month).
- Cuts down on cross-checking transactions between buyers and sellers. This allows for a greater concentration of the Tax Department's time on imports and exports.
- Allows the Tax Department to do a more thorough job concentrating on the remaining accounts and their refunds.
- Provides better opportunity for joint compliance efforts with surrounding states and the Federal government.

For the Industry

- Decreases paperwork. Distributors and retailers no longer would need to file reports.

◆ Have other states made this change?

Yes. Approximately 17 states have moved the point of taxation up the chain of distribution. Additionally, the Federal government has taxed at the supplier level for approximately ten years in the case of gasoline, and approximately two and a half years in the case of diesel.

Tax Facts
Motor Fuel Tax Collection
Office of State Tax Commissioner



Effects of HB 1462	
Without Passage of HB 1462	With Passage of HB 1462
Motor vehicle fuel, special fuel and aviation fuel taxes collected anywhere in the fuel distribution chain.	Motor fuel vehicle fuel, special fuel and aviation fuel taxes collected at the supplier level.
Special excise taxes imposed in Section 57-43.2-03 assessed at the rate of 2% on the cost of fuel.	Special excise taxes imposed in Section 57-43.2-03 assessed at the rate of 1 2/10 cents per gallon.
No enforcement or penalties for misuse of dyed special fuel.	Creates enforcement (with the cooperation of highway patrol) and penalties for the misuse of dyed special fuel.
Compressed natural gas and liquefied petroleum remain under special fuels tax chapter.	Creates a separate tax chapter for taxation of compressed natural gas and liquefied petroleum gases under the heading of "alternative fuel."
All licensees in the distribution chain continue to be required to remit tax and file monthly returns.	Only suppliers and importers will be accountable for remitting the tax and filing monthly returns.
The Tax Department processes approximately 1200 returns per month from entities throughout the distribution chain.	The Tax Department processes about 260 returns per month from only major oil companies, major petroleum marketers, importers and exporters.
The tax is due to the state on the 25th of the month following the month covered by the report (ex: February report is due March 25); Received from all licensees within the fuel distribution chain.	The tax is due to the state on the 25th of the month following the month covered by the report (ex: February report is due March 25); Tax not due from distributor to supplier until the day before the supplier must remit it to the state (the 24th). Supplier or importer is always the remitter to the state.



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HB 1462

Senate Finance and Taxation

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the ND Petroleum Marketers Association. I appear before you in opposition to HB 1462.

213'
Petroleum Marketers recognize the concern of the legislature in trying to find the needed federal highway matching funds without increasing taxes. We applaud this effort and support the majority of ideas being considered to locate the needed funds. However, petroleum marketers are extremely concerned about HB1462 and the dangers that coincide with changing the point of taxation. Fuel dealers in North Dakota affected by this bill are mostly small family owned businesses. These small businesses cannot afford to take another hit. The low oil prices along with the high costs to upgrade their under-ground storage tanks and all the other costly government regulations coupled with the tough rural economy have put these businesses in tough financial shape. Can we afford to place more financial stress on these small businesses and potentially have more fuel dealers put out of business?

We believe that if tax evasion is occurring the violators should be caught and penalized. Currently there is little or no enforcement mechanism in place. The changes made to dyed diesel in the 1997 legislative session has increased the amount of taxes collected but has led to a huge increase in refunds being claimed by consumers.

The majority of states that report increases in motor fuel revenues say the increase is due to strict dyed diesel enforcement. Kansas has not moved their point of taxation to the rack but reported huge revenue increases due to a new dyed diesel enforcement program. We have also heard reports about the effectiveness of the dyed diesel enforcement efforts in SD.

To address tax evasion we suggest that legislature consider the following options instead of moving the point of taxation:

- Provide the Tax Department the resources to perform audits on marketers tax reports, dyed diesel refund requests, and cross-checks on imports and exports of loads of fuel with other states.
- Adopt the dyed diesel provisions of this bill.
- Empower the Highway Patrol and DOT to enforce the laws.



The revenue impact of changing the point of taxation is unknown. Moving the point taxation does not guarantee the "golden egg" that every state is searching for as the answer to finding the needed highway funds.

Changing the point of taxation does not guarantee more revenue.

- 16 states have moved their tax collection to the rack.
- Of course, there is going to be jump in revenues the first year because the state will collect more than 2.7 million inventory taxes from marketers once the law takes effect.
- Many states including South Dakota have not seen increases in subsequent years after the change.
- On the other hand, 10 states that did not change reported increases in excess of 10% in 1996.
- Factors that cause increases in revenues might include:
 - Growth in the economy
 - Enforcement
 - Tax increases
- New Jersey moved their point of taxation down to the retailer and experienced larger gains than any state.
- Evasion usually occurs on the importing & exporting of fuel, - moving to the rack does not change this ability to cheat unless the states coordinate their information - currently not done well.
- Ohio, recently defeated a rack tax bill but got tough on enforcement -- their recent increase was one of the highest in the nation.
- ND's taxable gallons are a fraction of most other states whose taxation point has been moved up - ND cannot expect the same types of revenue increases even if cheating is occurring and is stopped as a result of the move.
- Minnesota and Montana do not tax at the rack. 2680

Moving the point of taxation to the rack does not stop cheaters. Cheaters find a ways to cheat - more and new enforcement is the answer. Changing the current system may only disrupt the business operations of honest business people who are following the rules.

The changes that will occur in the industry as a result of this lengthy bill could drastically impact marketers across the state. Many of whom are already struggling to survive in a time of business closings, mergers, costly government regulations, and low margins in the industry. We urge the committee to keep and enhance the enforcement provisions of this bill and leave the taxation point at the current location.

Thank you, I would be happy to answer any questions.

Testimony on HB 1462

My Copies

ND Motor Carriers Association, Inc.

Leroy Ernst

March 16, 1999

Before the Senate Finance and Taxation Committee

Chairman Urlacher and members of the committee, thank you for the opportunity to express the trucking industry's input regarding HB 1462.

The North Dakota Motor Carriers Association is the state trade association of the trucking industry representing every type of motor carrier in the state. Combined with NDMCA's allied members, we are an association of several hundred members-- most of which are small businesses.

The trucking industry plays a central role in our state's economy -- employing one out of every 11 workers and paying more than \$563.9 million in salaries a year. Trucks move 85.8% or 89,281 tons of essential manufactured freight each business day and projections are that we will transport 9.1% more goods by the year 2000 -- serving every community in North Dakota.

We support the principle of highway user taxes and the highway trust fund, because truck operators believe it is an equitable method of allowing those who benefit from the use of the highway system to pay for it. North Dakota truckers are big customers of that system, contributing over \$105.8 million in 1996 in state and federal taxes and fees -- this equates to a weekly tax bill of \$2.3 million.

Mr. Chairman, those who work in the trucking industry would strongly agree that we must invest in our infrastructure if we are going to ensure that our state remain competitive in the coming decade. But, increasing highway user fees and fuel taxes is not always a painless way to pay for such improvements. NDMCA is, however, on record supporting HB 1183, which increases vehicle registration fees.

A number of states have changed the point of taxation in recent years to mirror the structure of the federal fuel tax system which moved the point of taxation effective January 1, 1994.

It would seem that taxing fuels at "higher levels" in the distribution chain reduces the number of taxpayers and the number of potential audits.

We have put together a chart from the Western Highway Institute showing which states have moved fuel tax collections to the terminal rack and the reported increases in the tax collection:

Fuel Tax Collection at Terminal Rack, as of 1/1/98

Michigan	1/1/93	21% increase
Indiana	10/1/93	16% increase
Florida	1/1/96	9% increase
Iowa	1/1/96	23% increase
Nevada	1/1/96	25% increase
South Dakota	1/1/96	19% increase
North Carolina	1/1/96	10% increase
Montana	1/1/96	20% increase
California	7/1/96	19% increase

South Carolina, Oklahoma, Idaho, and Wyoming have also changed their point of collection in 1996 and 1997, but we have no reports on their percentage (increase or decrease) of fuel tax collections.

Mr. Chairman and committee members, we at NDMCA support HB 1462 and request your favorable consideration of this legislation which we feel will streamline the fuel tax collection and auditing process in addition to possibly increasing highway funding revenues.

SENATE FINANCE AND TAXATION COMMITTEE

March 16, 1999

North Dakota Department of Transportation
Marshall W. Moore, Director

HB 1462

Mr. Chairman and members of the committee: HB 1462 changes the point of taxation of motor fuels. NDDOT supports this bill as a significant move, along with other measures, to halt tax evasion on motor fuels in North Dakota.

The Transportation Equity Act for the 21st Century (TEA-21) was a major vindication for federal efforts to control fuel tax evasion over the previous ten years. TEA-21 increased federal funding to the states by a billion dollars a year as a result of increased fuel tax revenue since dyed diesel and tax-at-the-rack took effect January 1, 1994.

Under TEA-21, up to 1/4 of 1 percent of state transportation planning funds may be used at the discretion of state DOTs for projects to "halt the evasion of payment of motor fuel taxes." These funds are available for states to use in the enforcement effort. Procedures for using these funds were published in the Federal Register on October 9, 1998. The Federal Highway Administration recommends that every state set aside some of these funds in their statewide transportation improvement program. NDDOT is working with the ND Tax Department to find the best way to coordinate this effort in North Dakota.

Revised apportionment formulas, for the first time, incorporate motor fuel use. Each additional gallon reported and taxed by North Dakota increases our state's share of the total federal dollars.

The state of Wyoming passed legislation, similar to HB 1462, which went into effect January 1, 1997. We have attached a letter from Mr. Gene Roccabruna, Wyoming DOT director, indicating that in the first full year their collection of fuel taxes increased \$6 million due to the change of reporting the tax at the rack.

We have also attached a Federal Highway Administration report by Mr. Stephen Baluch on TEA-21 incentives for the state motor fuel tax collection program.

Minimizing fuel tax evasion is an important public policy priority. It improves the efficiency and effectiveness of the tax system, reduces revenue losses, and provides a level playing field for all honest taxpayers.



Jim Grogan, Governor
Gene Roccabruna, P.E., Director

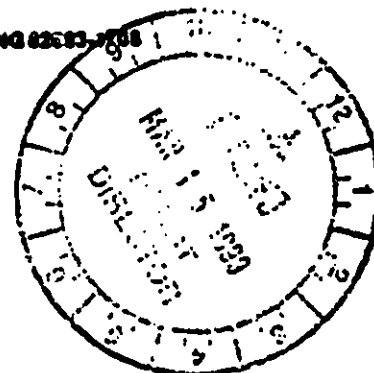
Department of Transportation

6308 BISHOP BOULEVARD (32008)

P.O. BOX 1703
March 12, 1999

CHEYENNE, WYOMING 82003-1703

Marshall Moore, P.E. Director
North Dakota Dept of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58305-0700



Dear Marshall:

Wyoming moved the point of taxation for motor fuels to the supplier (refinery) level effective January 1, 1997. The Wyoming Department of Transportation worked closely with the suppliers, distributors, importers and exporters to achieve this goal. It is still a work in progress and will probably always be due to the issue being taxation.

Adjusting for normal growth, Wyoming has seen an increase of over \$6 million dollars credited to moving the point of taxation to the supplier level (rack). (See attached).


Wyoming's petroleum industry had numerous concerns about moving to the rack and Wyoming worked directly with the Colorado Wyoming Petroleum Marketers Association to address these concerns. A review of your proposed legislation indicates that North Dakota is striving to settle the same concerns.

Concerns that are still an issue are the increased paperwork and no handling allowance for being the state's tax agent. This legislative session, Wyoming agreed to allow the distributors and importers, having bulk storage in Wyoming, to claim a 1% shrinkage credit on the monthly tax returns. Moving the point of taxation to the supplier level increased Wyoming's reporting requirements. The department is constantly reviewing the paperwork to insure that necessary information is collected and that the information collected is necessary.

Wyoming's philosophy is that the increased revenues outweigh the additional administrative burdens on the industry and the state. Part of the state's administrative burden is to partner with the industry and educate them as to benefits they reap also.

Good luck in this effort. Marshal and if we can be of further assistance, please don't hesitate to contact us.

