

Fifty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1462

Introduced by

Representatives Timm, Dorso

1 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,  
2 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  
3 chapter 57-43.4 of the North Dakota Century Code, relating to collection by the supplier of  
4 motor vehicle, special fuels, aviation fuels, and alternative fuels taxes, taxation of inventories,  
5 administration, enforcement, and penalties; to amend and reenact sections 57-43.1-02,  
6 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,  
7 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  
8 Dakota Century Code, relating to collection by suppliers of motor vehicle, special fuels, aviation  
9 fuels, and alternative fuels taxes, taxation of inventories, administration, enforcement, and  
10 penalties; to repeal sections 57-43.1-27 and 57-43.3-24 of the North Dakota Century Code,  
11 relating to motor vehicle fuels tax imposition and credit for losses and aviation fuel taxes  
12 collection allowances; and to provide an effective date.

13 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

14 **SECTION 1. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **57-43.1-02. (Effective through December 31, 1999) Tax imposed on motor vehicle**  
17 **fuels.**

- 18 1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79  
19 liters] is imposed on all motor vehicle fuel sold or used in this state.
- 20 2. ~~The dealer~~ A supplier shall ~~collect~~ remit the tax imposed by this section ~~from the~~  
21 on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a  
22 distributor or retailer, and on direct sales of motor vehicle fuel to a consumer on all  
23 sales. For a supplier who is also a distributor or retailer, the motor vehicle fuel  
24 must be considered sold and the tax imposed when the fuel is removed from a

- 1           terminal by the supplier. A distributor who is an importer shall remit the tax  
2           imposed by this section on motor vehicle fuel imported into the state.
- 3           3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the~~  
4           ~~dealer may collect the tax imposed by this chapter, but on sales in the original~~  
5           ~~package to persons other than licensed dealers, the dealer is liable for the tax.~~  
6           The tax imposed by this section does not apply on a sale by a supplier to another  
7           supplier, or on an export by a licensed exporter.
- 8           4. A supplier required to remit the tax imposed by this section shall pass the tax on to  
9           the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer  
10           or consumer. A retailer shall pass the tax on to a consumer.
- 11           5. The person required to remit the tax imposed by this section shall pay the tax to  
12           the commissioner by the twenty-fifth day of the calendar month after the month  
13           during which the motor vehicle fuel was acquired, sold, or used by the person.  
14           When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or  
15           legal holiday, the due date is the first working day after the Saturday, Sunday, or  
16           legal holiday. When payment is made by mail, the payment is timely if the  
17           envelope containing the payment is postmarked by the United States postal  
18           service or other postal carrier service before midnight of the due date.
- 19           6. A licensed distributor may delay the payment of the tax required to be paid to a  
20           supplier until one day prior to the date the tax is due and payable by the supplier.  
21           To be timely, a distributor's tax payment must be available to the supplier for  
22           deposit on or before the date the distributor's tax payment is due. The licensed  
23           distributor may make the payment to a supplier by electronic funds transfer or by  
24           mail.
- 25           7. The commissioner shall pay over all of the moneys received during each calendar  
26           month to the state treasurer.

27           **(Effective after December 31, 1999) Tax imposed on motor vehicle fuels.**

- 28           1. Except as otherwise provided in this section, a tax of seventeen cents per gallon  
29           [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
- 30           2. ~~The dealer~~ A supplier shall ~~collect~~ remit the tax imposed by this section ~~from the~~  
31           on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a

- 1           distributor or retailer, and on direct sales of motor vehicle fuel to a consumer ~~on all~~  
2           sales. For a supplier who is also a distributor or retailer, the motor vehicle fuel  
3           must be considered sold and the tax imposed when the fuel is removed from a  
4           terminal by the supplier. A distributor who is an importer shall remit the tax  
5           imposed by this section on motor vehicle fuel imported into the state.
- 6           3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the~~  
7           ~~dealer may collect the tax imposed by this chapter, but on sales in the original~~  
8           ~~package to persons other than licensed dealers, the dealer is liable for the tax.~~  
9           The tax imposed by this section does not apply on a sale by a supplier to another  
10           supplier or on an export by a licensed exporter.
- 11           4. A supplier required to remit the tax imposed by this section shall pass the tax on to  
12           the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer  
13           or consumer. A retailer shall pass the tax on to a consumer.
- 14           5. The person required to remit the tax imposed by this section shall pay the tax to  
15           the commissioner by the twenty-fifth day of the calendar month after the month  
16           during which the motor vehicle fuel was acquired, sold, or used by the person.  
17           When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or  
18           legal holiday, the due date is the first working day after the Saturday, Sunday, or  
19           legal holiday. When payment is made by mail, the payment is timely if the  
20           envelope containing the payment is postmarked by the United States postal  
21           service or other postal carrier service before midnight of the due date.
- 22           6. A licensed distributor may delay the payment of the tax required to be paid to a  
23           supplier until one day prior to the date the tax is due and payable by the supplier.  
24           To be timely, a distributor's tax payment must be available to the supplier for  
25           deposit on or before the date the distributor's tax payment is due. The licensed  
26           distributor may make the payment to a supplier by electronic funds transfer or by  
27           mail.
- 28           7. The commissioner shall pay over all of the moneys received during each calendar  
29           month to the state treasurer.

30           **SECTION 2.** Section 57-43.1-02.2 of the North Dakota Century Code is created and  
31 enacted as follows:

1           **57-43.1-02.2. Inventory tax.** A person who has title to or possession of tax-free motor  
2 vehicle fuel as of the close of the business day preceding the effective date of this Act, is  
3 subject to the tax imposed by this chapter on the tax-free motor vehicle fuel in inventory. The  
4 tax on the inventory is due and payable to the commissioner on or before the twenty-fifth day of  
5 February succeeding the effective date of this Act. The tax on inventories does not apply to a  
6 supplier's motor vehicle fuel in a terminal.

7           **SECTION 3.** Section 57-43.1-12.1 of the North Dakota Century Code is created and  
8 enacted as follows:

9           **57-43.1-12.1. Credit for taxes paid on worthless accounts and refunds.** Except in  
10 the case of sales to bonded distributors, taxes paid on motor vehicle fuel represented by  
11 accounts found to be worthless and actually charged off for income tax purposes may be taken  
12 by a supplier as a credit against subsequent taxes due provided the accounts charged off  
13 included the cost of the fuel as well as the taxes due. If in any case the credit, or any part of it,  
14 cannot be utilized by the supplier because of a discontinuance of a business or for other valid  
15 reason, the amount may be refunded. If the worthless account is charged off by a distributor or  
16 a retailer, the distributor or retailer may file a claim with the commissioner for a refund of the  
17 noncollectible taxes. If the worthless account is subsequently collected, the amount of the tax  
18 collected must be remitted to the commissioner.

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

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

1           **SECTION 4. AMENDMENT.** Section 57-43.1-14 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **57-43.1-14. ~~Form and contents of application for dealer's license—Fee—Bond or~~**  
4 **~~other security letter of credit required.~~** As a condition precedent to the issuance of a single  
5 or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond,  
6 or an approved letter of credit as security to guarantee the payment of the motor vehicle fuel  
7 tax liabilities imposed by this chapter. A refiner, a terminal operator, a distributor who is not an  
8 importer, or an exporter who is not also licensed as a supplier, is exempt from this requirement.

- 9           1. ~~To procure a license as a dealer in motor vehicle fuel, an applicant shall file with~~  
10 ~~the commissioner an application upon a form prescribed and furnished by the~~  
11 ~~commissioner. Such application must contain:~~ The surety bond, cash bond, or  
12 letter of credit must be in an amount prescribed by the commissioner but not less  
13 than one thousand dollars.
- 14           a. ~~The name under which the applicant intends to transact business.~~
  - 15           b. ~~If a partnership, the name and address of each of the several persons~~  
16 ~~constituting the firm.~~
  - 17           c. ~~If a domestic corporation, the corporate name, the date of incorporation, and~~  
18 ~~the names of the directors and corporate officers.~~
  - 19           d. ~~If a foreign corporation, the corporate name, the state where and the time~~  
20 ~~when incorporated, the name of the resident agent, the location of each place~~  
21 ~~of business, and the date on which the business was established.~~
  - 22           e. ~~If a domestic limited liability company, the limited liability company name, the~~  
23 ~~date of formation, and the names of the governors and managers.~~
  - 24           f. ~~If a foreign limited liability company, the limited liability company name, the~~  
25 ~~state where and the time when formed, the name of the resident agent, the~~  
26 ~~location of each place of business, and the date on which the business was~~  
27 ~~established.~~
  - 28           g. ~~Any other information the commissioner may require. The application must~~  
29 ~~be signed and verified by the owner of the business, if an individual,~~  
30 ~~partnership, or unincorporated association, by any authorized officer, if a~~  
31 ~~corporation, and by any authorized manager, if a limited liability company.~~

- 1           2. ~~At the time of applying for a license, the applicant shall pay to the commissioner as~~  
2           ~~a license fee the sum of twenty dollars. This fee must be paid into the state~~  
3           ~~treasury and credited to the general fund. The surety bond, cash bond, or letter of~~  
4           ~~credit is subject to approval by the commissioner.~~
- 5           3. ~~As a condition precedent to the issuance of a license, a dealer shall furnish a bond~~  
6           ~~in an amount set by the commissioner, but not less than one thousand dollars,~~  
7           ~~guaranteeing the payment of the motor vehicle fuel tax collected by the dealer.~~  
8           ~~The bond is subject to approval by the commissioner and must be in effect for at~~  
9           ~~least three years. After a dealer has had a valid license for three or more years,~~  
10          ~~the commissioner may review the records of the dealer and waive the bond~~  
11          ~~requirement. The bond requirement may be reinstated at the discretion of the~~  
12          ~~commissioner. After a single or multiple license has been in effect for five or more~~  
13          ~~years, the commissioner may review the person's records and may waive the~~  
14          ~~requirement for a security. The requirement for a security may be reinstated at the~~  
15          ~~discretion of the commissioner.~~
- 16          4. ~~In lieu of a bond, securities, including letters of credit, approved by the~~  
17          ~~commissioner in such amounts as the commissioner may prescribe, may be~~  
18          ~~deposited with the commissioner, which securities shall be kept in the custody of~~  
19          ~~the commissioner and may be sold by the commissioner at public or private sale,~~  
20          ~~without notice to the depositor, if it becomes necessary to recover any tax,~~  
21          ~~penalties, or interest due. All moneys deposited as security with the commissioner~~  
22          ~~under the provisions of this subsection must be paid by the commissioner to the~~  
23          ~~state treasurer and credited by the treasurer into a special fund to be known as the~~  
24          ~~"motor vehicle fuel tax security trust fund". If any tax, penalty, or interest imposed~~  
25          ~~by this chapter is not paid when due, the commissioner shall certify that~~  
26          ~~information to the director of the office of management and budget who shall~~  
27          ~~transmit the money to the commissioner who shall apply the money deposited by~~  
28          ~~the person or so much of the deposit as is necessary to satisfy the tax, penalty,~~  
29          ~~and interest due. The commissioner, when in the commissioner's judgment it is no~~  
30          ~~longer necessary to require the deposit to be maintained by the depositor, shall~~  
31          ~~certify that information to the director of the office of management and budget who~~

1           ~~shall pay the unused money to the depositor.~~ A surety bond or letter of credit  
2           provided as security must be kept in the custody of the commissioner and may be  
3           used by the commissioner, without notice to the principal, if it becomes necessary  
4           to cover the motor vehicle fuel tax, penalties, and interest due.

