

LEGISLATIVE BILL 1039

Approved by the Governor April 11, 1988

Introduced by Revenue Committee, Hefner, 19,
Vice-Chairperson; Haberman, 44; Rogers,
41; Hartnett, 45; Peterson, 21; Miller,
37; Landis, 46

AN ACT relating to fuel taxes; to amend sections 66-408, 66-410, 66-412, 66-428, 66-429, 66-473, 66-477, 66-478, and 66-610.03, Reissue Revised Statutes of Nebraska, 1943, and section 66-401, Revised Statutes Supplement, 1987; to redefine terms; to change provisions relating to dealers records; to change provisions relating to the liability for motor vehicle fuel taxes; to change provisions relating to the amount of motor vehicle fuel taxes; to change provisions relating to the payment and report of motor vehicle fuel taxes; to provide for use of certain trust funds; to provide an exception to the payment of taxes; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 66-401, Revised Statutes Supplement, 1987, be amended to read as follows:

66-401. As used in sections 66-401 to 66-424:

(1) Motor vehicles shall include all automotive or self-propelled vehicles, engines, or machines, movable or immovable, except farm tractors, which are operated or propelled in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this section;

(2) Motor vehicle fuels shall include all products and fuels commonly or commercially known as gasoline, including casing head or natural gas, benzol, naphtha, and benzine with an initial boiling point under two hundred degrees Fahrenheit, except any petroleum product having an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit and having an American Society of Testing Materials research method

octane number less than seventy and end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum, shall not be included as motor vehicle fuels, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of or as may be used for operating or propelling motor vehicles, motor boats, or aircraft, or as an ingredient in the manufacture of such fuels, except the products commonly known as kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, or smudge oil, and further except any petroleum product having an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit and having an American Society of Testing Materials research method octane number less than seventy and end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum, shall not be included as motor vehicle fuels. It shall not include the domestic alcohol content of any of the foregoing, it being specifically provided that domestic alcohol shall not be deemed to be a motor vehicle fuel for the purpose of such sections, except that agricultural ethyl alcohol produced in the State of Nebraska for use as a motor vehicle fuel shall be considered a motor vehicle fuel. The term domestic alcohol means ethyl alcohol produced from agricultural commodities grown within the continental United States, and for the purpose of such sections the volume of domestic alcohol blend with gasoline for motor vehicle fuel shall include the volume of any denaturant, other than gasoline, required pursuant to law. The term alcohol blend shall mean a blend of domestic ethyl alcohol in gasoline or other motor vehicle fuel, such blends to contain not less than five percent by volume of alcohol;

(3) The term dealers shall include (a) any person, firm, ~~copartnership~~ partnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof, who imports or causes to be imported into the State of Nebraska, ~~and also motor vehicle fuel as herein defined.~~ (b) any person, firm, ~~copartnership~~ partnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof, who produces, refines, manufactures, or compounds such motor vehicle fuel as herein defined, ~~or (c) any person.~~

firm, partnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof which purchases for sale motor vehicle fuel as herein defined from a dealer described in subdivision (3)(a) or (3)(b) of this section, any part of which such motor vehicle fuel is for use, distribution, sale, or delivery in the State of Nebraska, except that a refinery or pipeline terminal or barge terminal shall not be deemed a dealer as to any motor fuel sold to licensed dealers in Nebraska or sold or delivered for use in a state other than Nebraska; and

(4) Capacity of container with respect to any tank vehicle shall mean the internal volume, less reasonable space for expansion, of all the compartments of the cargo tank thereof in which any liquid is carried. When the vehicle is loaded by meter approved by the Tax Commissioner, the Tax Commissioner may accept as the capacity the metered gallons invoiced as recorded at the place of loading and shown on the loading ticket, waybill, or manifest.