Very truly yours,


Gene R. Roccabruna, P.E.
Director

GRR/njw
Attachment

TEA-21 INCENTIVES FOR STATE MOTOR FUEL TAX COLLECTION PROGRAMS

For presentation at the American Association of State Highway and Transportation Officials 1998 Annual Meeting

**Stephen Baluch
Federal Highway Administration (FHWA)
Washington, D.C.
(202) 366-9243
November 9, 1998**

TEA-21 INCENTIVES FOR STATE MOTOR FUEL TAX COLLECTION PROGRAMS
Stephen J. Baluch, Federal Highway Administration
AASHTO Annual Meeting, November 9, 1998

Motor fuel tax evasion has been around as long as motor fuel itself. It was not until the mid-1980's, when the tax went up over a nickel a gallon, that it became a major money maker for organized crime in the United States. Billion dollar losses of tax revenue, and the major criminal investigations and prosecutions that followed, have been widely reported in the last 10 years. So you may be thinking, "I thought we had that under control." Much progress, yes. Under control? No. In fact, the clearest lesson from the past 10 years' effort has been that tax evasion is something that will never be "under control" as long as 40 to 50% of the price of motor fuel is tax.

Why the renewed interest in fuel tax compliance projects since TEA-21?

The Transportation Equity Act for the 21st Century (TEA-21) was a major vindication for our efforts to control fuel tax evasion over the past 10 years. TEA-21 substantially increased Federal funding to the States with the increase coming largely from two sources of revenue: a billion dollars a year from increased diesel fuel tax revenue since dyed diesel and tax-at-the-rack took effect on January 1, 1994, and several billion more from moving the 4.3 cents per gallon deficit reduction tax to the Highway Trust Fund (HTF).

TEA-21 is loaded with other incentives that make revenue enforcement even more important to every State (Exhibit 1). Funding authorization and obligation limitation will increase automatically if HTF revenues increase. Therefore, all the additional revenue collected by IRS as a result of cooperation with your State revenue agency increases the Federal dollars to be distributed.

Revised apportionment formulas, for the first time, incorporate motor fuel use (Exhibit 2). Therefore, each additional gallon reported and taxed by your State increases your share of the total Federal dollars. Furthermore, every State is guaranteed a minimum of 90.5% of the State's percent share of HTF revenue, which translates to roughly 80 to 90 cents for every additional 5 gallons taxed and reported by the State.

To help the States capitalize on these incentives, TEA-21 provided authority for State DOT's to use up to 1/4 of 1% of Surface Transportation Program for projects to "halt the evasion of payment of motor fuel taxes" (Exhibit 3.) In FY 1998, this amounted to \$13.3 million and that will increase annually.

What has been accomplished so far?

There have been monumental changes in motor fuel tax collection and enforcement in the last 10 years. State revenue agencies quickly signed on to the project when FHWA funding first became available under Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Exhibit 4). All States but one now actively participate, along with IRS counterparts, in one or more of the nine regional enforcement task forces. The Highway Trust Fund (HTF) and the States have been well rewarded for these efforts.

IRS audit results in nine target States have yielded over \$300 million in fuel tax assessments, an average of \$45 per dollar spent performing the audits (Exhibit 5). State audit efforts have shown additional tax assessments of over \$100 million per year, with a yield of better than 10 to 1 (Exhibit 6.)

In the peak criminal investigation years, over 200 persons were indicted in Federal fuel tax fraud cases that accounted for over \$370 million in estimated tax losses (Exhibit 7). In the same period, States convicted another 67 persons for fuel tax fraud with estimated tax losses of over \$100 million (Exhibit 8).

But perhaps the single event with the largest impact on motor fuel tax collections in the U.S. was the Federal tax-at-the-rack and diesel fuel dyeing law effective January 1, 1994. This law moved the tax incidence for diesel fuel to the terminal rack, where fuel is loaded from bulk storage into tanker trucks for delivery to retail outlets. Only red dyed diesel fuel is exempt from the tax. The dyed diesel fuel is available to consumers for home heating, trains, construction equipment and other non-taxed uses. Those caught with dyed fuel in highway vehicles are subject to a minimum \$1,000 fine (Exhibit 9.) Federal diesel fuel tax revenue increased over \$1 billion in the first year under the new law, with about \$650 million of that attributed to improved compliance (Exhibit 10). State diesel fuel tax revenue increased as well, as a spillover benefit. Overall, tax compliance efforts have demonstrated a \$1.2 billion revenue benefit to State and Federal transportation revenues.

What is there yet to do?

The progress of recent years has clearly made a substantial dent in the magnitude of motor fuel tax evasion. Evasion of Federal diesel fuel taxes, not so long ago estimated to be over 20% of the total fuel consumed, is most likely now in the 5-10% range. States that have enacted piggyback legislation on point of taxation (Exhibit 11) and dyed fuel provisions (Exhibit 12) have also seen substantial improvements. Unfortunately, evidence shows that fraud schemes have quickly adapted to take advantage

of remaining loop holes. State fuel tax revenues are particularly vulnerable to these new schemes.

State lines are probably now the single most exploited evasion opportunity. Whenever a substantial rate differential exists at the border (Exhibit 13), a common scheme is to pay the lower tax rate and ship the fuel to the higher tax State and pocket the differential.

Native American reservations offer another variation on this theme (Exhibit 14). Because of the Federal preemption of taxing authority with respect to Native American tribes, fuel is often sold on reservation without collection of State taxes.

International borders provide another opportunity to underreport or mislabel motor fuel products to avoid payment of Federal, State, and provincial taxes (Exhibit 15).

Blending untaxed additives to motor fuel is another popular evasion strategy. The recent Federal requirement to dye untaxed kerosene, for example, is designed to deter blending untaxed kerosene in diesel fuel.

So even though much progress has been achieved, States will continue to see substantial evasion. The magnitude will be highly variable from State to State.

What is the role of the State DOT?

Under TEA-21, up to 1/4 of 1% of STP funds may be used at the discretion of State DOT's for projects to "halt the evasion of payment of motor fuel taxes." Up to \$13 million a year is available, and States would be well-rewarded for devoting some of these funds to the enforcement effort. The implementation procedures for using these funds were published in the Federal Register on October 9, 1998 (Exhibit 16 and 17), a copy of which is attached. FHWA recommends that every State set aside some of these funds in the Statewide transportation improvement program (STIP), as several States have already done (Exhibit 18).

No State need reinvent the wheel on how to design effective anti-evasion programs. The Federation of Tax Administrators (FTA) Uniformity Committee has developed a how-to guide, called the "11-Point Plan" (Exhibits 19-20). The first important step that the DOT can take is to establish a regular dialog with the revenue agency. This will be the nucleus for a "State advisory group", Point #10. This group will ultimately expand to include related enforcement agencies and industry groups, and will coordinate the multi-faceted compliance program and develop effective legislative strategies, where needed.

Some important elements of a comprehensive program that could be considered for STP funding include: on-road diesel fuel inspections, International Fuel Tax Agreement (IFTA) enforcement activities, and increased audits. State DOT should also make sure that construction contractors abide by dyed fuel restrictions on State jobs (Exhibit 21).

And finally, State DOT's need to revisit the motor fuel reporting process, since correct and complete reporting of motor fuel gallons to FHWA on the FHWA-551M is essential to assure that the State receives its fair share of the Federal dollars. FHWA has just convened a study committee to evaluate and recommend improvements to this process.

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TEA-21 TAX COMPLIANCE INCENTIVES

Automatic funding increases if revenues increase.

- Apportionment formulas based on motor fuel use.
- State minimum guarantee of 90.5% of State %share of Highway Trust Fund rev.
- Up to 1/4% STP at State DOT request: "to halt the evasion of ... motor fuel taxes".

EXHIBIT 1

APPORTIONMENT FORMULAS

	\$Bil.	Lane Miles	VMT	Fuel Use	Other
IM		1/3	1/3	1/3	
> \$9.8				(Commercial HTF)	
NHS		25%	35%	30%	10%
				(Diesel)	
STP	\$6.3	25%	40%	35%	
				(Total HTF)	
MG	\$2.8			100%	
Total	\$19.9			(Total HTF)	

EXHIBIT 2

TEA-21 (As amended) TAX EVASION PROJECTS

- Added to 23 USC Section 143.
- \$10.0 million, FY 1998
\$ 5.0 million per year FY 1999-FY 2003.
- Up to 1/4% STP per State DOT request:
- 100% Federal share.
- Average \$13.9 million max. per year.
- "to halt evasion of...motor fuel taxes".
- ExFIRS funded as first priority.

EXHIBIT 3

JOINT PROJECT FUNDING (in \$Million)

Fiscal Year	States Funded	Funding to States	Funding Total
1990-91	12	\$0.30	\$1.17
1992	34	1.95	5.99
1993	46	3.15	5.00
1994	48	3.44	5.07
1995	49	3.21	5.04
1996	50	2.54	4.37
1997	50	3.14	5.00
Total		\$17.73	\$31.64

EXHIBIT 4

IRS JOINT PROJECT AUDITS

Fiscal Year	Tax Assessed (\$Millions)	Tax Assessed per \$1 Spent
1991	\$ 1.20	\$12
1992	23.80	38
1993	18.15	14
1994	26.65	14
1995	36.94	24
1996	47.68	30
1997-10mo.	161.79	197
Total	\$316.21	\$45

EXHIBIT 5

STATE AUDIT/RECONCILIATION RESULTS

Fiscal Year	States Reporting	Tax Assessed (\$Millions)	Tax Assessed /\$1 cost
1991 (2nd half)	12	\$38.0	\$20.70
1992	13	31.4	13.70
1993	42	115.3	12.70
1994	47	141.2	10.70
1995 (1st half)	49	81.4	12.20

EXHIBIT 6

FEDERAL FUEL TAX FRAUD INDICTMENTS

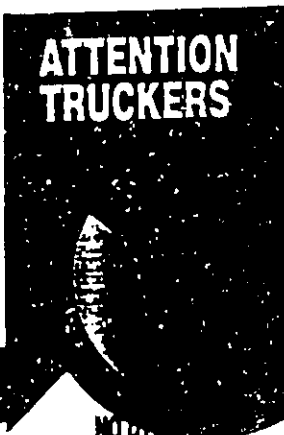
Fiscal Year	Persons Indicted	Estimated Tax Loss (\$Millions)
1993	71	\$204.7
1994	77	25.6
1995	63	140.0
Total	211	\$370.3

EXHIBIT 7

STATE FUEL TAX FRAUD INDICTMENTS

Fiscal Year	States Reporting	Persons Convicted	Estimated Tax Loss (\$Millions)
1993	42	23	\$48.6
1994	47	25	49.8
1995	49	19	23.1
Total		67	\$111.5

EXHIBIT 8



ATTENTION TRUCKERS

NO DYE
FUEL ON
THE HIGHWAY

- 1. _____
- 2. _____
- 3. _____
- 4. _____

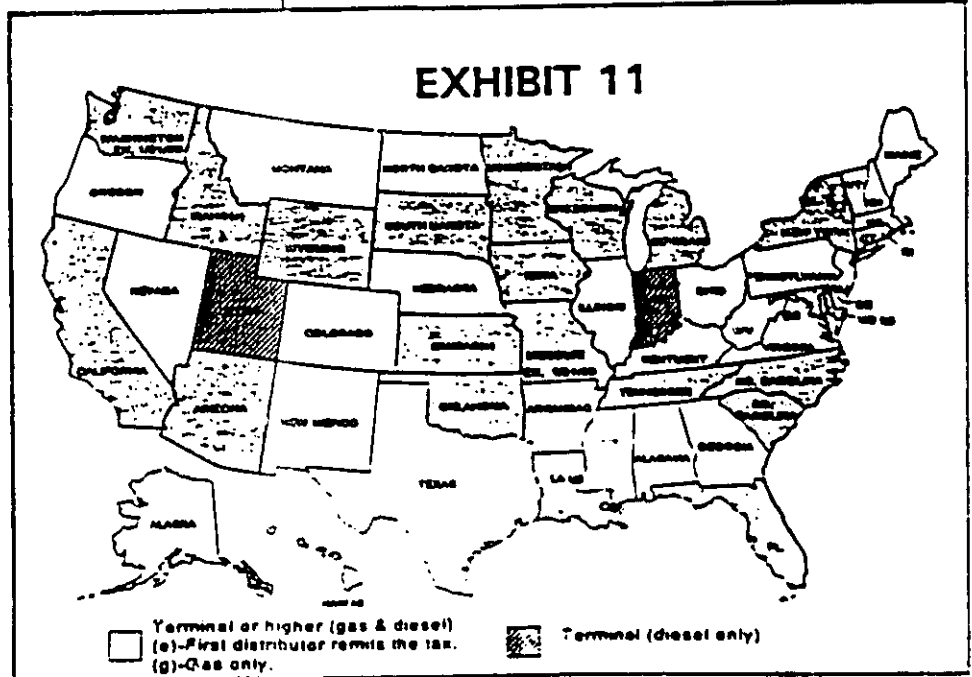
EXHIBIT 9

REVENUE ENHANCEMENT SUMMARY (Annual Impact, \$Million)