5           5. Money deposited with the commissioner as a cash bond must be made in the form  
6           of a cashier's check or bank money order payable to the commissioner. The  
7           money received must be paid by the commissioner to the state treasurer and  
8           credited by the treasurer to a special fund known as the motor fuel tax security  
9           trust fund. The money deposited may be used by the commissioner, without  
10           notice to the depositor, if it becomes necessary to cover tax, penalties, and interest  
11           due. If the money deposited is used to cover unpaid liabilities, the commissioner  
12           shall certify the information to the director of the office of management and budget.  
13           The office of management and budget shall transmit the money to the  
14           commissioner who shall apply as much of the money deposited by the person as is  
15           necessary to satisfy the liabilities. When in the commissioner's judgment it is no  
16           longer necessary to require the deposit to be maintained, the commissioner shall  
17           certify the information to the director of the office of management and budget who  
18           shall pay the unused money to the depositor.

19           **SECTION 5. AMENDMENT.** Section 57-43.1-16 of the 1997 Supplement to the North  
20           Dakota Century Code is amended and reenacted as follows:

21           **57-43.1-16. ~~Report~~ Monthly report by dealer to commissioner refiner, supplier,**  
22           **importer, or exporter required.** ~~Each dealer in motor vehicle fuel who engages in the sale or~~  
23           ~~use of motor vehicle fuel in this state shall render to the commissioner, not later than the~~  
24           ~~twenty fifth day of each calendar month, on the form prescribed, prepared, and furnished by the~~  
25           ~~commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used,~~  
26           ~~received, and delivered by that dealer during the preceding calendar month. If the~~  
27           ~~commissioner deems it necessary to ensure the payment of the tax imposed by this chapter,~~  
28           ~~the commissioner may require returns and payment of the tax to be made for periods other~~  
29           ~~than monthly periods. If the dealer is a domestic corporation, the statement must be signed by~~  
30           ~~the president or secretary, and if a foreign corporation, by the resident general agent, attorney~~  
31           ~~in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability company,~~

1 ~~the statement must be signed by the president or treasurer, and if a foreign limited liability~~  
2 ~~company, by the resident agent, president, or treasurer. If the dealer is a firm, or an~~  
3 ~~association of individuals, the statement must be made by the managing agent or owner.~~

- 4       1. A refiner, supplier, importer, or exporter shall file a monthly report with the  
5           commissioner no later than the twenty-fifth day of each calendar month covering  
6           motor vehicle fuel acquired, sold, and used during the preceding calendar month.  
7           When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or  
8           legal holiday, the due date is the first working day after the Saturday, Sunday, or  
9           legal holiday. When the report is filed by mail, the report is timely if the envelope  
10           containing the report is postmarked by the United States postal service or other  
11           postal carrier service before midnight of the due date.
- 12       2. The report to the commissioner must be on a form prescribed and furnished by the  
13           commissioner. The commissioner may require that all or part of the report be  
14           submitted in an electronic format approved by the commissioner, provided the  
15           person required to file the report is able to use an electronic format. The report  
16           must contain the information as required by the commissioner including:
  - 17           a. A detailed schedule of gallons of motor vehicle fuel refined, purchased,  
18               imported, and exported.
  - 19           b. A detailed schedule of gallons of motor vehicle fuel sold to a person eligible to  
20               purchase the motor vehicle fuel without the tax imposed by this chapter.
  - 21           c. A detailed schedule of gallons of motor vehicle fuel sold tax-paid for resale,  
22               including a list of persons who purchased the motor vehicle fuel for resale.
  - 23           d. The total number of gallons of motor vehicle fuel sold and used subject to the  
24               tax imposed by this chapter.
  - 25           e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified  
26               consumer.
  - 27           f. The number of gallons of motor vehicle fuel in inventory at the beginning of  
28               the calendar month, the number of gallons in inventory at the close of the  
29               calendar month, and any gains or losses experienced.
- 30       3. The report must be signed by the taxpayer to be valid and must contain a written  
31           declaration that it is made and subscribed under penalties of perjury.



1           4. The tax commissioner may prescribe alternative methods for signing, subscribing,  
2           or verifying a return filed by electronic means, including telecommunications, that  
3           shall have the same validity and consequence as the actual signature and written  
4           declaration for a paper return. ~~The report must contain a statement of the~~  
5           ~~quantities of motor vehicle fuel sold, used, received, and delivered within this state~~  
6           ~~from the dealer's place of business. If any motor vehicle fuel has been sold and~~  
7           ~~delivered by the dealer to customers in the original package, whether in tank car,~~  
8           ~~barrel, or other package, and in the form and condition in which the same was~~  
9           ~~imported, the statement must show the amount of motor vehicle fuel so sold and~~  
10           ~~delivered, and the names and addresses of the persons to whom it was sold and~~  
11           ~~delivered.~~

12           **SECTION 6. AMENDMENT.** Section 57-43.1-24 of the North Dakota Century Code is  
13           amended and reenacted as follows:

14           **57-43.1-24. ~~Deduction of cost of collecting~~ Tax credit allowance.** ~~On making~~  
15           ~~payments to the commissioner as provided in this chapter, the dealer shall deduct two percent~~  
16           ~~from the amount of tax due to cover the cost of collecting the tax and transmitting it to the~~  
17           ~~commissioner. A supplier shall deduct two and seven-tenths percent from the amount of tax~~  
18           ~~due and payable as a credit to cover the cost of collecting the tax and to cover shrinkage and~~  
19           ~~evaporation losses due to temperature adjustments. The supplier shall pass two and~~  
20           ~~five-tenths percent of the credit allowance on to the distributor or retailer. The supplier shall~~  
21           ~~report the credit allowance on the monthly tax report and shall retain records verifying that the~~  
22           ~~credit was passed on to a distributor. The tax credit allowance does not apply to additional tax~~  
23           ~~assessed during an audit.~~

24           **SECTION 7. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is  
25           amended and reenacted as follows:

26           **57-43.1-26. Inventory gains - Losses ~~-Deductions allowed to dealer - Remedies.~~**  
27           ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of~~  
28           ~~motor fuel received during each calendar month from the statement submitted as required in~~  
29           ~~section 57-43.1-16, but the allowance may not exceed one percent of the total received during~~  
30           ~~that month. For purposes of this chapter, it is presumed that all motor vehicle fuel received by~~  
31           ~~each dealer above this one percent allowance, except that gallonage shown as inventory at the~~

1 ~~end of each calendar month, and other allowances provided in this chapter, has been sold,~~  
2 ~~delivered, or used and the dealer is liable for the amount of the motor vehicle fuel tax on each~~  
3 ~~gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle~~  
4 ~~fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle~~  
5 ~~fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not~~  
6 ~~deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this~~  
7 ~~state, or for shipment or delivery to destinations in this state.~~

- 8 1. A supplier, distributor, or retailer shall take a physical inventory reading of all motor  
9 vehicle fuel located in a terminal, underground tank, aboveground tank, railcar,  
10 storage tank of a tank truck, and the storage tank of a bulk delivery truck on a  
11 regular basis. The physical inventory reading must include motor vehicle fuel  
12 stored in a barrel, drum, or other receptacle.
- 13 2. Except as otherwise provided in this chapter, a supplier is liable for the tax  
14 imposed under section 57-43.1-02 on all motor vehicle fuel not accounted for.
- 15 3. When sold or used by a supplier, distributor, or retailer, a gain in motor vehicle fuel  
16 inventories is subject to the tax imposed by this chapter in the same manner as  
17 motor vehicle fuel purchased, imported, or otherwise acquired.
- 18 4. The commissioner may allow a tax credit to a supplier and a tax refund to a  
19 distributor or retailer for actual inventory losses due to a casualty loss, based on  
20 proof of the loss as required by the commissioner.

21 **SECTION 8. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23 **57-43.2-01. Definitions.** As used in this chapter, unless the context otherwise  
24 requires:

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

- 1           3. "Consumer" means a user of special fuel including any person purchasing special  
2           fuel in this state for use in a licensed motor vehicle; any person importing special  
3           fuel into this state or purchasing special fuel in this state for use as heating fuel, or  
4           for an agricultural, industrial, or railroad purpose; or any person purchasing special  
5           fuel in this state for use in recreational or any other types of motor vehicles. It  
6           does not include a dealer or a retailer importing or purchasing special fuel for  
7           resale.
- 8           4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale  
9           dealer of liquefied petroleum gas.
- 10          5. "Director" means the director of the department of transportation.
- 11          6. "Dyed special fuel" means special fuel to which an indelible dye meeting United  
12          States environmental protection agency and internal revenue service regulations  
13          has been added before or upon withdrawal at a terminal or refinery rack.
- 14          7. "Heating fuel use" means use of special fuel to heat homes, private and public  
15          office buildings, or private and public commercial buildings or use of special fuel in  
16          stoves or burners or for any other heating purposes.
- 17          ~~7.~~ 8. "Highway purpose" means any use of special fuel in any motor vehicle in any  
18          phase of construction, reconstruction, repair, or maintenance of public roads or  
19          highways, but does not include that special fuel used for heating of oils, gravel,  
20          bituminous mixture, or in any equipment used in the preparation of any materials to  
21          be used on any type of road or highway surfacing.
- 22          ~~8.~~ 9. "Importer for use" means any person importing fuel into this state in the fuel supply  
23          tank or tanks of any motor vehicle or combination of vehicles used, designed, or  
24          maintained for transportation of persons or property; and having two axles and a  
25          gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or  
26          having three or more axles regardless of weight; is used in combination when the  
27          weight of such combination exceeds twenty-six thousand pounds [1179.3401  
28          kilograms] gross vehicle weight. In the case of motor vehicles that are leased or  
29          rented, the importer for use means the lessee or renter unless the commissioner  
30          has designated the lessor, renter, or some other person as the importer for use.
- 31          ~~9.~~ 10. "Industrial purpose" means:

Fifty-sixth  
Legislative Assembly

- 1 a. A manufacturing, warehousing, or loading dock operation;
  - 2 b. Construction;
  - 3 c. Sand and gravel processing;
  - 4 d. Well drilling, well testing, or well servicing;
  - 5 e. Maintenance of business premises, golf courses, or cemeteries;
  - 6 f. A commercial or contract painting operation;
  - 7 g. Electrical services;
  - 8 h. A refrigeration unit on a truck;
  - 9 i. A power take-off unit; and
  - 10 j. Other similar business activity.
- 11 Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or  
12 machine, movable or immovable, operated in whole or in part by internal  
13 combustion. It does not include heating fuel, fuel used for an agricultural purpose,  
14 fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
- 15 ~~10. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special  
16 fuel purposes, is used as heating fuel.~~
- 17 11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon  
18 public roads or highways, but does not include a vehicle with a permanently  
19 mounted manure spreader or stack moving unit.
- 20 12. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable,  
21 operated in whole or in part by internal combustion using one or more of the  
22 special fuels defined in this chapter but does not include aircraft.
- 23 13. "Person" means every natural person, fiduciary, association, corporation, or limited  
24 liability company. Whenever used in any cause prescribing and imposing a fine or  
25 imprisonment, or both, the term "person" as applied to an association means and  
26 includes the partners or members thereof, as applied to corporations, the officers  
27 thereof, and as applied to limited liability companies, the managers thereof.
- 28 14. "Public road or highway" means every way or place generally open to the use of  
29 the public as a matter of right, for the purpose of motor vehicle travel,  
30 notwithstanding that it may be temporarily closed or subject to restricted travel due  
31 to construction, reconstruction, repair, or maintenance.