Sec. 2. That section 66-408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-408. Every licensed dealer shall keep a complete and accurate record of all gallonage of motor vehicle fuel, to be based on capacity of container, received, purchased, or obtained and imported by such dealer, which record shall show the name and address of the person from whom each transfer or purchase of motor vehicle fuel so imported was made, the point from which shipped or delivered, the point at which received, and the number and initials of the car, if shipped by rail, or, if delivered by other means, the method of delivery and the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on capacity of container, of motor vehicle fuel imported, produced, refined, manufactured, or compounded; and the date of importation, production, refining, manufacturing, or compounding. If any licensed dealer sells to another licensed dealer any motor vehicle fuel on which a tax has not been paid pursuant to section 66-410, such licensed dealer shall keep as part of such dealer's records the name, address, and motor fuel dealer license number of the licensed dealer to whom the motor vehicle fuel was sold along with the date, quantity, and location where the motor vehicle fuel was sold. These records The records required by this section shall be retained and be available for audit and examination for a period of

three years following the date of filing fuel tax reports supported by ~~these such~~ records by the Tax Commissioner, or his or her authorized agents, at all times during the business hours of the day.

Sec. 3. That section 66-410, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-410. At the time of filing the statement required by section 66-409, such dealer shall, in addition to the tax imposed pursuant to sections 66-473, 66-477, and 66-478 and in addition to the other taxes provided for by law, pay a tax of ten and one-half cents per gallon upon all motor vehicle fuels as shown by such statement, except that there shall be no tax on the motor vehicle fuel so reported if the required taxes on the motor vehicle fuel have been paid or if the motor vehicle fuel has been sold to a licensed dealer and the seller was a licensed dealer as described in subdivision (3)(a) or (3)(b) of section 66-401 and was the importer or first receiver of such fuel in this state. Effective ~~January 1, 1978~~ July 1, 1985, gasoline sold in Nebraska which contains a minimum of ten percent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, produced from cereal grains or domestic agricultural commodities shall be subject to a state motor fuel tax which is ~~five~~ three cents per gallon less than gasoline which does not contain such a blend. ~~Effective July 1, 1985, gasoline which contains such a blend shall be subject to a state motor fuel tax rate which is three cents per gallon less than gasoline which does not contain such a blend.~~ Effective January 1, 1993, gasoline which contains such a blend shall be subject to the same state motor fuel tax rate as gasoline which does not contain such a blend. Such dealers shall remit such tax to the Tax Commissioner.

Sec. 4. That section 66-412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-412. No tax shall be collected with respect to motor vehicle fuel imported by barge, barge line, or pipeline, and stored at a barge, barge line, or pipeline terminal in this state, or refined at a refinery in this state and stored thereat until the motor vehicle fuel is withdrawn for sale or use in this state or is loaded at the terminal or refinery into transportation equipment for shipment or delivery to a destination in this state. When motor vehicle fuel is withdrawn or loaded as provided in this section, the

importer or the refiner in this state, as the case may be, shall be liable for payment of the motor vehicle fuel tax with respect thereto and subject to the following exemptions: (1) exemption: When motor vehicle fuel is withdrawn or loaded as provided in this section for delivery or shipment to the account of a person licensed as a dealer under section 66-403, such licensed dealer for whose account such fuel is loaded shall be deemed to be the importer or first receiver thereof in this state and shall pay the motor vehicle fuel tax with respect thereto, and the tax liability shall not be transferred to any other person; (2) when motor vehicle fuel so loaded is for shipment or delivery to a nonlicensed person for the account of a dealer licensed as such under section 66-403, the licensed dealer for whose account delivery to the unlicensed person is made shall be deemed to be the importer or first receiver thereof in this state and shall pay the motor vehicle fuel tax with respect thereto, and the tax liability shall not be transferred to any other person. The person, firm, or corporation owning and operating such refinery, barge or barge line terminal, or pipeline terminal shall furnish security as defined in section 66-404, in the sum of fifty thousand dollars for each such refinery, barge or barge line terminal, or pipeline terminal within the state, such security running to the Department of Revenue of the State of Nebraska, and conditioned upon the faithful performance of all obligations to the state imposed by law upon said such person, firm, or corporation. Such person, firm, or corporation shall make and file such verified reports of operations within the state as shall be required by the Tax Commissioner of the State of Nebraska.