Enforcement Strategy	States	Federal (IRS)	Total
Audits (Assessments)	\$140	\$100	\$240
Criminal Inv. (Est. tax loss)	50	120	170
Dyed Fuel (Revenue increase)	150	650	800
Total	\$340	\$870	\$1,210

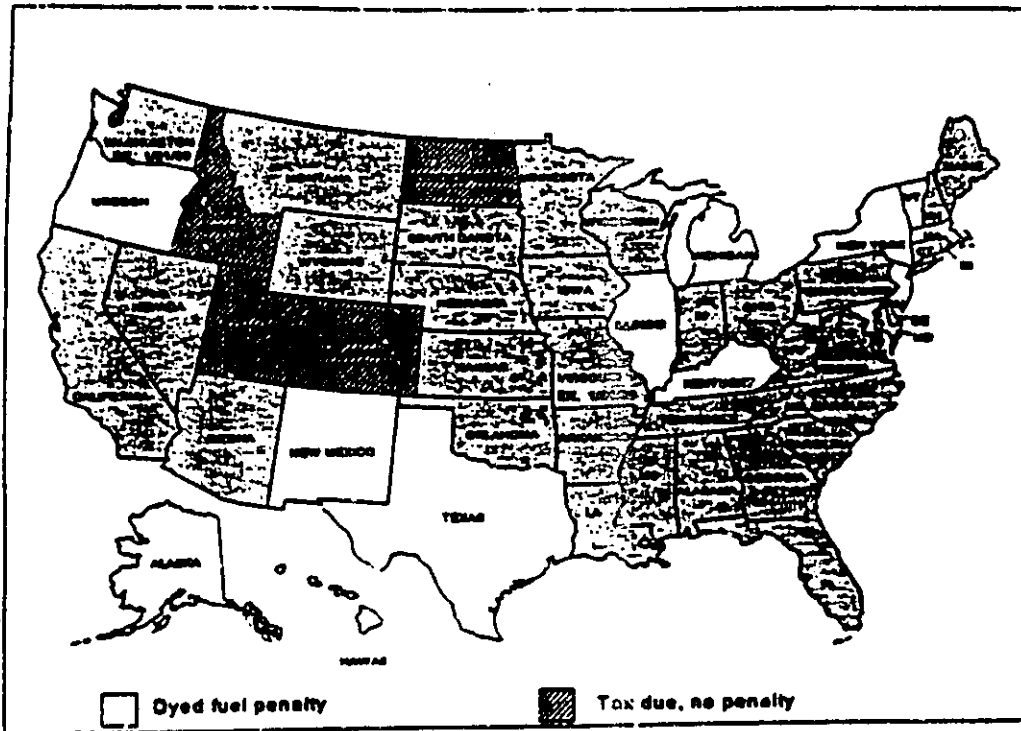
EXHIBIT 10

EXHIBIT 11



STATE MOTOR FUEL TAX—COLLECTION POINT

(August 11, 1996, STATE TAX US)



STATE DYED FUEL PENALTIES

August 11, 1998 L STATE TAX US

EXHIBIT 12

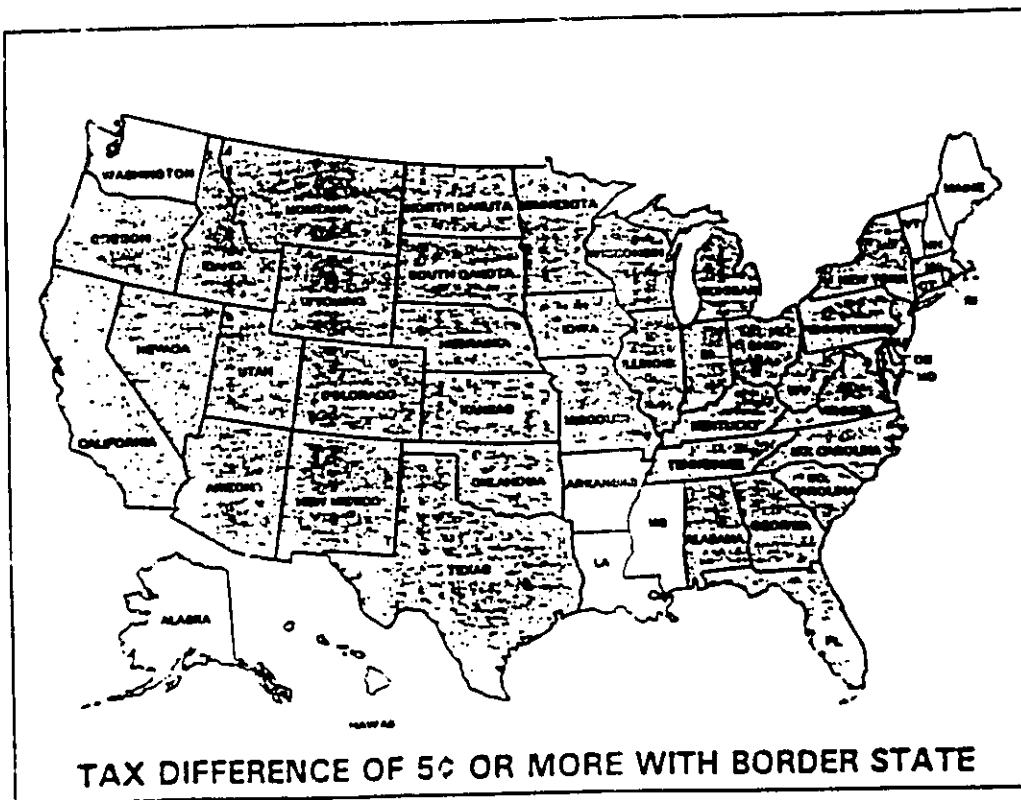


EXHIBIT 13

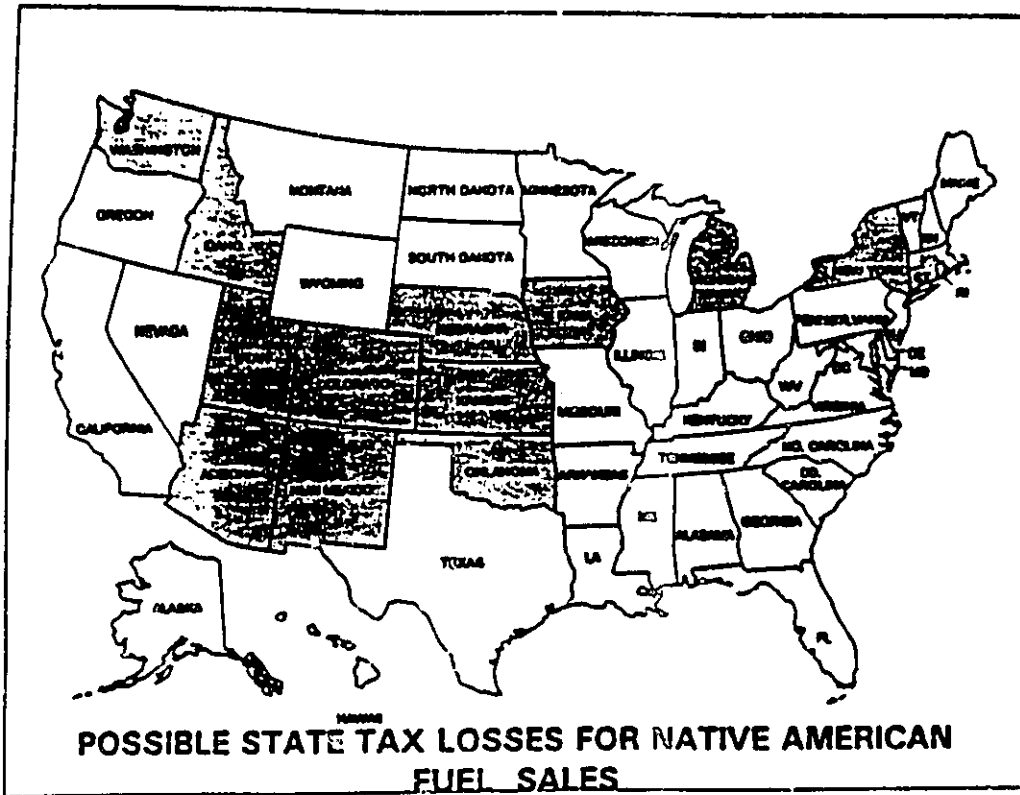


EXHIBIT 14

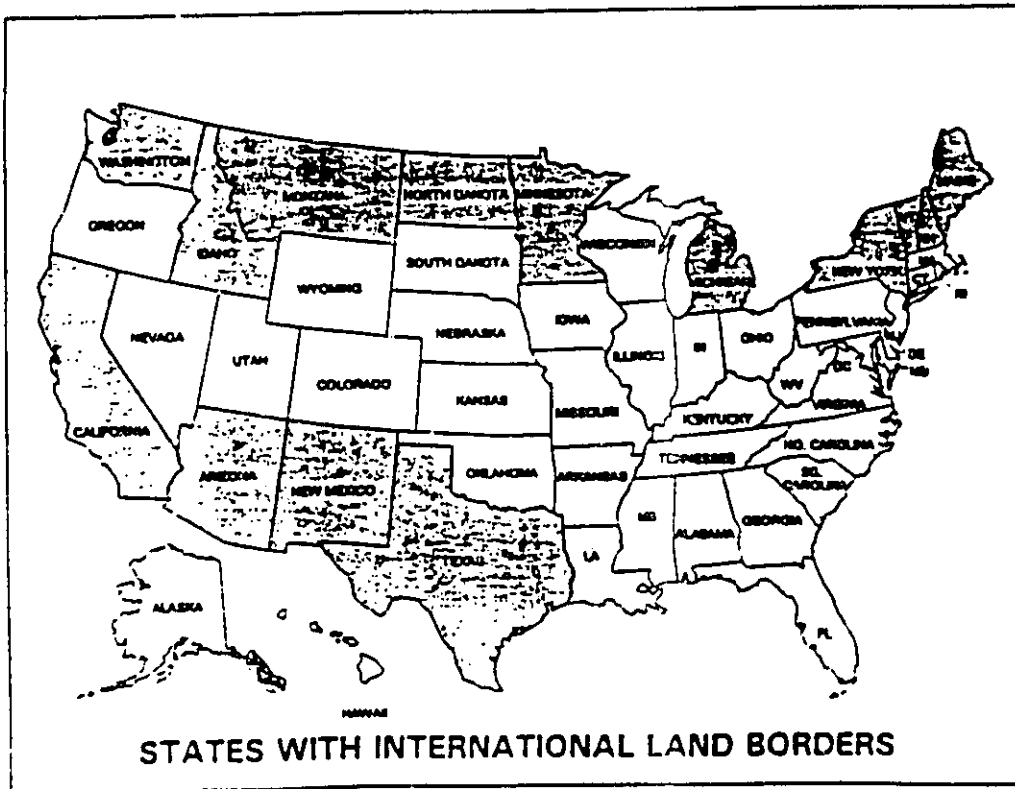


EXHIBIT 15

**TAX EVASION PROJECTS
1/4% STP Projects**

- Maximum amount as published in Supplementary Tables.
- Projects selected by State transportation agency (STA).
- Federal share: 100%
- Eligible items include initiatives to halt evasion of "motor fuel taxes".