- 1           15. "Railroad purpose" means the operation of railroad locomotives and the  
2                   construction, reconstruction, repair, and maintenance of railroads. Fuel used for a  
3                   railroad purpose includes fuel used to operate a railroad locomotive, and fuel used  
4                   in a motor vehicle for purposes of construction, reconstruction, repair, and  
5                   maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 6           16. "Sale" means the transfer of title or possession, exchange, or barter, conditional or  
7                   otherwise, in any manner or by any means, for a consideration, of special fuels  
8                   between special fuel dealers or between a special fuel dealer and a retailer or a  
9                   consumer.
- 10          17. "Special fuel" means all combustible gases and liquids suitable for the generation  
11                   of power for propulsion of motor vehicles and includes ~~compressed natural gas~~  
12                   kerosene, all gases and liquids which meet the specifications as determined by the  
13                   state department of health pursuant to the provisions of section 19-10-10, as well  
14                   as all liquids determined by the state department of health to be heating oil  
15                   pursuant to the provisions of section 19-10-10, except that it does not include  
16                   either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as  
17                   defined in section 57-43.3-01, alternative fuels as defined in section 57-43.4-01, or  
18                   antifreeze as defined by section 19-16.1-02.
- 19          18. "Special fuel dealer" means any person in the business of handling special fuel  
20                   who delivers or sells any special fuel to a special fuel user.
- 21          19. "Special fuel wholesaler" means any person who produces, refines, manufactures,  
22                   blends, or compounds special fuel, or who imports or exports special fuel, other  
23                   than in the fuel supply tank of a motor vehicle, for distribution to a special fuel  
24                   dealer for sale and use.
- 25          20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or  
26                   sells that fuel known as liquefied petroleum gas, commonly called "propane" or  
27                   "butane", to any retail dealer, or user of liquefied petroleum gas.

28           **SECTION 9. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North  
29   Dakota Century Code is amended and reenacted as follows:

30           **57-43.2-02. (Effective through December 31, 1999) Tax imposed.**

- 1           1.    Except as otherwise provided in this chapter, an excise tax of twenty cents per  
2                   gallon [3.79 liters] is imposed on ~~the sale or delivery of all~~ special fuel ~~to any~~  
3                   ~~consumer~~ sold or used in this state. For the purpose of determining the tax upon  
4                   ~~compressed natural gas under this section, one hundred twenty cubic feet [3.40~~  
5                   ~~cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other~~  
6                   ~~special fuel.~~
- 7           2.    ~~The dealer~~ A supplier shall remit the tax imposed by this section on ~~all sales to~~  
8                   ~~consumers~~ special fuel used, on the wholesale distribution of special fuel to a  
9                   distributor or retailer, and on direct sales of special fuel to a consumer. For a  
10                  supplier who is also a distributor or retailer, the special fuel must be considered  
11                  sold and the tax imposed when the fuel is removed from a terminal by the supplier.  
12                  A distributor who is an importer shall remit the tax imposed by this section on  
13                  special fuel imported into the state.
- 14           3.    ~~The dealer may make sales of special fuel to another dealer free of the tax~~  
15                  ~~imposed by this chapter. The tax imposed by this section does not apply on sales~~  
16                  by a supplier to another supplier or on an export by a licensed exporter.
- 17           4.    A supplier required to remit the tax imposed by this section shall pass the tax on to  
18                  the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer  
19                  or consumer. A retailer shall pass the tax on to a consumer.
- 20           5.    The person required to remit the tax imposed by this section shall pay the tax to  
21                  the commissioner by the twenty-fifth day of the calendar month after the month  
22                  during which the special fuel was acquired, sold, or used by the person. When the  
23                  twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
24                  holiday, the due date is the first working day after the Saturday, Sunday, or legal  
25                  holiday. When payment is made by mail, the payment is timely if the envelope  
26                  containing the payment is postmarked by the United States postal service or other  
27                  postal carrier service before midnight of the due date.
- 28           6.    A licensed distributor may delay the payment of the tax required to be paid to a  
29                  supplier until one day prior to the date the tax is due and payable by the supplier.  
30                  To be timely, a distributor's tax payment must be available to the supplier for  
31                  deposit on or before the date the distributor's tax payment is due. The licensed

1           distributor may make the payment to a supplier by electronic funds transfer or by  
2           mail.

3           7. The commissioner shall pay over all of the moneys received during each calendar  
4           month to the state treasurer.

5           **(Effective after December 31, 1999) Tax imposed.**

6           1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per  
7           gallon [3.79 liters] is imposed on ~~the sale or delivery of all~~ special fuel ~~to any~~  
8           ~~consumer~~ sold or used in this state. ~~For the purpose of determining the tax upon~~  
9           ~~compressed natural gas under this section, one hundred twenty cubic feet [3.40~~  
10           ~~cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other~~  
11           ~~special fuel.~~

12           2. ~~The dealer~~ A supplier shall remit the tax imposed by this section on ~~all sales to~~  
13           ~~consumers~~ special fuel used, on the wholesale distribution of special fuel to a  
14           distributor or retailer, and on direct sales of special fuel to a consumer. For a  
15           supplier who is also a distributor or retailer, the special fuel must be considered  
16           sold and the tax imposed when the fuel is removed from a terminal by the supplier.  
17           A distributor who is an importer shall remit the tax imposed by this section on  
18           special fuel imported into the state.

19           3. ~~The dealer may make sales of special fuel to another dealer free of the tax~~  
20           ~~imposed by this chapter. The tax imposed by this section does not apply on sales~~  
21           by a supplier to another supplier, or on an export by a licensed exporter.

22           4. A supplier required to remit the tax imposed by this section shall pass the tax on to  
23           the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer  
24           or consumer. A retailer shall pass the tax on to a consumer.

25           5. The person required to remit the tax imposed by this section shall pay the tax to  
26           the commissioner by the twenty-fifth day of the calendar month after the month  
27           during which the special fuel was acquired, sold, or used by the person. When the  
28           twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
29           holiday, the due date is the first working day after the Saturday, Sunday, or legal  
30           holiday. When payment is made by mail, the payment is timely if the envelope

1           containing the payment is postmarked by the United States postal service or other  
2           postal carrier service before midnight of the due date.

3           6. A licensed distributor may delay the payment of the tax required to be paid to a  
4           supplier until one day prior to the date the tax is due and payable by the supplier.  
5           To be timely, a distributor's tax payment must be available to the supplier for  
6           deposit on or before the date the distributor's tax payment is due. The licensed  
7           distributor may make the payment to a supplier by electronic funds transfer or by  
8           mail.

9           7. The commissioner shall pay over all of the moneys received during each calendar  
10           month to the state treasurer.

11           **SECTION 10. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North  
12           Dakota Century Code is amended and reenacted as follows:

13           **57-43.2-03. Special excise tax levied.**

14           1. Except as otherwise provided in this chapter, a special excise tax of ~~two percent~~  
15           one and two-tenths cents per gallon [3.79 liters] is imposed on all sales of special  
16           fuels; which are exempted from the tax imposed under section 57-43.2-02. For a  
17           supplier who is also a distributor or retailer, the special fuel subject to tax under  
18           this section must be considered sold and the tax imposed when the fuel is  
19           removed from a terminal by the supplier.

20           2. The special excise tax applies to all special fuels taxed under section 57-43.2-02  
21           for which taxes are later refunded to any consumer.

22           3. A consumer importing special fuel into this state, for a purpose for which the  
23           special fuel is taxable under this section, is liable for the tax. The commissioner  
24           shall collect the tax from the consumer importing the fuel.

25           4. If any fuel subject to tax by this section was subject to tax in any other state or its  
26           political subdivisions, the tax in this section applies but at a rate measured by the  
27           difference between the rate imposed in this section and the rate imposed by the  
28           other state or its political subdivisions. If the tax imposed by the other state or its  
29           political subdivisions is the same or greater than the tax imposed by this section,  
30           no tax is due.



- 1           5. An invoice, sales ticket, or other sales document issued or created covering a sale  
2           taxable under this section must ~~identify the consumer to whom the sale was made,~~  
3           ~~specify the purpose for which the special fuel was sold,~~ and specify whether the  
4           fuel was dyed for tax exemption purposes.
- 5           6. The tax imposed by this section does not apply on sales by a supplier to another  
6           supplier or on an export by a licensed exporter.
- 7           7. ~~The dealer~~ A supplier shall remit the tax imposed by this section ~~on all sales to a~~  
8           and shall pass the tax on to the distributor, retailer, or consumer. A distributor  
9           shall pass the tax on to a retailer or consumer. A retailer shall pass the tax on to a  
10          consumer.
- 11          8. The person required to remit the tax imposed by this section shall pay the tax to  
12          the commissioner by the twenty-fifth day of the calendar month after the month  
13          during which the special fuel was acquired, sold, or used by the person. When the  
14          twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
15          holiday, the due date is the first working day after the Saturday, Sunday, or legal  
16          holiday. When payment is made by mail, the payment is timely if the envelope  
17          containing the payment is postmarked by the United States postal service or other  
18          postal carrier service before midnight of the due date. A licensed distributor may  
19          delay the payment of the tax required to be paid to the supplier until one day prior  
20          to the date the tax is due and payable by the supplier.
- 21          9. A licensed distributor may delay the payment of the tax required to be paid to a  
22          supplier until one day prior to the date the tax is due and payable by the supplier.  
23          To be timely, a distributor's tax payment must be available to the supplier for  
24          deposit on or before the date the distributor's tax payment is due. The licensed  
25          distributor may make the payment to a supplier by electronic funds transfer or by  
26          mail.
- 27          10. The commissioner shall pay over all of the moneys received during each calendar  
28          month to the state treasurer.

29           **SECTION 11.** Section 57-43.2-03.1 of the North Dakota Century Code is created and  
30   enacted as follows:

1           **57-43.2-03.1. Inventory tax.** A person who has title to or possession of tax-free  
2 special fuel as of the close of the business day preceding the effective date of this Act, is  
3 subject to the tax imposed by this chapter on the tax-free special fuel in inventory. The tax on  
4 the inventory is due and payable to the commissioner on or before the twenty-fifth day of  
5 February succeeding the effective date of this Act. The tax on inventories does not apply to a  
6 supplier's special fuel in a terminal.

7           **SECTION 12. AMENDMENT.** Section 57-43.2-04.1 of the North Dakota Century Code  
8 is amended and reenacted as follows:

9           **57-43.2-04.1. ~~Deduction of cost of collecting and remitting~~ Tax credit allowance.**  
10 ~~On making payments to the commissioner as provided in this chapter, the dealer shall deduct~~  
11 ~~one percent from the amount of tax due, up to a maximum of three hundred dollars per month,~~  
12 ~~to cover the cost of collecting the tax and remitting it to the commissioner. A supplier shall~~  
13 deduct seven-tenths percent from the amount of tax due and payable as a credit to cover the  
14 cost of collecting the tax and to cover shrinkage and evaporation losses due to temperature  
15 adjustments. The supplier shall pass five-tenths percent of the credit allowance on to the  
16 distributor or retailer. The supplier shall report the credit allowance on the monthly tax report  
17 and shall retain records verifying that the credit was passed on to a distributor. The tax credit  
18 allowance does not apply to additional tax assessed during an audit.

19           **SECTION 13.** Section 57-43.2-04.4 of the North Dakota Century Code is created and  
20 enacted as follows:

21           **57-43.2-04.4. Credit for taxes paid on worthless accounts and refunds.** Except in  
22 the case of sales to bonded distributors, taxes paid on special fuels represented by accounts  
23 found to be worthless, and actually charged off for income tax purposes, may be taken by a  
24 supplier as a credit against subsequent taxes due provided the accounts charged off included  
25 the cost of the fuel as well as the taxes due. If in any case the credit, or any part of it, cannot  
26 be utilized by the supplier because of a discontinuance of a business or for other valid reason,  
27 the amount may be refunded. If the worthless account is charged off by a distributor or a  
28 retailer, the distributor or retailer may file a claim with the commissioner for a refund of the  
29 noncollectible taxes. If the worthless account is subsequently collected, the tax must be  
30 remitted on the amount collected.