Sec. 5. That section 66-428, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-428. In addition to the tax imposed pursuant to sections 66-473, 66-477, and 66-478, there There is hereby levied and imposed an excise tax of ten and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-473, 66-477, and 66-478, upon the use of all motor vehicle fuels, as defined by section 66-401, used in this state, and due the State of Nebraska under the provisions of section 66-410 or Chapter 66, article 6, except that such excise tax after June 1, 1979 July 1, 1985, shall be five three cents per gallon less on motor vehicle fuel containing a minimum of ten percent blend of agricultural ethyl alcohol produced from cereal grains or domestic

agricultural commodities whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, than on motor vehicle fuel which does not contain such a blend. Effective July 17, 1985, such excise tax shall be three cents per gallon less on such motor vehicle fuel containing such a blend than on such motor vehicle fuel which does not contain such a blend. Effective January 1, 1993, the excise tax on such motor vehicle fuel containing such a blend shall be the same as that on such motor vehicle fuel which does not contain such a blend. Users of motor vehicle fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by sections 66-413 and 66-414. For purposes of this section and section 66-429, use shall mean the purchase or consumption of motor vehicle fuels in this state.

Sec. 6. That section 66-429, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-429. Every person, firm, corporation, or association using motor vehicle fuels subject to taxation on the use thereof under the provisions of sections 66-428 to 66-431 and 66-441, shall pay said the excise tax taxes and make a report concerning the same to the Tax Commissioner in like manner, form, and time as is required by sections 66-409 and 66-410 for dealers in motor vehicle fuels. No such payment of tax or report shall be required if, with the knowledge and consent or at the request of the user of such motor vehicle fuels, such tax shall have has been paid and the report made for said has been made for such user by any dealer licensed under the provisions of section 66-403. Dealers or other persons having paid said such tax, or being liable for its payment, shall collect the amount thereof from any person, firm, or corporation to whom said such motor vehicle fuel is sold in this state along with the selling price thereof.

Sec. 7. That section 66-473, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-473. (1) Each dealer as defined in subdivision (3) of section 66-401 required by section 66-410 to pay motor vehicle fuel taxes shall, in addition to all other taxes provided by law, pay an excise tax at a rate, set pursuant to section 66-476, for motor vehicle fuels, as defined in Chapter 66, article 4 section 66-401, received, imported, produced, refined, manufactured, blended, or compounded by such

dealer within the State of Nebraska as a motor vehicle fuel, suitable for retail sale. All sums of money received under this section shall be credited to the Highway Trust Fund for allocation to the Highway Cash Fund, except that the State Treasurer shall first transfer such amounts to the Tax Refund Fund as the Tax Commissioner shall determine to be equal to the credits and refunds of such tax allowed to dealers.

(2) Dealers of motor vehicle fuels subject to taxation under subsection (1) of this section shall pay such excise tax and make a report concerning the tax in like manner, form, and time and be allowed the same exemptions, deductions, and rights of reimbursement as are authorized dealers for taxes paid pursuant to Chapter 66, article 4.

Sec. 8. That section 66-477, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-477. In addition to the tax imposed by sections 66-410 and 66-473, each dealer required by section 66-410 to pay motor vehicle fuel taxes shall pay an excise tax of two cents per gallon on all motor vehicle fuels received, imported, produced, refined, manufactured, blended, or compounded by such dealer within the State of Nebraska.

Sec. 9. That section 66-478, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-478. In addition to the tax imposed by sections 66-428 and 66-410, 66-473, and 66-477 each dealer required by section 66-410 to pay motor vehicle fuel taxes shall pay an excise tax of two cents per gallon on all motor vehicle fuel or special fuel used in the State of Nebraska.

Sec. 10. That section 66-610.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-610.03. (1) Money in the trust funds created pursuant to section 66-610.01 shall be used solely for the purpose of preventing a loss to the state for fuel taxes that are not paid and for use in automating enforcement of the taxation of motor fuels imported into Nebraska. The total amount of the trust funds which may be used for enforcement shall not exceed one hundred and twenty-five thousand dollars.

(2) Whenever the Tax Commissioner determines that fuel tax has been delinquent for ninety days, he or she shall certify the delinquent amount of tax and the interest due thereon to the State Treasurer. The

certification shall include the specific fund into which the tax would have been deposited if received and which cash bond is liable for the tax and interest.

(3) Upon receipt of the certification, the State Treasurer shall transfer the amount to the fund identified.

(4) Such transfer shall not affect the liability of the dealer to the state.

Sec. 11. The changes made by this legislative bill shall apply to any transactions occurring on or after January 1, 1988.

Sec. 12. That original sections 66-408, 66-410, 66-412, 66-428, 66-429, 66-473, 66-477, 66-478, and 66-610.03, Reissue Revised Statutes of Nebraska, 1943, and section 66-401, Revised Statutes Supplement, 1987, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

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