EXHIBIT 16

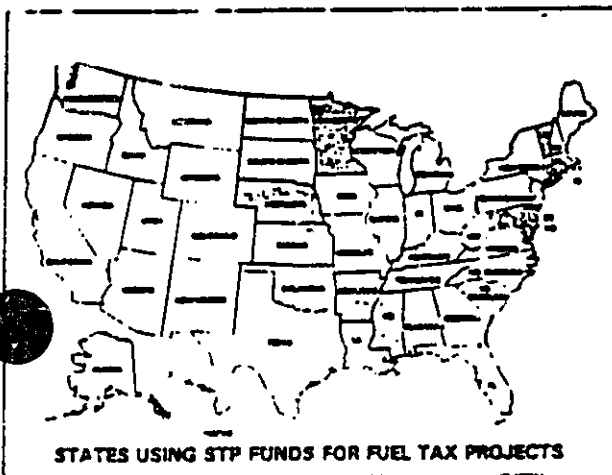


EXHIBIT 18

11 POINT PLAN RECOMMENDATIONS

1. Uniform reporting
2. Uniform definitions
3. Standard taxpayer identification
4. Licensing of all obtaining tax-free inventory
5. Total accountability
6. Uniform electronic reporting
7. Regional cooperation
8. Allow intergovernmental data exchange
9. Require carrier reports
10. State advisory group
11. Adequate enforcement staffing

EXHIBIT 20

1/4% STP Projects (cont.)

- Required items:
Work plan and budget based on A-87 (Revised 8/29/97).
- Included in Statewide transportation improvement program (STIP).
- Intergovernmental review.
- Project agreement (PR-2) signed by FHWA & STA.
- Annual narrative report to STA-data forms optional.

EXHIBIT 17

**FEDERATION OF TAX ADMINISTRATORS
UNIFORMITY COMMITTEE-11 POINT PLAN**

- To achieve uniformity in administration.
- To reduce inefficiency.
- To combat fuel tax evasion.

EXHIBIT 19

SUGGESTED ELIGIBLE ITEMS FOR 1/4% STP

- Revenue agency audits, investigations
- Dyed fuel inspections (MC, State police, Agr., Weights and Measures, other)
- IFTA agency audits, roadside enforcement
- Motor fuel fraud prosecutions
- Coordination, advisory group, etc.

EXHIBIT 21

21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107), for allocating these funds to the States and the IRS and provides implementation guidance for the approval and administration of such projects under 23 U.S.C. 143. The FHWA seeks public comment from all interested parties regarding the revised funding allocation and administrative procedures described in this notice. The procedures described in this notice may be modified based on the comments received.

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen J. Baluch, Office of Policy Development, 202-366-0570; or Mr. Wilbert Baccus, Office of the Chief Counsel, 202-366-0780; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

Sections 1101 and 1114 of the TEA-21 authorize funding for highway use tax evasion projects under 23 U.S.C. 143. This notice sets forth certain procedures for allocating those funds to the States

and provides guidance for the approval and administration of projects to reduce the evasion of motor fuel and other highway use taxes. Funding authorized for highway use tax evasion projects includes \$10 million for fiscal year (FY) 1998 and \$5 million per year for FY 1999 through 2003, and up to one-fourth of 1 percent of funds apportioned to the States for the Surface Transportation Program (STP) for "Initiatives to halt the evasion of payment of motor fuel taxes" (23 U.S.C. 143(b)(8)).

In accordance with 23 U.S.C. 143(c), the major part of the funding authorized in section 1101(a)(14) of TEA-21 for highway use tax evasion projects will be provided to the IRS for the development and maintenance of an automated fuel reporting system. The Federal Highway Administrator, as delegated by the Secretary of Transportation (Secretary), and the Commissioner of the IRS have approved a Memorandum of Understanding (MOU) for the purposes of implementing this system. A copy of the MOU is provided as an attachment to this notice. The MOU establishes the funding to be provided to the IRS. As long as the IRS has met the funding needs to establish and operate the automated fuel reporting system, pursuant to the Secretary's authority under 23 U.S.C. 143(b)(2), the IRS may use a portion of the funds for continuation of the IRS examination and criminal investigation activities of the Joint Federal/State Motor Fuel Tax Compliance Project (or Joint Compliance Project), previously funded under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, or for any other activity specified in 23 U.S.C. 143(b).

All funds not provided to the IRS will be allocated to the States for efforts to reduce the evasion of highway use taxes, including continued participation in regional motor fuel tax enforcement task forces. Nine such task forces have been organized since 1991 covering all States, under the coordination and leadership of the IRS district offices and State revenue agencies in the nine lead States (California, Florida, Indiana, Massachusetts, North Carolina, Nebraska, New Jersey, Oregon, and Texas).

The FHWA intends to distribute the available funds so as to provide, if possible, at least half of the annual funding allocation that was provided under the ISTEA, that is, \$50,000 for lead States and \$25,000 for all other States and the District of Columbia. In each fiscal year, allocations would be made only to States that have expended and billed the FHWA for all but 1 year's

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
(FHWA Docket No. FHWA 98-4262)

Transportation Equity Act for the 21st Century; Implementation Procedures for the Approval and Administration of Projects To Reduce the Evasion of Motor Fuel and Other Highway Use Taxes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice: request for comments.

SUMMARY: Over the years, funds have been authorized by the Congress for use by the States and the Internal Revenue Service (IRS) to reduce the evasion of motor fuel and highway use taxes. This document sets forth revised procedures, pursuant to sections 1101 and 1114 of Transportation Equity Act for the

ent of obligated funds. In order for ent funds to be available to meet target allocation, the following actions are recommended:

1. State revenue agencies are encouraged to extend the completion date for current projects utilizing unexpended funds (the FHWA will grant reasonable extensions of time up to December 2003 for current projects):

2. States should submit timely reimbursement vouchers so the FHWA can track the balance of unexpended funds for use in making annual allocations; and

3. Funds not obligated by June 30 would not be restored in future years.

The reduced allocations to the States will not be sufficient to fully fund some of the expenditure items previously budgeted, such as, auditor and investigator salaries, equipment purchases, and computerization initiatives. Funding for such items would have to be provided from the one-fourth percent allowable use of STP funds by mutual agreement between the State transportation and revenue agencies. But in any event, the \$5 million total available for distribution to the States for FYs 1999-2003 should, by judicious use of remaining unexpended funds and careful allocation to meet State needs, provide sufficient minimum funding for all States to continue participation in the activities of the Joint Compliance Project.

Steering Committee

At the outset of the Joint Compliance Project in 1990, a Steering Committee was formed to lend guidance to the regional task forces, serve as a clearinghouse for exchanging information among the task forces, recommend strategies for expanding the project, review progress, and resolve differences among project participants. The FHWA plans to continue using the Steering Committee, with at least one meeting each year, to assist the States, the IRS, and the task forces in adapting to the changing funding situation under TEA-21. Lead States should continue to designate a representative and alternate to serve on the Steering Committee. In addition, under the MOU to be signed between the IRS and the FHWA, the IRS has proposed forming a work group comprised of State, industry, and Federal agency participants that will develop and monitor an implementation plan for the automated fuel reporting system.

Project Requirements

The following requirements apply to highway use tax evasion projects funded with allocated funds under section 143(b)(1) or from STP funds:

1. Obligation authority—

a. Allocated funds—Obligation authority will be provided when funds are allocated by an FHWA Notice. The funds allocated to a State shall remain available to the State revenue agency responsible for motor fuel tax enforcement for obligation until June 30 of each fiscal year, at which time any unobligated funds will be withdrawn.

b. STP funds—Funds are available for obligation at the request of the State highway agency for the period specified in the law, i.e., for a period of up to 3 years following the year authorized. Funds obligated shall be included within the obligation limitation distributed to the State by the FHWA.

2. Federal share (allocated funds and STP funds)—

As provided in 23 U.S.C. 143(b)(8), funds are available at 100 percent Federal share.

3. Maintenance of effort certification—

a. Allocated funds—As specified in 23 U.S.C. 143(b), States wishing to receive allocations for tax evasion projects must certify that the aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level which does not fall below the average level of such expenditures for its last 2 fiscal years.

b. STP funds—Maintenance of effort certification is not required.

4. Task force participation—

a. Allocated funds—To receive allocations under this program, the State revenue agency responsible for enforcement of State motor fuel taxes shall sign the Memorandum of Understanding agreeing to participate in at least one of the regional task forces. States may join one or more task forces to best meet their needs for coordinated fuel tax enforcement.

b. STP funds—Signing the Memorandum of Understanding for participation in a regional task force is not required.

5. Project agreement—

a. Allocated funds—The State revenue agency shall sign two copies of the Project Agreement (FHWA-1548 as amended after July 1, 1998).

b. STP funds—The State highway agency shall sign the Project Agreement (PR-2). (A copy of the Project Agreement forms (FHWA-1548 and PR-2) may be obtained from the contacts listed in this notice.)

6. Project eligibility—

a. Allocated funds—Funds are available for projects to reduce evasion of motor fuel and other highway use taxes.

b. STP funds—Funds are available for initiatives to halt the evasion of

payment of motor fuel taxes" (emphasis added) as specified in 23 U.S.C. 143(b)(8).

7. Allowable costs (allocated funds and STP funds)—An estimate of costs by category of expenditure shall be attached to the Project Agreement. Allowable costs shall be determined in accordance with the Office of Management and Budget Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." With respect to travel costs, the FHWA project funds may be used:

a. To reimburse State travel costs for motor fuel tax examination and criminal investigation training;

b. For participation at regional task force meetings and other task force activities, such as, joint audits and investigations;

c. For participation in International Fuel Tax Agreement audit and enforcement committee activities;

d. For participation at meetings of the work group for the automated fuel reporting system;

e. For other cooperative State efforts to foster motor fuel tax compliance, such as, the meetings of the Uniformity Committee and the annual and regional Federation of Tax Administrators motor fuel conferences;

f. For participation of lead State representatives at Steering Committee meetings; and

g. For participation of representatives from other States at Steering Committee meetings when requested by the Steering Committee or to participate in other special activities arranged by the Steering Committee.

8. Intergovernmental review (allocated funds and STP funds)—The State shall comply with the intergovernmental review requirements of 49 CFR part 17 according to the procedures established by the State.

9. Environmental impacts (allocated funds and STP funds)—With respect to environmental impact and related procedures (23 CFR 771), projects are considered to be a categorical exclusion under 23 CFR 771.117(c)(1).

10. Compliance with planning requirements—Highway use tax evasion projects are deemed to be part of the long range plans discussed in 23 U.S.C. 134 and 135 with respect to enforcement of any highway user taxes the revenues from which are used to finance the implementation of projects in the plan. Projects should be included in the Transportation Improvement Program (TIP) as follows:

a. Allocated funds—Since funds are allocated to State revenue agencies only for the purpose of fuel tax evasion project activities, projects are not

required to be listed in the TIP discussed in 23 U.S.C. 134 and 135.

STP funds—Highway use tax evasion projects carried out by State agencies shall be included in the transportation improvement program (TIP) described in 23 U.S.C. 135. Highway use tax evasion projects carried out by local government agencies within the boundaries of metropolitan areas shall be included in the metropolitan TIP described in 23 U.S.C. 134.

11. Project approval (allocated funds and STP funds)—The State shall request FHWA approval for projects by submitting a letter to the FHWA Division Administrator in the State requesting funds for the project along with the following items:

- a. Evidence of completion of the intergovernmental review requirements;
- b. The cost estimate by expenditure category; and
- c. A signed original copy of the Project Agreement.

12. Project modifications (allocated funds and STP funds)—The State shall request in writing the FHWA's approval of the following items as necessary:

- a. Revised budget whenever the estimate for a single cost category changes by more than 10 percent of the total agreement amount, i.e., \$5,000 for \$10,000 project;

b. Proposal for procurement of professional services, including identification of the contractor and estimated cost, when the estimated cost exceeds \$10,000;

- c. Extension of project completion date and reasons for the extension; and
- d. Additional funding if required to complete the project.

13. Progress reports (allocated funds and STP funds)—Annual narrative and expenditure reports are required to document progress. The report forms covering motor fuel tax examinations, audits, criminal investigations, and roadside fuel checks are optional.