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

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

14           **SECTION 14. AMENDMENT.** Section 57-43.2-05 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **57-43.2-05. Special fuel wholesaler's or dealer's license required Refiner,**  
17 **supplier, distributor, importer, exporter, and terminal operator required to secure license**  
18 **- License fees.** ~~No person may act as a special fuel wholesaler or dealer in this state unless~~  
19 ~~that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by~~  
20 ~~the commissioner. Application for a special fuel wholesaler's or dealer's license must be made~~  
21 ~~to the commissioner. The application must be filed upon a form prepared and furnished by the~~  
22 ~~commissioner and must contain such information as the commissioner requires.~~

23           1. A person may not engage in business in this state as a refiner, supplier, distributor,  
24 importer, exporter, or terminal operator of special fuel unless that person holds an  
25 unrevoked license issued by the commissioner.

26           2. The person shall file an application for a license with the commissioner providing  
27 such information as required by the commissioner, on a form or in a format as  
28 required by the commissioner. The information must include:

29           a. The name under which the person intends to transact business in this state.

- 1           b. The physical location of each place of business to be covered by the license  
2                   and the mailing address of the location to which forms and correspondence  
3                   are to be directed.
- 4           c. If a partnership, the name and address of each of the persons constituting the  
5                   partnership.
- 6           d. If a domestic corporation, the corporate name, the date of incorporation, and  
7                   the names and addresses of the directors and corporate officers.
- 8           e. If a foreign corporation, the corporate name, the state and the date of  
9                   incorporation, the name and address of the resident agent, the location of  
10                  each place of business, and the date on which the business was established.
- 11          f. If a domestic limited liability company, the limited liability company name, the  
12                  date of formation, and the names and addresses of the governors and  
13                  managers.
- 14          g. If a foreign limited liability company, the limited liability company name, the  
15                  state and the date of formation, the name and address of the resident agent,  
16                  the location of each place of business, and the date on which the business  
17                  was established.
- 18          h. Any other information the commissioner may require.

19           The application must be signed by the taxpayer to be valid and must contain a  
20           written declaration that it is made and subscribed under penalties of perjury. For  
21           an individual, partnership, or unincorporated association, the application must be  
22           signed by the owner. For a corporation, the application must be signed by an  
23           authorized officer. For a limited liability company, the application must be signed  
24           by an authorized manager.

- 25          3. An applicant for a single or multiple license as a refiner, supplier, distributor,  
26                  importer, exporter, or terminal operator shall pay to the commissioner a license fee  
27                  of twenty dollars. The license fee must be paid at the time the application is made.

28           **SECTION 15. AMENDMENT.** Section 57-43.2-07 of the North Dakota Century Code is  
29           amended and reenacted as follows:

30           **57-43.2-07. ~~Special fuel wholesaler's or dealer's bond~~ Bond or letter of credit. As**  
31           a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or

1 importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to  
2 guarantee the payment of the special fuel tax liabilities imposed by this chapter. A refiner, a  
3 terminal operator, a distributor who is not an importer, or an exporter who is not also licensed  
4 as a supplier, is exempt from this requirement.

5       1. ~~As a condition precedent to the issuance of a license, a wholesaler or dealer shall~~  
6 ~~furnish a bond in an amount set by the commissioner, but not less than five~~  
7 ~~hundred dollars, guaranteeing the payment of the special fuels tax collected by the~~  
8 ~~wholesaler or dealer. The bond is subject to approval by the commissioner and~~  
9 ~~must be in effect for at least three years. After a wholesaler or dealer has had a~~  
10 ~~valid license for three or more years, the commissioner may review the~~  
11 ~~wholesaler's or dealer's records and waive the bond requirement. The bond~~  
12 ~~requirement may be reinstated at the discretion of the commissioner. The surety~~  
13 ~~bond, cash bond, or letter of credit must be in an amount prescribed by the~~  
14 ~~commissioner but not less than one thousand dollars.~~

15       2. ~~In lieu of a bond, securities, including letters of credit, approved by the~~  
16 ~~commissioner in such amounts as the commissioner prescribes, may be deposited~~  
17 ~~with the commissioner, which securities must be kept in the custody of the~~  
18 ~~commissioner and may be sold at public or private sale, without notice to the~~  
19 ~~depositor, if it becomes necessary in order to recover any tax, penalties, or interest~~  
20 ~~due. The commissioner shall pay all moneys deposited as security with the~~  
21 ~~commissioner under the provisions of this subsection to the state treasurer who~~  
22 ~~shall credit them into a special fund to be known as the "special fuels tax security~~  
23 ~~trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when~~  
24 ~~due, by the person depositing moneys with the tax commissioner as security for~~  
25 ~~the payment of tax, penalty, or interest imposed by this chapter, the commissioner~~  
26 ~~shall certify that information to the director of the office of management and~~  
27 ~~budget. The office of management and budget shall transmit the money to the~~  
28 ~~commissioner who shall apply as much of the money deposited by the person as is~~  
29 ~~necessary to satisfy the tax, penalty, and interest due. When in the~~  
30 ~~commissioner's judgment it is no longer necessary to require the deposit to be~~  
31 ~~maintained by the person, the commissioner shall certify that information to the~~

1 ~~director of the office of management and budget who shall pay the unused money~~  
2 ~~to the person. The surety bond, cash bond, or letter of credit is subject to approval~~  
3 ~~by the commissioner.~~

4 3. After a single or multiple license has been in effect for five or more years, the  
5 commissioner may review the person's records and may waive the requirement for  
6 a security. The requirement for a security may be reinstated at the discretion of  
7 the commissioner.

8 4. A surety bond or letter of credit provided as security must be kept in the custody of  
9 the commissioner and may be used by the commissioner, without notice to the  
10 principal, if it becomes necessary to cover tax, penalties, and interest due.

11 5. Money deposited with the commissioner as a cash bond must be made in the form  
12 of a cashier's check or bank money order payable to the tax commissioner. The  
13 money received must be paid by the commissioner to the state treasurer and  
14 credited by the treasurer into a special fund to be known as the motor fuel tax  
15 security trust fund. The money deposited may be used by the commissioner,  
16 without notice to the depositor, if it becomes necessary to cover tax, penalties, and  
17 interest due. If the money deposited is to be used to cover unpaid liabilities, the  
18 commissioner shall certify the information to the director of the office of  
19 management and budget. The office of management and budget shall transmit the  
20 money to the commissioner who shall apply as much of the money deposited by  
21 the person as is necessary to satisfy the liabilities. When in the commissioner's  
22 judgment it is no longer necessary to require the deposit to be maintained, the  
23 commissioner shall certify the information to the director of the office of  
24 management and budget who shall pay the unused money to the depositor.

25 **SECTION 16. AMENDMENT.** Section 57-43.2-11 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **~~57-43.2-11. Records and returns—Penalties and interest—Powers of~~**  
28 **~~commissioner Report by refiner, supplier, importer, or exporter required.~~**

29 1. ~~A special fuel dealer shall keep such records and make such monthly returns and~~  
30 ~~payments of the tax to the commissioner, in the manner, at the time, and pursuant~~  
31 ~~to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The~~

- 1           ~~commissioner may require returns and payments of the tax to be made for other~~  
2           ~~than monthly periods.~~ A refiner, supplier, importer, or exporter shall file a monthly  
3           report with the commissioner no later than the twenty-fifth day of each calendar  
4           month covering special fuel acquired, sold, and used during the preceding  
5           calendar month. When the twenty-fifth day of the calendar month falls on a  
6           Saturday, Sunday, or legal holiday, the due date is the first working day after the  
7           Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is  
8           timely if the envelope containing the report is postmarked by the United States  
9           postal service or other postal carrier service before midnight of the due date.
- 10          2. ~~For failure or refusal to keep such records, file returns, and make payments of the~~  
11          ~~tax to the commissioner as provided in this chapter, a special fuel dealer is subject~~  
12          ~~to the penalties and interest as provided in this chapter.~~ The report to the  
13          commissioner must be on a form prescribed and furnished by the commissioner.  
14          The commissioner may require that all or part of the report be submitted in an  
15          electronic format approved by the commissioner, provided the person is able to  
16          use an electronic format. The report must contain such information as required by  
17          the commissioner including:
- 18           a. A detailed schedule of special fuel refined, purchased, imported, and  
19           exported.
  - 20           b. A detailed schedule of special fuel sold to a person eligible to purchase the  
21           special fuel without the tax imposed by this chapter.
  - 22           c. A detailed schedule of special fuel sold tax-paid to a person for resale,  
23           including a list of persons who purchased the special fuel for resale.
  - 24           d. The total number of gallons of special fuel sold and used subject to tax  
25           imposed by this chapter.
  - 26           e. The number of gallons of special fuel sold tax-exempt to a qualified  
27           consumer.
  - 28           f. The number of gallons of special fuel in inventory at the beginning of the  
29           calendar month and the number of gallons in inventory at the close of the  
30           calendar month and any gains or losses experienced.

- 1           3. ~~The commissioner, for good cause shown, may waive the penalty for failure to pay~~  
2           ~~the tax due or for failure or refusal to file a return within the time required by this~~  
3           ~~chapter or grant a reasonable extension of time for filing such a return. The~~  
4           ~~commissioner may revoke the license of any special fuel dealer under the~~  
5           ~~conditions and after notice as provided in section 57-43.2-09; assess deficiencies~~  
6           ~~in the tax; determine the tax when returns are not filed as required by this chapter;~~  
7           ~~and permit credit for or authorize refund of erroneously or illegally collected taxes;~~  
8           ~~penalties, or interest imposed by this chapter from undistributed funds received~~  
9           ~~under this chapter, all in the manner and to the same extent as provided in~~  
10           ~~sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20. The report must be~~  
11           ~~signed by the taxpayer to be valid and must contain a written declaration that it is~~  
12           ~~made and subscribed under penalties of perjury. The commissioner may prescribe~~  
13           ~~alternative methods for signing, subscribing, or verifying a report filed by electronic~~  
14           ~~means, including telecommunications, that shall have the same validity and~~  
15           ~~consequence as the actual signature and written declaration for a paper return.~~  
16           4. ~~The commissioner shall enforce the provisions of this chapter and may prescribe;~~  
17           ~~adopt, and enforce reasonable rules relating to the administration and enforcement~~  
18           ~~of this chapter, and may examine the records of special fuel wholesalers or dealers~~  
19           ~~and special fuel users and make such investigations as are deemed necessary in~~  
20           ~~the administration and enforcement of this chapter.~~  
21           5. ~~The commissioner shall audit the returns and make necessary assessments~~  
22           ~~pursuant to the procedures and limitations provided for in section 57-43.2-14.~~

23           **SECTION 17. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **57-43.2-21. Inventory gains - Losses –~~Deductions allowed to dealer~~ – Remedies.**

- 26           1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct~~  
27           ~~the actual shrinkage of the total gallonage of special fuel received during each~~  
28           ~~calendar month from the statement submitted as required in section 57-43.2-12;~~  
29           ~~but such allowance may not exceed one percent of the total received during the~~  
30           ~~month. Each wholesale dealer of liquefied petroleum gas may deduct the actual~~  
31           ~~shrinkage of the total gallonage received during each calendar month from the~~



- 1 ~~statement submitted as required in section 57-43.2-12, but this allowance may not~~  
2 ~~exceed two percent of the total received during the month. A supplier, distributor,~~  
3 ~~or retailer shall take a physical inventory reading of all special fuel located in a~~  
4 ~~terminal, underground tank, aboveground tank, railcar, storage tank of a tank truck,~~  
5 ~~and the storage tank of a bulk delivery truck on a regular basis. The physical~~  
6 ~~inventory reading must include special fuel stored in a barrel, drum, or other~~  
7 ~~receptacle.~~
- 8 2. Except as otherwise provided in this chapter, a supplier is liable for the tax  
9 imposed under section 57-43.2-02 on all special fuel not dyed for federal tax  
10 exemption purposes and not accounted for. The supplier is liable for the tax  
11 imposed under section 57-43.2-03 on special fuel dyed for federal tax exemption  
12 purposes and not accounted for.
- 13 3. ~~For the purposes of this chapter, it is presumed that all special fuel received by~~  
14 ~~each dealer over and above the one percent allowance, or the two percent~~  
15 ~~allowance for liquefied petroleum gas, not otherwise accounted for, but not that~~  
16 ~~gallage shown as inventory at the end of every calendar month, and other~~  
17 ~~allowances provided in this chapter, has been sold, delivered, or used. The dealer~~  
18 ~~is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special~~  
19 ~~fuel not accounted for. For purposes of this chapter, special fuel refined at a~~  
20 ~~refinery in this state and placed in storage at the refinery, and special fuel brought~~  
21 ~~into the state by pipeline and placed in storage at a pipeline terminal, is not~~  
22 ~~deemed received until it is withdrawn from the refinery or terminal storage for sale~~  
23 ~~or use in this state, or for shipment or delivery to destinations in this state. When~~  
24 ~~sold or used by a supplier, distributor, or retailer, a gain in special fuel inventories~~  
25 ~~is subject to the tax imposed by this chapter in the same manner as special fuel~~  
26 ~~purchased, imported, or otherwise acquired.~~
- 27 4. The commissioner may allow a tax credit to a supplier and a tax refund to a  
28 distributor or retailer for actual inventory losses due to casualty loss subject to the  
29 discretion of the commissioner and based on proof of the loss as required by the  
30 commissioner.

1           **SECTION 18.** Section 57-43.2-38 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **57-43.2-38. Dyed special fuel - Penalties - Inspections.**

- 4           1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the  
5 tax imposed by section 57-43.2-03 and, unless otherwise provided in this section,  
6 may not be used in the fuel supply tank of a licensed motor vehicle. The owner or  
7 operator of a licensed motor vehicle found to contain dyed special fuel in the fuel  
8 supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to  
9 be determined based on the capacity of the fuel supply tank of the licensed vehicle  
10 involved and is subject to civil penalties as follows:
- 11           a. A one hundred dollar fine for the first violation.
- 12           b. A five hundred dollar fine for a second violation occurring within three years of  
13 a previous violation.
- 14           c. A one thousand dollar fine for a third violation occurring within three years of  
15 two previous violations.
- 16           d. A five thousand dollar fine for the fourth and subsequent violations occurring  
17 within three years of three or more previous violations.
- 18           2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be  
19 considered dyed if the fuel contains traces of the dye in an amount sufficient to be  
20 found in violation of federal laws and rules.
- 21           3. For purposes of enforcing the provisions of this section, the highway patrol, by  
22 agreement with the commissioner, may:
- 23           a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of  
24 fuel from the fuel supply tank of the vehicle in a manner and in a quantity  
25 sufficient to determine whether the fuel is a special fuel and to determine the  
26 dye content of the fuel.
- 27           b. Physically inspect, examine, or otherwise search any tank, reservoir, or other  
28 container that can or may be used for the production, storage, or  
29 transportation of any type of fuel for coloration, markers, and shipping papers.

1           Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping  
2           papers by the highway patrol is subject to a civil penalty of not more than one  
3           thousand dollars per occurrence.

4           4. The highway patrol may issue a citation covering any violation of this section, and  
5           the person receiving a citation has the right to a hearing.

6           5. This section does not apply to:

7           a. A person who purchased dyed special fuel in another state or Canadian  
8           province and imported that fuel into the state in the supply tank of a licensed  
9           motor vehicle provided the state or Canadian province where the fuel was  
10           purchased does not prohibit its use in that vehicle.

11           b. A state or local government using dyed special fuel in licensed vehicles for  
12           purposes of construction, reconstruction, repair, or maintenance of public  
13           roads or highways.

14           **SECTION 19. AMENDMENT.** Section 57-43.3-02 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **57-43.3-02. ~~Imposition and collection of tax~~ Tax imposed on aviation fuel.** An  
17 ~~excise tax of eight cents per gallon [3.79 liters] is hereby imposed on the sale or delivery of~~  
18 ~~aviation fuel by a dealer to a user. The dealer shall collect the tax from the user and pay the~~  
19 ~~tax to the commissioner.~~

20           1. Except as otherwise provided in this section, a tax of eight cents per gallon [3.79  
21           liters] is imposed on all aviation fuel sold or used in this state.

22           2. A supplier shall remit the tax imposed by this section on aviation fuel used, on the  
23           wholesale distribution of aviation fuel to a distributor or retailer, and on direct sales  
24           of aviation fuel to a consumer. For a supplier who is also a distributor or retailer,  
25           the aviation fuel must be considered sold and the tax imposed when the fuel is  
26           removed from a terminal by the supplier. A distributor who is also an importer shall  
27           remit the tax imposed by this section on aviation fuel imported into the state.

28           3. The tax imposed by this section does not apply on sales by a supplier to another  
29           supplier, or on an export by a licensed exporter.

- 1           4. A supplier required to remit the tax imposed by this section shall pass the tax on to  
2           the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer  
3           or consumer. A retailer shall pass the tax on to a consumer.
- 4           5. The person required to remit the tax imposed by this section shall pay the tax to  
5           the commissioner by the twenty-fifth day of the calendar month after the month  
6           during which the aviation fuel was acquired, sold, or used by the person. When  
7           the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
8           holiday, the due date is the first working day after the Saturday, Sunday, or legal  
9           holiday. When payment is made by mail, the payment is timely if the envelope  
10           containing the payment is postmarked by the United States postal service or other  
11           postal carrier service before midnight of the due date.
- 12           6. A licensed distributor may delay the payment of the tax required to be paid to a  
13           supplier until one day prior to the date the tax is due and payable by the supplier.  
14           To be timely, a distributor's tax payment must be available to the supplier for  
15           deposit on or before the date the distributor's tax payment is due. The licensed  
16           distributor may make the payment to a supplier by electronic funds transfer or by  
17           mail.
- 18           7. The commissioner shall pay over all of the moneys received during each calendar  
19           month to the state treasurer.

20           **SECTION 20.** Section 57-43.3-02.2 of the North Dakota Century Code is created and  
21 enacted as follows:

22           **57-43.3-02.2. Inventory tax.** A person who has title to or possession of tax-free  
23 aviation fuel as of the close of the business day preceding the effective date of this Act, is  
24 subject to the tax imposed by this chapter on the tax-free aviation fuel in inventory. The tax on  
25 the inventory is due and payable to the commissioner on or before the twenty-fifth day of  
26 February succeeding the effective date of this Act. The tax on inventories does not apply to a  
27 supplier's aviation fuel in a terminal.

28           **SECTION 21.** Section 57-43.3-09 of the North Dakota Century Code is created and  
29 enacted as follows:

30           **57-43.3-09. Bond or letter of credit required.** As a condition precedent to the  
31 issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety

1 bond, a cash bond, or an approved letter of credit as security to guarantee the payment of  
2 aviation fuel tax liabilities. A refiner, a terminal operator, a distributor who is not an importer, or  
3 an exporter who is not also licensed as a supplier, is exempt from this requirement.

4 1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by  
5 the commissioner but not less than five hundred dollars.

6 2. The surety bond, cash bond, or letter of credit is subject to approval by the  
7 commissioner.

8 3. After a single or multiple license has been in effect for five or more years, the  
9 commissioner may review the person's records and may waive the requirement for  
10 a security. The requirement for a security may be reinstated at the discretion of  
11 the commissioner.

12 4. A surety bond or letter of credit provided as security must be kept in the custody of  
13 the commissioner and may be used by the commissioner, without notice to the  
14 principal, if it becomes necessary to cover the aviation fuel tax, penalties, and  
15 interest due.

16 5. Money deposited with the commissioner as a cash bond must be made in the form  
17 of a cashier's check or bank money order payable to the tax commissioner. The  
18 money received must be paid by the commissioner to the state treasurer and  
19 credited by the treasurer into a special fund to be known as the motor fuel tax  
20 security trust fund. The money deposited may be used by the commissioner,  
21 without notice to the depositor, if it becomes necessary to cover tax, penalties, and  
22 interest due. If the money deposited is to be used to cover unpaid liabilities, the  
23 commissioner shall certify the information to the director of the office of  
24 management and budget. The office of management and budget shall transmit the  
25 money to the commissioner who shall apply as much of the money deposited by  
26 the person as is necessary to satisfy the liabilities. When in the commissioner's  
27 judgment it is no longer necessary to require the deposit to be maintained, the  
28 commissioner shall certify the information to the director of the office of  
29 management and budget who shall pay the unused money to the depositor.

30 **SECTION 22.** Section 57-43.3-14 of the North Dakota Century Code is created and  
31 enacted as follows:

1           **57-43.3-14. Monthly report by refiner, supplier, importer, or exporter required.**

- 2           1. A refiner, supplier, importer, or exporter shall file a monthly report with the  
3           commissioner no later than the twenty-fifth day of each calendar month covering  
4           aviation fuel sold and used during the preceding calendar month. When the  
5           twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
6           holiday, the due date is the first working day after the Saturday, Sunday, or legal  
7           holiday. When the report is filed by mail, the report is timely if the envelope  
8           containing the report is postmarked by the United States postal service or other  
9           postal carrier service before midnight of the due date.
- 10          2. The report to the commissioner must be on a form prescribed and furnished by the  
11          commissioner. The commissioner may require that all or part of the report be  
12          submitted in an electronic format approved by the commissioner, provided the  
13          person required to file the report is able to file the report using an electronic format.  
14          The report must contain such information as required by the commissioner  
15          including:
- 16           a. A detailed schedule of aviation fuel refined, purchased, imported, and  
17           exported.
- 18           b. A detailed schedule of aviation fuel sold to a person eligible to purchase the  
19           aviation fuel without the tax imposed by this chapter.
- 20           c. A detailed schedule of the number of gallons of aviation fuel sold to a person  
21           with the tax imposed by this chapter, including a person who purchased the  
22           aviation fuel for resale.
- 23           d. The total number of gallons of aviation fuel sold and used subject to the tax  
24           imposed by this chapter.
- 25           e. The number of gallons of aviation fuel sold tax-exempt to a qualified  
26           consumer.
- 27           f. The number of gallons of aviation fuel in inventory at the beginning of the  
28           calendar month, the number of gallons in inventory at the close of the  
29           calendar month, and any gains or losses experienced.
- 30          3. The report must be signed by the taxpayer to be valid and must contain a written  
31          declaration that it is made and subscribed under penalties of perjury.

1           4.   The tax commissioner may prescribe alternative methods for signing, subscribing,  
2                   or verifying a return filed by electronic means, including telecommunications, that  
3                   shall have the same validity and consequence as the actual signature and written  
4                   declaration for a paper return.