14. Audits (allocated funds and STP funds)—The State shall arrange for audits when required by 49 CFR part 90.

15. Reimbursement—

a. Allocated funds—State revenue agencies may continue to submit vouchers (PR-201) to the Division Administrator for payment.

b. STP funds—The State transportation agency would submit vouchers for payment as part of the current billing process, and the State transportation agency would make interagency fund transfers to other State or local agencies carrying out project activities.

Effective Date

The procedures described in this notice are effective on the date of publication, and may be modified by a subsequent notice based on the comments received.

Request for Comments

The FHWA is requesting public comment from all interested parties concerning the funding allocation, the administrative procedures described in this notice, or on any suggestions to enhance motor fuel tax compliance under this program.

Comments should be submitted to the docket by the deadline indicated in the DATES caption. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Authority: 23 U.S.C. 315; secs. 1101 and 1114, Pub. L. 105-178, 112 Stat. 1071(1998); and 49 CFR 1.48)

Issued on: October 2, 1998.

Kenneth R. Wykle,
Federal Highway Administration,
Administrator.

Memorandum of Understanding Between the U.S. Department of Transportation (DOT) and the Internal Revenue Service (IRS)

Purpose: The purpose of this Memorandum of Understanding (MOU) is to implement the provisions of 23 United States Code (U.S.C.) 143, relating to highway use tax evasion projects, in particular the requirement for the development and maintenance for an excise fuel reporting system.

Background: On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, authorizing highway, highway safety, transit, and other surface transportation programs for the next 6 years. TEA-21, as amended, builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991, and combines the continuation and improvement of current programs with new initiatives to meet America's needs through efficient and flexible transportation. A key part of funding these highway improvements is the collection of Federal and State revenues used for this purpose.

Recognizing the need to ensure compliance for revenue collection, section 1114 of TEA-21, amended 23 U.S.C. 143 to require that the Secretary of Transportation hereinafter

referred to as the "Secretary") shall carry out highway use tax evasion projects in accordance with the provisions therein. Section 143 provides that the funds made available to carry out highway use tax evasion projects may be allocated to the IRS and the States, and that the Secretary shall not impose any condition on the use of funds allocated to the IRS under this subsection.

Title 23, U.S.C. Section 143, further limits the use of funds, provides for the establishment and operation of an automated fuel reporting system, provides for a funding priority, and a MOU between the Secretary and IRS for the purposes of the development and maintenance by the IRS of an excise fuel reporting system.

Wherefore, the DOT and the IRS agree that:

I. Automated Excise Fuel Reporting System (the System) a.k.a. Excise Fuel Information Reporting System (EXFIRS)

(A) The IRS shall develop and maintain the system through contracts.

(1) The IRS believes that a participative process with all stakeholders is the best method to use in the design and development of ExFIRS. By October 1, 1998, the IRS will form a workgroup with participants representing industry, States, the Federal Highway Administration (FHWA), and the IRS. The workgroup will be headed by the IRS Director, Excise Taxes, and will develop an implementation plan to provide for a basic automated excise fuel reporting system, and for enhancements that will best serve the stakeholders, including industry, the States, the FHWA, other government agencies, the IRS, etc.

(2) Workgroup members will determine the system needs and assist the IRS in assembling an implementation plan for use in contracting.

(3) The IRS will use the most expeditious method to obtain qualified contractors to complete the project.

(4) The implementation plan will be a living document. The plan will be monitored by the workgroup on an ongoing basis with revisions to the content, scope, timing, as needed.

(B) The system shall be under the control of the IRS.

(C) To allow for a transition of funding for the States, the IRS projects that the following funding can be made available to the States for motor fuel compliance projects:

FY99	\$1,500,000
FY00	1,250,000
FY01	1,000,000
FY02	750,000
FY03	500,000
Total	5,000,000

(D) The system shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 8103 of the Internal Revenue Code of 1986.

II. Limitation on Use of Funds

Funds made available to carry out highway use tax evasion projects shall be used only:

- (A) to expand efforts to enhance motor fuel tax enforcement;

to fund additional IRS staff, but only to perform the functions described in this paragraph:

(C) to supplement motor fuel tax examinations and criminal investigations;

(D) to develop automated data processing tools to monitor motor fuel production and sales;

(E) to evaluate and implement registration and reporting requirements for motor fuel taxpayers;

(F) to reimburse State expenses that supplement existing fuel tax compliance efforts; and

(G) to analyze and implement programs to reduce tax evasion associated with other highway use taxes.

III. Funding Availability and Priority

(A) The Secretary shall, by Reimbursable Agreement, provide available funding to the IRS for the automated fuel reporting system and for highway use tax evasion projects as described in 23 U.S.C. 143.

(B) The Secretary shall make available sufficient funds for each of fiscal years 1998 through 2003 to the IRS to establish and operate an automated fuel reporting system as its first priority.

IV. Oversight

The FHWA Director, Office of Policy Development, and the IRS Director, Specialty Taxes, will review the development and implementation of highway use tax evasion project activity.

Dated: September 3, 1998

John R. Winkle,

Administrator, Federal Highway Administration

Dated: September 10, 1998.

Charles O. Rossotti,

Commissioner, Internal Revenue Service.

IFR Doc. 98-27231 Filed 10-8-98; 8:43 am

BILLING CODE 4910-22-9

Submitted by Sen. Wardlaw

MEMORANDUM

TO: Members of the Conference Committee on HB 1462
FR: Kathryn L. Strombeck, Research Analyst, Tax Department
RE: Fiscal Impact of HB 1462
DT: April 5, 1999

There have been at least four official fiscal notes on various versions of HB 1462. This memo will attempt to outline some of the estimated fiscal effects by type, which may help in your discussions. As is usually the case, please note that the actual amount of additional revenue is unknown; these are "best guess" estimates.

Provisions specific to the point of taxation change to terminal rack:

◆ One-time "bump" in collections:	+\$ 2 M
◆ Taxation of inventories:	+\$2.5 M
◆ Potential increased audit coverage:	+\$.8 M
	<u>3.5 M</u>

Other possible provisions:

◆ "Buy-Rite" refund provisions:	+\$1.0 M
◆ Dyed fuel enforcement:	+\$1.0 M
	<u>\$ 2.0 M</u>

The final two work hand-in-hand and may be manifested in better compliance at the front end - which is a desired outcome of the legislation.

Hopefully this will help clarify some of the fiscal effects that have been contained in the various versions of fiscal notes. Please let us know if you have any questions or if we can be of any assistance.

April 7, 1999

**1999-2001 ESTIMATED HIGHWAY FUND REVENUE -
COMPARISON OF EXECUTIVE BUDGET, HOUSE VERSION, AND SENATE VERSION**

	Executive Budget	House Version	Senate Version
Major highway fund revenue:			
Highway tax distribution fund			
Current law and House Bill Nos. 1130 and 1183:			
Total gas tax and motor vehicle registration fees			
Executive budget - Fuel tax at \$.20 per gallon and \$18.3 million of registration fee increases	\$185,600,000		
House version - Fuel tax at \$.21 per gallon and no increase in registration fees		\$180,400,000	
Senate version - Fuel tax at \$.20 per gallon and \$15.8 million of registration fee increases			\$184,050,000
Motor vehicle division changes - HB 1012		2,000,000	600,000
Additional fee for specific number plate - HB 1012			63,000
Ethanol incentive payments - HB 1019		(700,000)	(1,350,000)
Motorcycles and trailer registrations - HB 1312 (passed)		(50,000)	(50,000)
Point of taxation - HB 1462	400,000	1,400,000	0
Reservation fuel agreement		(189,000)	(189,000)
Total highway tax distribution fund revenue	\$187,000,000	\$182,861,000	\$183,124,000
Other major revenues not deposited in the distribution fund but directly in the highway fund, including licensing, fees, permits, interest, and miscellaneous	34,200,000	34,200,000	34,200,000
Related legislation affecting highway-related revenues.			
Highway Patrol funding - HB 1011	(13,200,000)	(13,200,000)	(13,200,000)
Highway fund transfer to general fund - HB 1011		(100,000)	(100,000)
Department of Transportation budget changes - HB 1012		4,000,000	3,223,000
Additional fee for Lewis and Clark plate - HB 1012			100,000
Graduated driver's license - HB 1291			40,000
Special road fund - SB 2267		(240,000)	(480,000)
Suspended driver's license fees - SB 2406 (passed)		810,000	810,000
Adjusted highway fund revenues available to Department of Transportation	\$208,000,000	\$208,331,000	\$207,717,000

¹ Although the fiscal note does not identify a specific fiscal impact relating to this bill, the narrative on the fiscal note indicates that provisions of the bill may result in additional highway tax distribution fund revenues of up to \$2 million per biennium.

NOTE The schedule below presents estimated highway tax distribution fund payments to cities and counties under the various versions

	1997-99 Biennium*	Executive Budget*	House Version*	Senate Version*
Payments to cities and counties	\$96.4	\$109.8	\$107.3	\$107.5

* Amounts shown in millions



ROCK CLAYBURGH
COMMISSIONER

STATE OF NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER

STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 58505-0588

701-328-2770

FAX 701-328-3700

Hearing/Speech Impaired 800-366-6888 (TTY Relay North Dakota)

[HTTP://WWW.STATE.ND.US/TA/CDPT](http://www.state.nd.us/ta/cdpt)

MEMORANDUM HB 1462

To: Rep. Stacey Mickelson
From: Joan Y. Galster
Motor Fuel Tax Supervisor
Date: April 8 1999
Re: Survey of other states

Rep. Mickelson:

Per your request, our staff conducted a brief survey of states that have moved the taxation of motor fuel to the rack. We contacted six states that we thought might have had some experiences that would apply to North Dakota. We were able to speak with four of the six.

I have attached copies of the telephone memos that detail our conversations with the four states that responded (Idaho, South Carolina, South Dakota and Wisconsin).

Please feel free to call me at 328-3139 if you have any other questions.



TELEPHONE MEMORANDUM



By: Doug VerDouw
Date: April 7, 1999
Name of Caller: Misc
Phone Number:
Name of Account:
Subject Matter: Legislative Inquiry

Message:

I spoke with Dar Walters (Idaho) and Robert Cromer (South Carolina) in regards to the effect of their states moving the point of taxation. Both indicated that they are not aware of any businesses that closed due to the moving of the point of taxation to the rack. Both indicated that the petroleum marketers in their state really liked the law change due to the decreased amount of paperwork that was required of the dealers. Let me know if you have any questions.

*****TELEPHONE MEMORANDUM*****

BY: Joan Y. Galster, Motor Fuel Supervisor

DATE: April 7, 1999

NAME OF CALLER: Alana Gourneau (I called her)

TELEPHONE NO: 605-773-5335

NAME OF ACCOUNT: SD Motor Fuels

SUBJECT MATTER: Rack Tax

MESSAGE:

I called Alana Gourneau (she is the individual who answered my survey questionnaire) to inquire whether SD's move to the rack resulted in jobbers down the chain from the rack going out of business. She said not to their knowledge - that she is sure they would have heard about it if that had been the case. They license entities down to the retailers and have not seen a decline in the number.

*****TELEPHONE MEMORANDUM*****

BY: Joan Y. Galster, Motor Fuel Supervisor

DATE: April 8, 1999

NAME OF CALLER: John Nordlie (I called him)

TELEPHONE NO: 608-26-3556

NAME OF ACCOUNT: WI Motor Fuels

SUBJECT MATTER: Rack Tax

MESSAGE:

Wisconsin's rack tax has been in place since April 1, 1994. I asked Mr. Nordlie whether anyone in the fuel distribution chain was forced out of business due to the movement of tax collection to the rack. He said not directly. Those who have gone out of business would have done so anyway. He said to his knowledge no one has gone out of business because of the movement of the tax to the rack.

For motor vehicle fuels, WI had a shrinkage allowance of 1.5% prior to changing the point of tax. They now have a 1.25% allowance with 1.15% passed down to the distributor who makes the purchase at the rack provided, however, that the distributor pay the supplier through electronic funds transfer prior to the supplier's due date for the tax.