5           **SECTION 23.** Section 57-43.3-18 of the North Dakota Century Code is created and  
6 enacted as follows:

7           **57-43.3-18. Credit for taxes paid on worthless accounts and refunds.** Except in  
8 the case of sales to bonded distributors, taxes paid on aviation fuel represented by accounts  
9 found to be worthless and actually charged off for income tax purposes, may be taken by a  
10 supplier as a credit against subsequent taxes due provided the accounts charged off included  
11 the cost of the fuel as well as the taxes due. If in any case the credit, or any part of it, cannot  
12 be utilized by the supplier because of a discontinuance of a business or for other valid reason,  
13 the amount may be refunded. If the worthless account is charged off by a distributor or a  
14 retailer, the distributor or retailer may file a claim with the commissioner for a refund of the  
15 noncollectible taxes. If the worthless account is subsequently collected, the amount of the tax  
16 collected must be remitted to the commissioner.

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

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

30           **SECTION 24.** Section 57-43.3-28 of the North Dakota Century Code is created and  
31 enacted as follows:

1           **57-43.3-28. Inventory gains - Losses.**

- 2           1. A supplier, distributor, or retailer shall take a physical inventory reading of all  
3           aviation fuel located in a terminal, underground tank, aboveground tank, railcar,  
4           storage tank of a tank truck, and the storage tank of a bulk delivery truck on a  
5           regular basis. The inventory reconciliation must include aviation fuel stored in a  
6           barrel, drum, or other receptacle.
- 7           2. Except as otherwise provided in this chapter, a supplier is liable for the tax  
8           imposed under section 57-43.3-02 on all aviation fuel not accounted for.
- 9           3. When sold or used by a supplier, distributor, or retailer, a gain in aviation fuel  
10           inventories is subject to the tax imposed by this chapter in the same manner as  
11           aviation fuel purchased, imported, or otherwise acquired.
- 12           4. The commissioner may allow a tax credit to a supplier and a tax refund to a  
13           distributor or retailer for actual inventory losses due to casualty loss, subject to the  
14           discretion of the commissioner and based on proof of the loss as required by the  
15           commissioner.

16           **SECTION 25.** Chapter 57-43.4 of the North Dakota Century Code is created and  
17 enacted as follows:

18           **57-43.4-01. Definitions.** As used in this chapter, unless the context otherwise  
19 requires:

- 20           1. "Agricultural purpose" means the science, art, and business of farming. It includes  
21           raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges  
22           and universities, custom combining, manure spreading, and stack moving  
23           operations. Fuel used for an agricultural purpose includes fuel used in a vehicle,  
24           engine, or machine, movable or immovable, operated in whole or in part by internal  
25           combustion. It does not include fuel used to operate a licensed motor vehicle.
- 26           2. "Alternative fuel" means combustible gases and liquids suitable for the generation  
27           of power for propulsion of motor vehicles which meet the specifications as  
28           determined by the state department of health pursuant to the provisions of section  
29           19-10-10 and are commonly known as liquefied petroleum gases and compressed  
30           natural gas. It does not include motor vehicle fuel as defined in section



- 1           57-43.1-01, special fuel as defined in section 57-43.2-01, or aviation fuel as  
2           defined in section 57-43.3-01.
- 3           3. "Commissioner" means the state tax commissioner.
- 4           4. "Common carrier" or "contract carrier" means a person involved in the movement  
5           of alternative fuel from a terminal or movement of alternative fuel imported into this  
6           state, who is not the owner of the alternative fuel.
- 7           5. "Consumer" means a user of alternative fuel including any person purchasing  
8           alternative fuel in this state for use in a licensed motor vehicle; any person  
9           importing alternative fuel into this state or purchasing alternative fuel in this state  
10           for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any  
11           person purchasing alternative fuel in this state for use in recreational or any other  
12           types of motor vehicles. It does not include a person importing or purchasing  
13           alternative fuel for resale.
- 14           6. "Destination state" means any state, territory, foreign country, or sovereign nation,  
15           to which alternative fuel is directed for delivery into a storage facility, receptacle,  
16           container, or any type of transportation equipment, for purposes of resale or use.
- 17           7. "Director" means the director of the department of transportation.
- 18           8. "Distributor" means a person, other than a retailer, who acquires alternative fuel  
19           from a refiner or supplier for subsequent wholesale distribution in bulk or transport  
20           load by truck, railcar, or in a barrel, drum, or other receptacle.
- 21           9. "Export" means the delivery of alternative fuel across the boundaries of this state  
22           from a place of origin in this state by or for a refiner, supplier, distributor, or retailer.
- 23           10. "Exporter" means a refiner, supplier, or distributor who exports alternative fuel out  
24           of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other  
25           receptacle.
- 26           11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume  
27           basis.
- 28           12. "Gross volume" means measurement in United States gallons without temperature  
29           or barometric adjustments.

- 1        13.   "Heating fuel use" means use of alternative fuel to heat homes, private and public  
2            office buildings, or private and public commercial buildings or use of alternative  
3            fuel in stoves or burners or for any other heating purpose.
- 4        14.   "Highway purpose" means any use of alternative fuel in any motor vehicle in any  
5            phase of construction, reconstruction, repair, or maintenance of public roads or  
6            highways, but does not include that alternative fuel used for heating of oils, gravel,  
7            bituminous mixture, or in any equipment used in the preparation of any materials to  
8            be used on any type of road or highway surfacing.
- 9        15.   "Import" means the delivery of alternative fuel across the boundaries of this state  
10           from a place of origin outside this state by a refiner, supplier, or distributor.
- 11       16.   "Importer" means a refiner, supplier, or distributor who imports alternative fuel into  
12           this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other  
13           receptacle.
- 14       17.   "Industrial purpose" means:
- 15           a.   A manufacturing, warehousing, or loading dock operation;  
16           b.   Construction;  
17           c.   Sand and gravel processing;  
18           d.   Well drilling, well testing, or well servicing;  
19           e.   Maintenance of business premises, golf courses, or cemeteries;  
20           f.   A commercial or contract painting operation;  
21           g.   Electrical services;  
22           h.   A refrigeration unit on a truck;  
23           i.   A power take-off unit; and  
24           j.   Other similar business activity.
- 25           Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or  
26           machine, movable or immovable, operated in whole or in part by internal  
27           combustion. It does not include heating fuel, fuel used for an agricultural purpose,  
28           fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
- 29       18.   "Licensed motor vehicle" means any motor vehicle licensed for operation upon  
30           public roads or highways, but does not include a vehicle with a permanently  
31           mounted manure spreader or stack moving unit.

- 1        19. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable,  
2        operated in whole or in part by internal combustion using one or more of the  
3        alternative fuels defined in this chapter, but does not include aircraft.
- 4        20. "Person" means every natural person, fiduciary, association, corporation, or limited  
5        liability company. Whenever used in any cause prescribing and imposing a fine or  
6        imprisonment, or both, the term "person" as applied to an association includes the  
7        partners or members, as applied to a corporation includes the officers, and as  
8        applied to a limited liability company includes the managers.
- 9        21. "Physical inventory reading" means a measurement of alternative fuel available for  
10       distribution in a terminal, an underground storage tank, or an aboveground storage  
11       tank or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other  
12       receptacle.
- 13       22. "Position holder" means a person holding an inventory position of alternative fuel in  
14       a terminal as reflected on the records of the terminal operator; a person holding  
15       the inventory position when that person has a contractual agreement with the  
16       terminal operator for the use of storage facilities or terminaling services at a  
17       terminal; and a terminal operator who owns alternative fuel in its terminal.
- 18       23. "Public road of highway" means every way or place generally open to the use of  
19       the public as a matter of right, for the purpose of motor vehicle travel,  
20       notwithstanding that it may be temporarily closed or subject to restricted travel due  
21       to construction, reconstruction, repair, or maintenance.
- 22       24. "Rack" means a mechanism used to dispense alternative fuel from a terminal.
- 23       25. "Railroad purpose" means the operation of railroad locomotives and the  
24       construction, reconstruction, repair, and maintenance of railroads. Fuel used for a  
25       railroad purpose includes fuel used to operate a railroad locomotive, and fuel used  
26       in a motor vehicle for purposes of construction, reconstruction, repair, and  
27       maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 28       26. "Refiner" means a person who produces, manufactures, or refines alternative fuels  
29       in this state.
- 30       27. "Retailer" means a person who acquires alternative fuel from a supplier or  
31       distributor for resale to a consumer at a retail location.



- 1           2. A supplier, distributor, or retailer shall remit the tax imposed by this section on  
2                   alternative fuel used and on direct sales of alternative fuel to a consumer.
- 3           3. The tax imposed by this section does not apply to a sale by a supplier to another  
4                   supplier, a sale by a supplier to a distributor, a sale by a distributor to another  
5                   distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt  
6                   consumer.
- 7           4. The person required to remit the tax imposed by this section shall pass the tax on  
8                   to the consumer.
- 9           5. The person required to remit the tax imposed by this section shall pay the tax to  
10                   the commissioner by the twenty-fifth day of the calendar month after the month  
11                   during which the alternative fuel was sold or used by the person. When the  
12                   twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
13                   holiday, the due date is the first working day after the Saturday, Sunday, or legal  
14                   holiday. When the payment is made by mail, the payment is timely if the envelope  
15                   containing the payment is postmarked by the United States postal service or other  
16                   postal carrier service before midnight of the due date.
- 17           6. The commissioner shall pay over all of the moneys received during each calendar  
18                   month to the state treasurer.

19           **(Effective after December 31, 1999) Tax imposed.**

- 20           1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per  
21                   gallon [3.79 liters] is imposed on the sale of all alternative fuel sold or used in this  
22                   state. For the purpose of determining the tax upon compressed natural gas under  
23                   this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed  
24                   natural gas is equal to one gallon [3.79 liters] of motor vehicle fuel or special fuel.
- 25           2. A supplier, distributor, or retailer shall remit the tax imposed by this section on  
26                   alternative fuel used and on direct sales of alternative fuel to a consumer.
- 27           3. The tax imposed by this section does not apply on sales by a supplier to another  
28                   supplier, on a sale by a supplier to a distributor, on a sale by a distributor to  
29                   another distributor, on a sale by a distributor to a retailer, on an export, or on a sale  
30                   to an exempt consumer.

- 1           4. The person required to remit the tax imposed by this section shall pass the tax on  
2           to the consumer.
- 3           5. The person required to remit the tax imposed by this section shall pay the tax to  
4           the commissioner by the twenty-fifth day of the calendar month after the month  
5           during which the alternative fuel was sold or used by the person. When the  
6           twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
7           holiday, the due date is the first working day after the Saturday, Sunday, or legal  
8           holiday. When payment is made by mail, the payment is timely if the envelope  
9           containing the payment is postmarked by the United States postal service or other  
10          postal carrier service before midnight of the due date.
- 11          6. The commissioner shall pay over all of the moneys received during each calendar  
12          month to the state treasurer.

13           **57-43.4-03. Refund of tax for alternative fuel used for heating or for an**  
14 **agricultural, industrial, or railroad purpose.** A consumer who purchases or uses any  
15 alternative fuel for heating or for an agricultural, industrial, or railroad purpose, except  
16 alternative fuel used to operate a licensed motor vehicle, on which the alternative fuel tax  
17 imposed by section 57-43.4-02 has been paid, may file a claim with the commissioner for a  
18 refund pursuant to the refund provisions in chapter 57-43.1. The tax imposed by section  
19 57-43.4-05 shall be deducted from the refund.

20           **57-43.4-04. Exemptions.**

- 21           1. Alternative fuel sold for use as heating fuel or for an agricultural, industrial, or  
22           railroad purpose is exempt from the alternative fuel tax imposed by section  
23           57-43.4-02 at the time the fuel is sold to the consumer and is subject instead to the  
24           tax imposed by section 57-43.4-05. Fuel purchased for use in a licensed motor  
25           vehicle is not exempt from the tax imposed by section 57-43.4-02.
- 26           2. A consumer purchasing alternative fuel for a use in which it becomes an ingredient  
27           or a component part of tangible personal property intended to be sold ultimately at  
28           retail is exempt from the tax imposed by section 57-43.4-02 and is not subject to  
29           the tax imposed by section 57-43.4-05.