HB 1462

Prepared by the North Dakota Legislative Council staff

April 9, 1999

1999-2001 ESTIMATED HIGHWAY FUND REVENUE -
COMPARISON OF VERSIONS

	Executive Budget	House Version	Senate Version	Final Action to Date*
Major highway fund revenue:				
Highway tax distribution fund				
Gas tax and motor vehicle registration fees - Current law and HB 1130 (passed)	\$174,100,000	\$174,100,000	\$174,100,000	\$174,100,000
Gas tax/motor vehicle registration fees - HB 1183				
Executive budget - Fuel tax at 20 cents per gallon and \$18.3 million of registration fee increases	11,500,000			
House version - Fuel tax at 21 cents per gallon and no increase in registration fees		6,300,000		
Senate version - Fuel tax at 20 cents per gallon and \$15.8 million of registration fee increases			9,950,000	
Motor vehicle division changes - HB 1012		2,023,191	574,191	
Additional fee for specific number plate - HB 1012			63,000	
Ethanol incentive payments - HB 1019		(713,160)	(1,343,160)	
Motorcycles and trailer registrations - HB 1312 (passed)		(50,400)	(50,400)	(50,400)
Point of taxation - HB 1462	1,386,000 ¹	(806,400) ²	0 ³	
Reservation fuel agreement		(189,000)	(189,000)	(189,000)
Total highway tax distribution fund revenue	\$186,986,000	\$180,664,231	\$183,104,631	\$173,860,600
Other major revenues not deposited in the distribution fund but directly in the highway fund, including licensing, fees, permits, interest, and miscellaneous	34,200,000	34,900,000 ⁴	34,900,000 ⁴	34,900,000 ⁴
Related legislation affecting highway-related revenues:				
Highway Patrol funding - HB 1011	(13,185,610)	(13,185,610)	(13,185,610)	
Highway fund transfer to general fund - HB 1011		(100,000)	(100,000)	
Department of Transportation budget changes - HB 1012		3,983,471	3,206,371	
Additional fee for Lewis and Clark plate - HB 1012			100,000	
Graduated driver's license - HB 1291 (passed)		44,000	44,000	44,000
Special road fund - SB 2267		(450,000) ⁴	(900,000) ⁴	
Suspended driver's license fees - SB 2406 (passed)		810,000	810,000	810,000
Adjusted highway fund revenues available to Department of Transportation	\$208,000,390	\$206,666,092	\$207,979,392	\$209,614,600

* The amounts shown in this column are only those that have been passed by both houses.

¹ The 1999-2001 executive budget highway fund revenue estimate included an additional \$1.4 million resulting from the point of taxation change recommended by the Governor. Although the fiscal note on the bill (HB 1462) as introduced did not specify any additional highway tax distribution fund revenue as a result of this change, the fiscal note narrative indicated that the bill may result in additional highway tax distribution fund revenues of up to \$2.5 million for the 1999-2001 biennium

² Although the fiscal note specifies a reduction of 1999-2001 biennium highway tax distribution fund revenues of \$1,280,000 as a result of the provisions of this bill, the Tax Department indicates that the bill may result in additional highway tax distribution fund revenues of up to \$4.5 million for the 1999-2001 biennium.

³ Although the fiscal note does not identify a specific fiscal impact relating to this bill, the narrative on the fiscal note indicates that provisions of the bill may result in additional highway tax distribution fund revenues of up to \$2 million per biennium.

Reflects the department's revised interest income estimate of \$1.5 million, \$700,000 more than the original estimate of \$800,000.

NOTE: The schedule below presents estimated highway tax distribution fund payments to cities and counties under the various versions:

	1997-99 Biennium**	Executive Budget**	House Version**	Senate Version**	Final Action to Date**
Payments to cities and counties	\$96.4	\$109.8	\$106.1	\$107.5	\$102.2

** Amounts shown in millions

April 9, 1999

Rep. Stacey Mickelson
ND House of Representatives
State Capitol
Bismarck, ND 58505

Dear Representative Mickelson:

We are writing to you in your capacity as Conference Committee Chairman of House Bill 1462. Throughout the Senate deliberations and conference committee meetings, little regard has been given to those interest groups who support HB-1462 as passed by the House, and the valid reasons for the support. This is disappointing to us.

We represent hundreds of North Dakota citizens and taxpayers who favor passage of HB-1462 with the tax at the rack provision. The bottom line for us is we know highway revenue will be enhanced, thereby helping create road construction jobs, while at the same time helping keep the state's motor fuel tax rate from unnecessarily being raised.

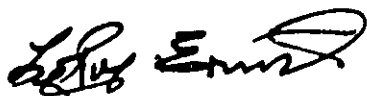
Moving the point of motor fuel tax collection to the rack works well, as witnessed by the federal government implementing it some 10 years ago. In addition, at least 15 states have made the change, all resulting in enhanced motor fuel tax revenue, and streamlined tax administration for the states and for the taxpayers. No state that has adopted the tax at the rack has reversed its decision, or even attempted to change back. We believe that is testimony that taxing at the rack is good government policy, and makes for happy motor fuel distributors and retailers.

The revenue to be gained by taxing at the rack, along with the "buy rite" concept, is too important to be ignored. It appears to us that in order for North Dakota to match all the federal highway funds expected, we are going to have to have a mixture of increases in motor fuel taxes, vehicle registration fees, AND tax at the rack.

Your efforts, Representative Mickelson, in chairing the conference committee on this important matter, are greatly appreciated. We urge you and the other conferees to continue to seek an agreement that incorporates the tax at the rack in the final version of HB-1462.

Thank you.

Sincerely,



LeRoy Ernst
ND Motor Carriers Association



Mark Johnson
ND Association of Counties



Curt Peterson
Associated General Contractors of ND



Lowell Ridgeway
ND Petroleum Council

Rep. Jimm
HB 1462

New fuel tax laws passed by the 1995 South Dakota legislature will go into effect January 1, 1996, bringing major changes to the state's fuel taxation system. The heart of the legislation is contained in two important provisions:

- a change in the point of taxation to the terminal rack for motor fuel, diesel fuel and aviation fuel
- implementation of a dyed diesel fuel program

Change in the Point of Taxation

Moving the point of taxation to the terminal rack means that individuals who own the fuel immediately before it is withdrawn from the rack must be licensed as suppliers and will remit fuel tax to the state of South Dakota on any fuel that they sell. An exception to this rule is fuel that is sold to a licensed exporter (an individual or business with a license to sell fuel outside of the state). If a licensed exporter withdraws fuel from a terminal and the bill of lading indicates the destination to be other than South Dakota, South Dakota tax is not imposed.

In addition to suppliers and exporters, other categories of licensees under the new law are out-of-state suppliers, importers, blenders, LPG and CNG vendors, LPG users, highway contractors, marketers, bulk plant operators and transporters.

• Out-of-state suppliers

Individuals who reside outside of South Dakota may voluntarily obtain a license as an out-of-state supplier. The out-of-state supplier must then remit South Dakota fuel tax on any transaction that indicates a South Dakota destination on a bill of lading.

• Importers

Like exporters, importers who bring fuel into the state by means other than a pipeline must be licensed. If they obtain fuel from an out-of-state supplier who is not voluntarily licensed for South Dakota, they are responsible for remitting the state fuel tax. If they are involved in both exporting and importing, any tax credit that exists on their tax return as a result of exports will automatically generate a refund.

• Blenders

Those individuals engaged in the blending of denatured 100 percent ethyl alcohol with gasoline must be licensed as a blender. The ethyl alcohol will not be subject to tax until it is blended (unless it is sold to an unlicensed party).

• Marketers

Individuals who purchase fuel from licensed suppliers and subsequently sell it to other customers must be licensed as marketers. This category will include most of those individuals formerly licensed as distributors and retail dealers. The marketer's license will enable a dealer to obtain any refunds to which he or she may be entitled.

• Highway Contractors

Individuals involved in highway construction, repair or maintenance that is financed through public funding will be required to be licensed as highway contractors. The license will enable them to purchase all types of fuel and report their usage. If a credit arises, refunds will be automatic.

• LPG and CNG Vendors and LPG Users

Individuals selling LPG or CNG, and LPG users that own licensed diesel vehicles or that use LPG for both taxable and non-taxable purposes, will be licensed as they have been in the past.

• Bulk Plant Operators

Bulk plant operators will be required to be licensed and maintain inventory records. However, they will have minimal or no reporting requirements.

• Transporters

Individuals who transport fuel by truck or railcar will be required to be licensed and maintain records. However, they will have minimal or no reporting requirements.

Reporting Requirements

All licensees who have reporting requirements (with the exception of LPG vendors and users and CNG vendors, whose reporting requirements will not change) will report on a monthly basis, on the last day of the month for the preceding month's activity.

- Suppliers and out-of-state suppliers will be allowed to deduct 2.25 percent from their taxable gallons, prior to determining their tax liability and paying the state.

- One-third of the allowance will be kept by the supplier.

- Two-thirds of the allowance will be passed along to the customer who purchases the fuel from the terminal location. Those purchasers have until the 25th day of the month

following the month in which the fuel was purchased to remit their tax liability to their supplier.

- Importers/exporters will deduct two-thirds of the 2.25 percent allowance from their taxable gallons prior to remitting their tax payment to the state.

Implementation of the Dyed Diesel Fuel Program

The second major change contained in the new fuel tax legislation is the dyed diesel fuel program. Diesel fuel that is to be used for agricultural and commercial purposes in equipment exempt from fuel taxation will have dye added to it. This dyeing program will make it easier to differentiate taxable and non-taxable fuel, thus ensuring that untaxed fuel is not consumed in licensed vehicles and eliminating the need for exemption certificates and licensing of special fuel users.

Refunds

Several special situations allow consumers or marketers to receive a refund of fuel taxes, including the following:

- **Refunds for Agricultural and Commercial Off-road Use of Undyed Fuel**

Consumers who use undyed (taxed) diesel fuel in licensed vehicles for agricultural or commercial off-road work will be entitled to a refund of their fuel tax. They are not, however, entitled to a refund on undyed fuel dispensed directly into equipment. (If you conduct agricultural or commercial off-road equipment transactions at your retail locations, you may want to consider adding an additional storage tank for dyed fuel so that you can dispense dyed fuel into these types of equipment.)

- **Refunds to Marketers**

Marketers will be able to claim a refund of fuel tax in the following cases:

- on undyed taxed diesel fuel sold as reefer fuel, subject to sales tax
- on all fuel sold to agencies of the federal government
- on all motor fuel sold to licensed Indian schools
- on all gallons lost

A claim must be submitted within 15 months of the initial transaction.

EXHIBIT B (continued)

Special Cases

There are some special situations outlined in the new legislation:

- **Terrigators and spray coupes**

Licensed terrigators and spray coupes are allowed to operate on dyed (untaxed) diesel fuel.

- **Sales to the state or political subdivisions**

Dyed diesel fuel must be sold to any state or political subdivision agency that would use fuel for road construction, repair or maintenance in either their own equipment or in licensed vehicles (for example, the Department of Transportation, or county highway maintenance shops). However, contrary to federal government fuel tax laws, you must sell undyed (taxed) diesel fuel to the state or political subdivisions for any of their other licensed vehicles (for example, diesel-powered cars used by the sheriff's department). In addition, you must sell undyed diesel fuel for all use in diesel-powered buses, including school buses. In these cases the government agencies and school districts will have to seek refund of the federal fuel taxes charged.

End-of-the-Year Inventory

In December you will receive a form on which to report and remit taxes on any undyed diesel fuel and jet fuel that remains in your inventory in South Dakota as of December 31, 1995. The inventory report and additional taxes will be due January 31, 1996. You will also report and be able to receive a credit or refund for any tax-paid 100 percent ethyl alcohol that remains in your storage as of December 31, 1995.

Joan Galster
explained this handout

MEMO

To: Representative Stacy Mickelson
From: Joan Galster, Motor Fuels Supervisor
Subject: Legislation (House Bill 1462)
Date: April 12, 1999

Per your call and our meeting of this morning, we have reviewed the records of the dealers referenced to provide additional information regarding the effect of the tax layout on fuel in inventory. The information relates to motor vehicle fuels only. Attached are the results of the review.

Sadowsky, GA

Storage (Motor Fuels): 74,000
40% of storage 29,600
Tax at .20 /gallon \$5,920.00

	Resale Shrink (Gallons)	Commission	Inventory	Shrink Gallons
07/31/96	824	390.81	24,993	(1,084)
08/31/96	609	304.42	16,364	(237)
09/30/96	402	197.19	21,675	(867)
10/31/96	465	230.75	24,140	(975)
11/30/96	404	193.07	23,021	(620)
12/31/96	373	245.76	23,086	(105)
01/31/97	337	154.19	16,123	(335)
02/28/97	384	180.27	22,641	65
03/31/97	292	144.83	18,399	56
04/30/97	376	217.73	13,479	(172)
05/31/97	421	210.78	30,430	(738)
06/30/97	678	322.71	17,472	(386)
07/31/97	675	313.84	24,830	(648)
08/31/97	782	369.94	24,767	(584)
09/30/97	518	246.23	19,054	(690)
10/31/97	441	211.71	25,801	(814)
11/30/97	481	204.57	21,580	(468)
12/31/97	370	172.88	21,926	(192)
01/31/98	336	168.52	18,752	(183)
02/28/98	270	106.88	15,497	14
03/31/98	289	155.30	28,243	(541)
04/30/98	341	174.06	14,605	42
05/31/98	505	240.74	17,652	(173)
06/30/98	660	305.06	15,806	(505)
Total	11,233	5,462.24	500,336	(10,140)
Average (per month)		227.59	20,847	(423)
40% of average			8,339	
Tax at .20 /gallon			1,667.80	
Percent of total storage			28.17%	

Schwab Oil

Storage (Motor Fuels): 88,830
 40% of storage 35,532
 Tax at .20 /gallon \$7,106.40

	Resale Shrink (Gallons)	Commission	Inventory	Shrink Gallons
07/31/96		111.20	19,651	
08/31/96		163.93	17,546	
09/30/96		77.97	16,782	
10/31/96		95.52	22,445	
11/30/96		86.95	8,990	(10,737)
12/31/96		77.57	8,822	
01/31/97		67.37	8,638	
02/28/97		80.79	11,723	
03/31/97		81.91	9,764	
04/30/97		91.67	7,852	
05/31/97		132.88	10,078	
06/30/97		105.52	12,717	
07/31/97		118.03	15,542	
08/31/97		180.22	14,333	
09/30/97		50.35	10,286	
10/31/97		100.88	18,801	
11/30/97		81.27	13,497	
12/31/97		80.79	13,225	
01/31/98		72.00	15,236	
02/28/98		63.09	16,486	
03/31/98		92.36	9,243	(9,685)
04/30/98		111.84	6,912	
05/31/98		96.14	4,496	
06/30/98		96.52	9,095	
Total		2,316.77	301,960	(20,422)
Average (per month)		96.53	12,582	(851)
40% of average			5,033	
Tax at .20 /gallon			1,006.60	
Percent of total storage			14.16%	

Sunrise Oil

Storage (Motor Fuels): 71,000
 40% of storage 28,400
 Tax at .20 /gallon \$5,680.00

	Resale Shrink (Gallons)	Commission	Inventory	Shrink Gallons
07/31/96		391.67	21,491	
08/31/96		350.05	15,162	
09/30/96		250.54	14,005	
10/31/96		248.02	27,364	
11/30/96		293.29	18,544	
12/31/96		225.66	16,949	(3,238)
01/31/97		199.42	11,046	
02/28/97		188.16	15,830	
03/31/97		199.00	18,818	
04/30/97		272.06	15,977	
05/31/97		297.93	19,690	
06/30/97		302.44	11,799	
07/31/97		330.04	25,947	
08/31/97		359.69	24,276	
09/30/97		288.43	19,246	
10/31/97		284.24	20,259	
11/30/97		215.83	20,189	
12/31/97		253.02	16,736	(5,107)
01/31/98		231.35	29,037	
02/28/98		153.18	12,641	
03/31/98		235.53	17,405	
04/30/98		298.75	18,545	
05/31/98		310.74	20,885	
06/30/98		288.98	21,674	
Total		6,468.02	453,515	(8,345)
Average (per month)		269.50	18,896	(348)
40% of average			7,559	
Tax at .20 /gallon			1,511.80	
Percent of total storage			26.61%	

Farmers Union
Kinson

Storage (Motor Fuels): 182,500
40% of storage 73,000
Tax at .20 /gallon \$14,600.00

	Resale Shrink (Gallons)	Commission	Inventory	Shrink Gallons
07/31/96		1,168.50	123,752	
08/31/96		1,251.69	128,284	
09/30/96		966.28	149,029	
10/31/96		1,234.14	140,925	
11/30/96		1,194.26	129,561	
12/31/96		1,005.97	109,772	
01/31/97		1,016.96	119,151	(15,785)
02/28/97		934.92	89,622	
03/31/97		1,040.62	123,267	
04/30/97		1,012.26	116,404	
05/31/97		1,358.63	141,447	
06/30/97		1,308.47	120,630	
07/31/97		1,628.32	107,449	
08/31/97		1,718.47	142,732	
09/30/97		1,161.74	141,139	
10/31/97		1,123.57	124,649	
11/30/97		1,123.91	136,762	
12/31/97		1,145.89	136,394	
01/31/98		1,142.82	122,994	
02/28/98		920.28	76,256	
03/31/98		1,084.74	114,091	
04/30/98		1,203.77	121,878	
05/31/98		1,248.54	122,445	
06/30/98		1,435.55	117,078	
Total	0	28,430.30	2,955,711	(15,785)
Average (per month)		1,184.60	123,155	(658)
40% of average			49,262	
Tax at .20 /gallon			9,852.40	
Percent of total storage			67.48%	

**Motor Vehicle Fuels
Commission and Shrinkage**

Joan Galster
Handout
HB 1462 Conf.

Fiscal Year	Total Gallons	Dealer Gains/Losses	Retail Shrinkage
1996	479,525,418	486,115	1,604,437
1997	491,580,800	900,818	1,722,359
1998	508,569,374	846,531	1,702,297
	1,479,675,592	2,233,464	5,029,093

Shrinkage Allowance (Revenue Neutral) 0.0049

Fiscal Year	Actual Commissions	Dealer Gains/Losses	Retail Shrink Allowance	
1996	1,348,743.15	92,361.85	303,660.66	1,744,765.66
1997	1,452,527.48	180,163.60	344,471.80	1,977,162.88
1998	1,473,546.33	169,306.20	340,459.40	1,983,311.93
	4,274,816.96	441,831.65	988,591.86	5,705,240.47

Fiscal Year	Tax Collected Gas/Gasoline	Total Allowance	
1996	66,350,035.79	1,744,765.66	
1997	71,061,007.79	1,977,162.88	
1998	72,419,039.26	1,983,311.93	
	209,830,082.84	5,705,240.47	
Average	69,943,360.95	1,901,746.82	
			Credit Allowance (Revenue Neutral) 0.0272

**Special Fuels
Commission and Shrinkage**

Fiscal Year	Total Gallons	Dealer Gains/Losses
1996	542,789,129	(47,756)
1997	559,822,965	(536,692)
1998	609,506,119	(352,034)
	1,712,118,213	(936,482)

Shrinkage Allowance (Revenue Neutral) (0.0005)

Fiscal Year	Actual Commissions
1996	223,680.20
1997	243,561.84
1998	238,915.71
	706,157.75

Fiscal Year	Tax Collected Diesel/LP	Total Allowance
1996	32,092,208.14	223,680.20
1997	35,877,134.44	243,561.84
1998	37,348,929.54	238,915.71
	105,318,272.12	706,157.75
Average	35,106,090.71	235,385.92

Credit Allowance (Revenue Neutral) 0.0067

**Tax Collection Allowance
Revenue Effect**

Motor Fuels

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Commissions/ Shrink	Revenue Effect
69,943,360.95 X	3.50% =	2,448,017.63 -	1,901,746.82 =	(546,270.81)
69,943,360.95 X	3.00% =	2,098,300.83 -	1,901,746.82 =	(196,554.01)
69,943,360.95 X	2.90% =	2,029,357.47 -	1,901,746.82 =	(126,610.64)
69,943,360.95 X	2.80% =	1,958,414.11 -	1,901,746.82 =	(56,667.28)
69,943,360.95 X	2.70% =	1,888,470.75 -	1,901,746.82 =	13,276.08
69,943,360.95 X	2.60% =	1,818,527.38 -	1,901,746.82 =	83,219.44
69,943,360.95 X	2.50% =	1,748,584.02 -	1,901,746.82 =	153,162.80
69,943,360.95 X	2.00% =	1,398,867.22 -	1,901,746.82 =	502,879.60
69,943,360.95 X	1.50% =	1,049,150.41 -	1,901,746.82 =	852,596.41
69,943,360.95 X	1.00% =	699,433.61 -	1,901,746.82 =	1,202,313.21
69,943,360.95 X	0.50% =	349,716.80 -	1,901,746.82 =	1,552,030.02

Special Fuels

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Average Commissions	Revenue Effect
35,106,090.71 X	3.50% =	1,228,713.17 -	235,385.92 =	(993,327.25)
35,106,090.71 X	3.00% =	1,053,182.72 -	235,385.92 =	(817,796.80)
35,106,090.71 X	2.50% =	877,652.27 -	235,385.92 =	(642,266.35)
35,106,090.71 X	2.00% =	702,121.81 -	235,385.92 =	(466,735.89)
35,106,090.71 X	1.50% =	526,591.36 -	235,385.92 =	(291,205.44)
35,106,090.71 X	1.00% =	351,060.91 -	235,385.92 =	(115,674.99)
35,106,090.71 X	0.70% =	245,742.63 -	235,385.92 =	(10,356.71)
35,106,090.71 X	0.50% =	175,530.45 -	235,385.92 =	59,855.47

Liquefied Petroleum

Current Average Collections	Proposed Credit Allowance	Total Allowance	Current Average Commissions	Revenue Effect
1,605,648.43 X	3.50% =	56,197.70 -	16,763.84 =	(39,433.86)
1,605,648.43 X	3.00% =	48,169.45 -	16,763.84 =	(31,405.91)
1,605,648.43 X	2.50% =	40,141.21 -	16,763.84 =	(23,377.37)
1,605,648.43 X	2.00% =	32,112.97 -	16,763.84 =	(15,349.13)
1,605,648.43 X	1.50% =	24,084.73 -	16,763.84 =	(7,320.89)
1,605,648.43 X	1.00% =	16,056.48 -	16,763.84 =	707.36
1,605,648.43 X	0.50% =	8,028.24 -	16,763.84 =	8,735.60

North Dakota Highway Funding
State, County, and City Matching Requirements
for the Years 1997-99, 1999-2001, and 2001-03
(Amounts Shown in Millions)

Tom Fields
4-11-99

Federal Fiscal Year	Federal Funds to State ¹	Required State Match ¹	Federal Funds to Counties	Required County Match	Federal Funds to Cities	Required City Match	Federal Funds to Others	Required Match	Total Federal Funds	Total Required Match
FY1998 (actual)	\$74.3	\$15.2	\$19.9	\$4.9	\$16.1	\$2.7	\$1.8	\$0.5	\$112.1	\$23.3
FY1997 (actual)	76.7	15.4	12.4	3.1	19.7	3.6	1.1	0.3	108.9	22.6
FY1998 (actual)	104.1	19.9	12.9	3.2	16.8	2.7	1.0	0.3	134.8	26.1
FY1999 (estimate)	109.9	24.2	21.6	5.4	24.6	4.6	2.0	0.5	158.1	34.7
FY2000 (estimate)	112.3	21.5	18.6	4.7	26.2	5.7	2.0	0.5	158.1	32.4
FY2001 (estimate)	124.5	27.2	19.6	4.9	26.6	3.6	2.1	0.6	173.0	36.3
FY2002 (estimate)	116.8	23.2	20.2	6.0	28.6	6.0	2.2	0.5	166.8	34.7
FY2003 (estimate)	125.3	25.9	20.7	5.2	26.6	5.1	2.2	0.6	174.8	36.8

¹ Includes the state share on projects that may involve the state and a city or the state and a county.