30           **57-43.4-05. Special excise tax levied.**

- 1           1. Except as otherwise provided in this chapter, a special excise tax of one and  
2                   two-tenths cents per gallon [3.79 liters] is imposed on all sales of alternative fuel  
3                   exempted from the tax imposed under section 57-43.4-02.
- 4           2. The special excise tax applies to all alternative fuel taxed under section 57-43.4-02  
5                   for which taxes are later refunded to any consumer.
- 6           3. A consumer importing alternative fuel into this state, for a purpose for which the  
7                   alternative fuel is taxable under this section, is liable for the tax. The  
8                   commissioner shall collect the tax from the consumer importing the alternative fuel.
- 9           4. The tax imposed by this section does not apply to a sale by a supplier to another  
10                   supplier, a sale by a supplier to a distributor, a sale by a distributor to another  
11                   distributor, a sale by a distributor to a retailer, or an export.
- 12          5. The person required to remit the tax imposed by this section shall pass the tax on  
13                   to the consumer.
- 14          6. The person required to remit the tax imposed by this section shall pay the tax to  
15                   the commissioner by the twenty-fifth day of the calendar month after the month  
16                   during which the alternative fuel was sold or used by the person. When the  
17                   twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
18                   holiday, the due date is the first working day after the Saturday, Sunday, or legal  
19                   holiday. When payment is made by mail, the payment is timely if the envelope  
20                   containing the payment is postmarked by the United States postal service or other  
21                   postal carrier service before midnight of the due date.
- 22          7. The commissioner shall pay over all of the moneys received during each calendar  
23                   month to the state treasurer.

24           **57-43.4-06. Tax credit allowance.** The person required to remit the tax imposed by  
25 this chapter is entitled to deduct one percent from the amount of tax due and payable as a  
26 credit to cover the cost of collecting the tax and to cover shrinkage and evaporation losses due  
27 to temperature adjustments.

28           **57-43.4-07. Credit for taxes paid on worthless accounts and refunds.** Taxes paid  
29 on alternative fuel represented by accounts found to be worthless and actually charged off for  
30 income tax purposes, may be taken as a credit against subsequent taxes due provided the  
31 accounts charged off included the cost of the fuel as well as the taxes due. If in any case the

1 credit, or any part of it, cannot be utilized by the person because of a discontinuance of a  
2 business or for other valid reason, the amount may be refunded. If the worthless account is  
3 subsequently collected, the tax must be remitted on the amount collected.

4 **57-43.4-08. Refund to prevent taxation by multiple jurisdictions.** Any person to  
5 whom alternative fuel is sold on which the tax imposed by this chapter or has been paid who  
6 thereafter removes the fuel from this state for sale or resale in another state or to a state that  
7 requires payment of a tax upon the use of the fuel in that state must be granted a refund of the  
8 tax that was paid pursuant to this chapter. The refund may be granted only upon application to  
9 the commissioner in the manner prescribed by the commissioner and must include proof that  
10 fuel for sale or resale in another state was reported to the taxing agency of that state, or in the  
11 case of a consumer, proof of payment of the tax imposed by the other state. The refund may  
12 not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway  
13 aid fund. A claim for refund under this section must be made within one year from the date the  
14 fuel was removed to another state for sale, resale, or use in another state.

15 **57-43.4-09. Refund of tax on tax-exempt sales.** When a person purchasing  
16 alternative fuel for resale purposes pays the tax imposed by this chapter later makes a sale of  
17 the fuel to an agency of the United States government, the person may apply to the  
18 commissioner for a refund of the tax.

19 **57-43.4-10. Refiner, supplier, distributor, importer, exporter, terminal operator, or**  
20 **retailer required to secure license - License fees.**

- 21 1. A person may not engage in business in this state as a refiner, supplier, distributor,  
22 importer, exporter, terminal operator, or retailer of alternative fuel unless that  
23 person holds an unrevoked license issued by the commissioner.
- 24 2. The person shall file an application for a license with the commissioner providing  
25 such information as required by the commissioner and on a form or in a format as  
26 required by the commissioner. The information shall include:
  - 27 a. The name under which the person intends to transact business in this state.
  - 28 b. The physical location of each place of business to be covered by the license  
29 and the mailing address of the location to which forms and correspondence  
30 are to be directed.



- 1           c. If a partnership, the name and address of each of the persons constituting the  
2           partnership.
- 3           d. If a domestic corporation, the corporate name, the date of incorporation, and  
4           the names and addresses of the directors and corporate officers.
- 5           e. If a foreign corporation, the corporate name, the state and the date of  
6           incorporation, the name and address of the resident agent, the location of  
7           each place of business, and the date on which the business was established.
- 8           f. If a domestic limited liability company, the limited liability company name, the  
9           date of formation, and the names and addresses of the governors and  
10           managers.
- 11           g. If a foreign limited liability company, the limited liability company name, the  
12           state and the date of formation, the name and address of the resident agent,  
13           the location of each place of business, and the date on which the business  
14           was established.
- 15           h. Any other information the commissioner may require.

16           The application must be signed by the taxpayer to be valid and must contain a  
17           written declaration that it is made and subscribed under penalties of perjury. For  
18           an individual, partnership, or unincorporated association, the application must be  
19           signed by the owner. For a corporation, the application must be signed by an  
20           authorized officer. For a limited liability company, the application must be signed  
21           by an authorized manager.

- 22           3. The applicant for a single or multiple license as a refiner, supplier, distributor,  
23           importer, exporter, terminal operator, or retailer shall pay to the commissioner a  
24           license fee of twenty dollars. The license fee must be paid at the time the  
25           application is made.

26           **57-43.4-11. Qualification for exporter license.** As a condition precedent to the  
27           issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a  
28           valid unrevoked license required by the jurisdiction of import.

29           **57-43.4-12. Qualification for importer license.** As a condition precedent to the  
30           issuance of a license to an importer, the importer shall furnish proof that the importer has a

1 valid unrevoked license required by the jurisdiction of export. An importer must also apply for a  
2 license in this state as a refiner, supplier, distributor, or retailer.

3 **57-43.4-13. Bond or letter of credit.** As a condition precedent to the issuance of a  
4 single or multiple license, a supplier, distributor, importer, or retailer shall furnish a surety bond,  
5 a cash bond, or an approved letter of credit as security to guarantee the payment of alternative  
6 fuel tax liabilities. A terminal operator, or an exporter who is not also licensed as a supplier,  
7 distributor, or retailer, is exempt from this requirement.

8 1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by  
9 the commissioner, but not less than five hundred dollars.

10 2. The surety bond, cash bond, or letter of credit is subject to approval by the  
11 commissioner.

12 3. After a single or multiple license has been in effect for five or more years, the  
13 commissioner may review the person's records and may waive the requirement for  
14 a security. The requirement for a security may be reinstated at the discretion of  
15 the commissioner.

16 4. A surety bond or letter of credit provided as security shall be kept in the custody of  
17 the commissioner and may be used by the commissioner, without notice to the  
18 principal, if it becomes necessary to cover tax, penalties, and interest due.

19 5. Money deposited with the commissioner as a cash bond shall be made in the form  
20 of a cashier's check or bank money order payable to the tax commissioner. The  
21 money received must be paid by the commissioner to the state treasurer and  
22 credited by the treasurer into an alternative fund to be known as the motor fuel tax  
23 security trust fund. The money deposited may be used by the commissioner,  
24 without notice to the depositor, if it becomes necessary to cover tax, penalties, and  
25 interest due. If the money deposited is to be used to cover unpaid liabilities, the  
26 commissioner shall certify the information to the director of the office of  
27 management and budget. The office of management and budget shall transmit the  
28 money to the commissioner who shall apply as much of the money deposited by  
29 the person as is necessary to satisfy the liabilities due. When in the  
30 commissioner's judgment it is no longer necessary to require the deposit to be  
31 maintained, the commissioner shall certify the information to the director of the

1           office of management and budget who shall pay the unused money to the  
2           depositor.

3           **57-43.4-14. Application for license - Issuance of license - Denial of license.**

4           1. Upon receipt and approval of an application for a license, the license fee, and the  
5           required security, the commissioner shall issue a license which shall be valid until  
6           it is suspended, revoked for cause, or otherwise canceled. The license is not  
7           transferable.

8           2. A multiple license shall be issued to a person who applied for and qualifies for  
9           more than one type of license.

10          3. The commissioner may refuse to issue a license to a person who has not provided  
11          the required security, who failed to provide the information requested on the  
12          application, who previously held a license that was revoked by the commissioner,  
13          to a person who is a subterfuge for the real party of interest whose license prior to  
14          the time of filing of the application has been revoked, or upon other sufficient  
15          cause being shown. The commissioner shall grant the person the right to a  
16          hearing. Written notice of the hearing must be served on the person fifteen or  
17          more days prior to the date established for the hearing.

18          **57-43.4-15. Revocation of license - Hearing to show cause - Reinstatement.**

19          1. The commissioner may revoke a license for reasonable cause. Before revoking a  
20          license, the commissioner shall grant a hearing to allow the person to show cause  
21          why the license should not be revoked. Written notice of a hearing must be served  
22          on the person fifteen or more days prior to the date established for the hearing.  
23          Any time prior to and pending hearing, the commissioner, in the exercise of  
24          reasonable discretion, may suspend the license.

25          2. Before a new license can be issued to a person whose license was revoked and  
26          who is obligated to remit the tax imposed by this chapter, the person must pay to  
27          the commissioner the amount of any delinquent tax, penalties, and interest  
28          remaining unpaid and must file with the commissioner a surety bond upon which  
29          the person is the obligor. The bond must be in an amount determined by the  
30          commissioner, but not less than five thousand dollars. The bond must be payable  
31          to the commissioner and must be conditioned upon the prompt filing of correct tax

1           reports and the prompt payment of the full amount of the tax due at the times, in  
2           the manner, and at the place required under the provisions of this chapter. If the  
3           person fails to file the monthly report required and to pay the full amount of the tax  
4           due promptly, the commissioner may require an increase in the amount of the  
5           surety bond conditioned to secure at all times the payment of any tax due to the  
6           state under the provisions of this chapter. If the person fails to provide an  
7           increased bond, the commissioner shall revoke the license.

8           **57-43.4-16. Report by refiner, supplier, distributor, importer, exporter, or retailer**  
9 **required.**

- 10          1. A refiner, supplier, distributor, importer, exporter, or retailer shall file a monthly  
11          report with the commissioner no later than the twenty-fifth day of each calendar  
12          month covering alternative fuel sold and used during the preceding calendar  
13          month. When the twenty-fifth day of the calendar month falls on a Saturday,  
14          Sunday, or legal holiday, the due date is the first working day after the Saturday,  
15          Sunday, or legal holiday. When the report is filed by mail, the report is timely if the  
16          envelope containing the report is postmarked by the United States postal service  
17          or other postal carrier service before midnight of the due date.
- 18          2. The report to the commissioner must be on a form prescribed and furnished by the  
19          commissioner. The commissioner may require that all or part of the report be  
20          submitted in an electronic format approved by the commissioner, provided the  
21          person is able to use an electronic format. The report must contain such  
22          information as required by the commissioner including:
- 23               a. A detailed schedule of alternative fuel purchased, imported, or exported.  
24               b. A detailed schedule of alternative fuel sold to another refiner, supplier,  
25               distributor, importer, exporter, or retailer.  
26               c. A detailed schedule of alternative fuel sold tax-paid to a person for resale,  
27               including a list of persons who purchased the alternative fuel for resale.  
28               d. The total number of gallons of alternative fuel and used subject to tax  
29               imposed by this chapter.  
30               e. The number of gallons of alternative fuel sold tax exempt to a qualified  
31               consumer.