North Dakota Highway Funding
State, County, and City Matching Requirements
for the 1997-99, 1999-2001, and 2001-03 Bienniums
(Amounts Shown in Millions)

Federal Fiscal Year	Federal Funds to State ¹	Required State Match ¹	Federal Funds to Counties	Required County Match	Federal Funds to Cities	Required City Match	Federal Funds to Others	Required Match	Total Federal Funds	Total Required Match
1997-99	\$160.8	\$35.4	\$26.3	\$6.3	\$36.5	\$6.5	\$2.1	\$0.5	\$244.7	\$48.7
1999-2001	222.2	45.7	40.2	10.0	50.8	10.3	4.0	1.0	317.2	67.0
2001-03	240.2	50.4	39.8	10.0	55.4	9.3	4.4	1.1	339.8	71.1

¹ Includes the state share on projects that may involve the state and a city or the state and a county.

MOTOR VEHICLE FUEL (GASOLINE/GASOHOL)

*Joan Galster
4-14-99*

The following amounts are based on actual commissions taken by Motor Fuel dealers on reports filed during the period July 1997 through June 1998.

*pertains to
amend. 0309*

\$300 Cap on Collection Allowance

Allowances at Current Rate of 2% of Tax Due:

Actual Allowances Taken Fiscal Year 1998	Fiscal Year 1998 Total Times 2 For Biennial Estimate
1,472,111.10	2,944,222.20

Allowances if they had been capped at \$300:

Fiscal Year 1998 Allowances	Fiscal Year 1998 Total Times 2 For Biennial Estimate
733,489.09	1,466,978.18

Savings to State with a \$300 Cap on Allowances:

Fiscal Year 1998 Allowances	Fiscal Year 1998 Total Times 2 For Biennial Estimate
738,622.01	1,477,244.02

Allowances greater than \$300 were taken by 13% of the dealers.
13% of 581 = 77 dealers.

NOTE: The tax collection allowance for Special Fuels and Aviation Fuels is 1%, up to a maximum of \$300 per month.

MOTOR VEHICLE FUELS (GASOLINE/GASOHOL)

*Pertains to
amend .0310*

The following amounts are based on actual commissions taken by Motor Fuel dealers on reports filed during the period July 1997 through June 1998

1% Collection Allowance

Current Allowance Rate of 2% of Tax Due:

Actual Allowances Taken Fiscal Year 1998	Fiscal Year 1998 Total Times 2 For Biennial Estimate
1,472,111.10	2,944,222.20

If Allowance Rate were 1% of Tax Due:

Fiscal Year 1998 Allowances	Fiscal Year 1998 Total Times 2 For Biennial Estimate
736,055.55	1,472,111.10

Savings to State with a 1% Allowance Rate:

Fiscal Year 1998 Allowances	Fiscal Year 1998 Total Times 2 For Biennial Estimate
736,055.55	1,472,111.10

By changing the allowance from 2% to 1%, each dealer's allowance would be cut in half. All dealer's would share the cut, each to its own degree.

NOTE: The tax collection allowance for Special Fuels and Aviation Fuels is 1%, up to a maximum of \$300 per month.

Office of State Tax Commissioner
North Dakota Motor Vehicle Fuel Dealer's Report

Report for the Month of _____, 19____. Check if Amended Report
(This report is due on or before the 25th of the month)

Hand out

NOTE: If information on label is not correct, please make corrections on label.	Dealer's Business Name	Fed. ID.#
	Address	License #
	City, Town or Post Office, State, and Zip Code	Telephone #

Receipts, Disbursements, And Inventory Reconciliation

1. Beginning book inventory (from line 8 of previous report)	W	1	
2. Total gallons received (include nonblended alcohol/ethanol) (attach schedules)	X	2	
3. Total gallons available (line 1 plus line 2)		3	
4. Total gallons disbursed (include nonblended alcohol/ethanol) (line 14 plus line 18)	B	4	
5. Closing book inventory before adjustment (line 3 minus line 4)		5	
6. Inventory gains (from line 3 of Statement of Inventory Adjustments)	4	6	
7. Inventory losses (from line 4 of Statement of Inventory Adjustments)	Z	7	
8. Closing inventory after adjustment (line 5 plus line 6; or, line 5 minus line 7)	Y	8	
Disbursements			
9. Gallons sold on which the \$.20 ND tax was paid to your supplier (attach invoices)	H	9	
10. Gallons sold tax free to licensed dealer (attach schedule)	N	10	
11. Gallons exported (attach schedule in duplicate)	J	11	
12. Gallons sold to U.S. Government (attach invoices, or purchase orders, or schedules)	L	12	
13. Shrinkage allowance on taxable sales to retailer for resale:		13	
Taxable gallons sold to retailer D <input type="text"/> times .01 (1%)	F		
14. Total nontaxable gallons (add lines 9, 10, 11, 12, & 13)		14	
15. Taxable gallons of \$.20 gasoline sold or used	Q	15	
16. Taxable gallons of \$.20 gasohol and nonblended alcohol/ethanol sold or used	A	16	
17. Taxable gallons of \$.08 aviation gasoline sold or used	P	17	
18. Total taxable gallons (add lines 15, 16, & 17)		18	
Tax Computation			
19. Tax of \$.20 on gasoline (\$.20 times line 15)	C	19	\$
20. Tax of \$.20 on gasohol and nonblended alcohol/ethanol (\$.20 times line 16)	R	20	\$
21. Total tax on gasoline, gasohol and nonblended alcohol/ethanol (line 19 plus line 20)		21	\$
22. Commission for collecting tax [.02 (2%) times line 21]	I	22	\$
23. Tax due of \$.20 from line 9 of Statement of Inventory Adjustment	M	23	\$
24. Balance due (line 21 minus line 22 plus line 23)		24	\$
25. Penalty for late filing [.05 (5%) times line 24, minimum of \$5.00]	T	25	\$
26. Interest for late payment [.01 (1%) per month times line 24] (See instructions before completing)	U	26	\$
27. Tax due on \$.08 aviation gasoline (\$.08 times line 17)	K	27	\$
28. Consolidated Lab. Inspection Fees [.00025 (1/40 of 1%) times total of lines 12 & 18]	G	28	\$
29. Credit due from previous month(s)	V	29	\$
30. Total due (add lines 24, 25, 26, 27, & 28 - subtract line 29)		30	\$

I declare under the penalties of North Dakota Century Code § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Signature of Taxpayer	Date	Signature of Preparer Other Than Taxpayer	Date
Title of Taxpayer			

Mail To: Office Of State Tax Commissioner, State Capitol, 600 E. Boulevard Ave., Bismarck, ND 58505-0599

Do Not Write In This Space

Motor Vehicle Fuel Dealer's Statement Of Inventory Adjustments (See Instructions)

complete this statement only when adjusting your book inventory to your physical (actual) inventory - - Must be done at least once per year.

1. Closing book inventory (from line 5 of dealer's report)
2. Physical inventory as of _____ day of _____, 19 ____ (include gasoline, gasohol, and nonblended alcohol/ethanol)

Gallons

If line 2 is greater than line 1, enter Gain on line 3 - - do not complete lines 4 through 9.
If line 2 is less than line 1, enter Loss on line 4 and complete lines 5 through 9.

3. Gain (line 2 minus line 1) (enter on line 6 of dealer's report)
4. Loss (line 1 minus line 2) (enter on line 7 of dealer's report)

The entry on line 5 must be documented by attaching written statements by reputable witnesses to the loss such as fire fighters, police officers, or others.

5. Documented loss due to leakage, fire, theft, or other
6. Balance of loss (line 4 minus line 5)

If there is a balance due on line 6, dealers are allowed to deduct 1% of total gallons purchased during a specified period as nontaxable loss due to shrinkage as computed on line 7.

- Shrinkage allowance:
- a. Gallons purchased during period from _____ to _____
 - b. Allowance [.01 (1%) times line 7a]

--

8. Taxable loss (line 6 minus line 7b)

If there is a balance on line 8, compute the tax due.

9. Tax due (\$.20 times line 8) (enter on line 23 of dealer's report)

	\$
--	----

#1

1991 Title Summary

House Bill No. 1183 increases the rate of motor vehicle fuels and special fuels taxes from 20 cents to 21 cents per gallon July 1, 1999.

House Bill No. 1462 reduces the shrinkage allowance for fuel suppliers, distributors, and retailers from a maximum of one percent to a maximum of .5 percent. The bill eliminates refunds of special fuels taxes for nonhighway purposes and initiates a "buy right" provision under which nonhighway users must buy and use dyed special fuel, which is subject to the reduced rate of two percent. The bill creates administrative fees for the owner or operator of a licensed motor vehicle found to contain dyed special fuel and which is being used on a highway. The administrative fees range from \$250 for the first violation to \$5,000 for a fourth and subsequent violation occurring within three years. Citations for unlawful use of dyed fuel on highways are to be issued by the Highway Patrol and collected by the Tax Commissioner. The Tax Commissioner may waive the administrative fees for good cause.

House Bill No. 1019 extends for two years, through December 31, 2001, an additional one cent per gallon withheld from agricultural purpose fuel tax refunds and retained in the highway tax distribution fund.

TELECOMMUNICATIONS TAXES

Senate Bill No. 2015 amends several provisions of the telecommunications carrier gross receipts tax laws to provide for audit, appeal, assessment, and refund similar to laws for other types of taxes. The bill allows taxpayers six months to bring a district court challenge to an assessment made by the State Board of Equalization. The bill eliminates the taxable status of a hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to patients or guests. The bill requires a telecommunications carrier to identify revenue receipts from other carriers to assist the Tax Commissioner in identifying all telecommunications service resellers doing business in the state. The bill requires a telecommunications carrier that provides service to pay telephones owned by other companies to provide a list of those pay telephone companies to the Tax Commissioner. The bill eliminates a requirement for notice of tentative assessment of telecommunications carrier gross receipts taxes. The bill provides for excusing payments of a tax liability of less than \$5.

House Bill No. 1108 (vetoed) contained the same provisions amending telecommunications carrier gross receipts tax laws that ultimately were passed in Senate Bill No. 2015 plus a provision to make clear that Internet access service or similar service would be included in the definition of "telecommunications service" subject to the gross receipts tax. This bill was vetoed by the Governor, who expressed objection to inclusion of Internet access service in taxable telecommunications service.

Senate Bill No. 2101 provides that the \$8.4 million per taxable year of net telecommunications carrier gross receipts tax revenues allocated to political subdivisions under 1997 amendments to North Dakota Century Code Section 57-34-05 must be deposited in a special fund in the state treasury and any excess amount must be deposited in the state general fund. The bill provides that by March 1 of each year the Tax Commissioner shall certify for payment to the State Treasurer the amount due to each county from telecommunications carrier gross receipts taxes.

Senate Bill No. 2318 provides that a city or county that desires to increase the rate of a previously approved excise tax on telephone access lines for emergency 911 service must present a new ballot question regarding the proposed increase and obtain approval of a majority of electors voting on the question.

X



Bismarck Dyed Diesel Fuel Savings from Exemption of Construction Equipment

Cost to Install Computerized Fuel Monitoring System	Basic system	Retail dispensing
Fuel Dispensing Computer System	\$ 8,000	\$ 14,000
Electrical	\$ 6,000	\$ 6,000
Installation	\$ 2,000	\$ 2,000
Total Cost	\$ 16,000	\$ 22,000

Cost to install double walled inground diesel fuel tank \$ 100,000

Bismarck's average annual savings on federal diesel fuel tax \$14,600

Time to recover cost of installation of fuel dispensing computer system, 1.1 to 1.5 years

Bismarck Diesel Fuel

Year	Total Gallons	Diesel Gallons and cost of Fed Tax paid for road vehicles						Fed tax savings (\$ 23/gal)
		1st qtr	2nd qtr	3rd qtr	4th qtr	total	Untaxed Gallons	
2007	143,538	46,304	37,399	9,299	12,419	105,421	38,117	\$ 8,767
	federal tax due	\$ 2,783	\$ 3,093	\$ 1,749	\$ 2,336	\$ 9,961		
2008	170,573	12,899	34,116	17,460	17,139	81,614	88,959	\$ 20,461
	federal tax due	\$ 2,426	\$ 6,417	\$ 3,284	\$ 3,223	\$ 15,350		