1           f. The number of gallons of alternative fuel in inventory at the beginning of the  
2                   calendar month and the number of gallons in inventory at the close of the  
3                   calendar month and any gains or losses experienced.

4           3. The report must be signed by the taxpayer to be valid and must contain a written  
5                   declaration that it is made and subscribed under penalties of perjury. The  
6                   commissioner may prescribe alternative methods for signing, subscribing, or  
7                   verifying a report filed by electronic means, including telecommunications, that  
8                   shall have the same validity and consequence as the actual signature and written  
9                   declaration for a paper return.

10           **57-43.4-17. Report by terminal operator required.**

11           1. A terminal operator shall file a monthly report with the commissioner no later than  
12                   the twenty-fifth day of each calendar month covering alternative fuel received into  
13                   and removed from the terminal during the preceding calendar month. When the  
14                   twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal  
15                   holiday, the due date is the first working day after the Saturday, Sunday, or legal  
16                   holiday. When the report is filed by mail, the report is timely if the envelope  
17                   containing the report is postmarked by the United States postal service or other  
18                   postal carrier service before midnight of the due date.

19           2. The report to the commissioner by a terminal operator must be on a form  
20                   prescribed and furnished by the commissioner. The commissioner may require  
21                   that all or part of the report be submitted in an electronic format approved by the  
22                   commissioner, provided the terminal operator is able to file the report in an  
23                   electronic format. The report must contain such information as required by the  
24                   commissioner and may include:

25           a. A detailed schedule of gallons of alternative fuel received into the terminal for  
26                   or on behalf of the position holder.

27           b. A detailed schedule of gallons of alternative fuel removed from the terminal by  
28                   or on behalf of a position holder.

29           c. The number of gallons of alternative fuel in inventory at the beginning of the  
30                   calendar month and the number of gallons in inventory at the close of the  
31                   calendar month for each position holder.

1           3.   The report must be signed by the taxpayer to be valid and must contain a written  
2                   declaration that it is made and subscribed under penalties of perjury. The  
3                   commissioner may prescribe alternative methods for signing, subscribing, or  
4                   verifying a report filed by electronic means, including telecommunications, that  
5                   shall have the same validity and consequence as the actual signature and written  
6                   declaration for a paper return.

7           **57-43.4-18. Common or contract carrier - License required - Records**  
8           **requirements - Diverted loads - Commissioner to audit records.**

- 9           1.   A common or contract carrier shall obtain a license issued by the commissioner.  
10                   The application for license must be made on a form prescribed by the  
11                   commissioner and must contain the information required by the commissioner.
- 12           2.   A common or contract carrier transporting alternative fuel in a vehicle, railcar, or  
13                   vessel into this state from another state or country, shall ensure that a bill of lading  
14                   has been issued by the terminal or bulk plant from which the fuel was removed  
15                   indicating North Dakota as the destination. If the bill of lading issued by the  
16                   terminal or bulk plant indicates a destination other than North Dakota, the  
17                   transporter shall issue a diversion ticket indicating North Dakota as the destination  
18                   state. If a bill of lading was not issued by the terminal or bulk plant, the transporter  
19                   shall issue a bill of lading for each shipment indicating North Dakota as the  
20                   destination state. A copy of a diversion ticket and a copy of a bill of lading  
21                   prepared by the transporter shall be mailed, faxed, or electronically transmitted to  
22                   the commissioner before the fuel enters the state.
- 23           3.   A common or contract carrier transporting alternative fuel in the state shall provide  
24                   a copy of the bill of lading accompanying the shipment, along with any drop load  
25                   tickets and diversion tickets issued for the delivered fuel, to the refiner, supplier,  
26                   distributor, importer, retailer, or consumer to whom delivery of the shipment was  
27                   made.
- 28           4.   A refiner, supplier, distributor, importer, retailer, or consumer, may not knowingly  
29                   accept delivery of alternative fuel into storage facilities in this state if that delivery is  
30                   not accompanied by a bill of lading or diversion ticket issued by the terminal

- 1           operator, bulk plant operator, or transporter, that sets out on its face North Dakota  
2           as the destination state of the alternative fuel.
- 3           5. If a common or contract carrier unloads only a portion of a shipment at a location,  
4           or if the load is unloaded at a location other than what is indicated on the bill of  
5           lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is  
6           dropped at more than one location, the drop load ticket shall identify the name and  
7           address of all locations in addition to the type of fuel and gallonage dropped. A  
8           copy of the ticket must be maintained on board and a copy must accompany the  
9           bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or  
10           consumer taking delivery of the fuel.
- 11          6. A diversion ticket must include the following information:
- 12           a. The transporter's name and address.  
13           b. The date and time of issuance.  
14           c. The diversion ticket number.  
15           d. The name and address of the consignee indicated on the original bill of  
16           lading.  
17           e. The destination on the original bill of lading, including the address and  
18           destination state.  
19           f. The original bill of lading number.  
20           g. The location diverted to, including the address and destination state.  
21           h. The number of gallons of fuel being diverted.  
22           i. The type of fuel being diverted.  
23           j. Any other information required by the commissioner.
- 24          7. A drop load ticket must include the following:
- 25           a. The transporter's name and address.  
26           b. The date and time of issuance.  
27           c. The partial load ticket number.  
28           d. The name and address of the consignee indicated on the original bill of  
29           lading.  
30           e. The destination on the original bill of lading or diversion ticket, if issued,  
31           including the address and destination state.

- 1           f. The original bill of lading number and, if available, the diversion ticket number.  
2           g. The number of gallons off-loaded at each location.  
3           h. The type of fuel off-loaded at each location.  
4           i. Any other information required by the commissioner.  
5           8. Except as otherwise provided in this section, the commissioner may audit the  
6           records of a common or contract carrier, whether or not licensed by the  
7           commissioner, and may impose such penalties as authorized by this chapter.

8           **57-43.4-19. Retention of records - Subject to inspection.** A refiner, supplier,  
9           distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records  
10           of all alternative fuel refined, purchased, imported, exported, sold, distributed, used, and  
11           inventory records for a period of not less than three years. Inventory records include physical  
12           readings, metered readings of sales, delivery tickets, and delivery readings. The records are  
13           open to inspection by the commissioner or by any agent or employee authorized by the  
14           commissioner during business hours.

15           **57-43.4-20. Commissioner to audit reports and assess tax.**

- 16           1. The commissioner, or an authorized representative, may audit the records, books,  
17           and papers and examine fuel and any equipment used to store, transport, or  
18           dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal  
19           operator, retailer, or common or contract carrier. For a person required to file a  
20           report, the examination and audit must be done no later than three years after the  
21           due date of the report or three years after the report was filed, whichever period  
22           expires later. The commissioner is authorized to make assessments of tax, plus  
23           penalty and interest, or to issue tax credits or make tax refunds as determined on  
24           the basis of the examination and audit.  
25           2. If it is determined upon audit that the tax due was twenty-five percent or more  
26           above the amount reported on a report, the tax may be assessed, or a proceeding  
27           in court for the collection of the tax may be begun without such assessment, at any  
28           time within six years after the due date of the return, or six years after the return  
29           was filed, whichever period expires later.  
30           3. Except as otherwise provided in this chapter, the commissioner may audit any  
31           consumer's claim for a refund of tax and, not later than three years after the due



1           date of the claim or three years after the claim was filed, whichever period expires  
2           later, assess additional tax or issue an additional refund. If additional tax is found  
3           due or if an additional tax refund applies, the commissioner shall notify the  
4           claimant in detail of the reason for the increase or decrease. For any claim  
5           selected for audit, the claimant shall provide additional verification, as required by  
6           the commissioner, of fuel purchases, payment of the tax, use of the fuel for a  
7           purpose entitling the claimant to a refund, and use of the fuel other than in a  
8           licensed motor vehicle.

9           4. If a person gives false or fraudulent information in a report or in a claim for refund,  
10           or if the failure by a person to file a tax report is due to the fraudulent intent or the  
11           willful attempt of the person in any manner to evade the tax, the time limitations in  
12           this section do not apply, and the tax may be assessed, or a proceeding in court  
13           for the collection of the tax may be begun without the assessment, at any time.

14           5. If before the expiration of the time prescribed in this chapter for the assessment of  
15           tax, the commissioner and the person consent in writing to an extension of time for  
16           the assessment of the tax, the tax may be assessed at any time prior to the  
17           expiration of the period agreed upon. The period so agreed upon may be  
18           extended by subsequent agreements in writing made before the expiration of the  
19           period previously agreed upon.

20           6. A determination of additional tax due issued to a person fixes the tax finally and  
21           irrevocably unless the person against whom it is assessed, within thirty days after  
22           the giving of notice of the determination, protests the determination under rules  
23           adopted by the commissioner and in the manner provided in chapter 28-32.

24           7. A determination that a claim for a tax credit or refund is disallowed becomes finally  
25           and irrevocably fixed unless the person claiming the refund, within thirty days after  
26           the giving of notice of the determination, protests the determination under rules  
27           adopted by the commissioner and in the manner provided in chapter 28-32.

28           **57-43.4-21. Penalty and interest - Violations - Penalties.**

29           1. If a person fails to file the required report or to pay the full amount of the tax as  
30           required by this chapter, there is imposed a penalty of five dollars or a sum equal  
31           to five percent of the tax due, for each calendar month or fraction of a month

1           during which the delinquency continues, excepting the month within which the tax  
2           became due. If a person files a false or fraudulent report with intent to evade the  
3           tax imposed by this chapter, there is imposed a penalty equal to ten percent of the  
4           deficiency, with interest at the rate of two percent per month on the deficiency, for  
5           each calendar month or fraction of a month during which the deficiency continues.

6           2. If a consumer fails to pay any tax due under this chapter, the commissioner shall  
7           impose a penalty of five dollars or a sum equal to five percent of the tax due,  
8           whichever is greater, together with interest at the rate of one percent per month on  
9           the tax due, for each calendar month or fraction of a month during which the  
10           delinquency continues, not including the month within which the tax became due.

11           The commissioner, for good cause shown, may waive all or part of the penalty or  
12           the interest provided by this subsection. A refiner, supplier, distributor, importer,  
13           exporter, or retailer may not be held liable for taxes due directly from a consumer.

14           3. A person is guilty of a class A misdemeanor if:

15           a. The person refuses or knowingly or intentionally fails to make and file any  
16           report required by this chapter in the manner or within the time required; or

17           b. The person knowingly or with intent to evade or aid in the evasion of the tax  
18           imposed by this chapter makes any false statement or conceals any material  
19           fact in any application, record, report, or claim for refund provided for in this  
20           chapter.

21           **57-43.4-22. Determination if no report is filed.** If a person fails, neglects, or refuses  
22           to file an alternative fuel report when due, the commissioner, on the basis of available  
23           information, shall determine the tax liability for the period during which no report was filed, and  
24           to the tax thus determined the commissioner shall add the penalty and interest as provided in  
25           section 57-43.4-21. An assessment made by the commissioner under this section or section  
26           57-43.4-20 is presumed to be correct, and if the validity of the assessment is in question, the  
27           burden is on the person who challenges the assessment to establish by fair preponderance of  
28           evidence that it is erroneous or excessive.

29           **57-43.4-23. Corporate officer liability.** If a corporation holding a license issued under  
30           this chapter fails for any reason to file the required returns or to pay the taxes due, any of its  
31           officers having control or supervision of, or charged with the responsibility for making, such

1 returns and payments is personally liable for the failure. The dissolution of a corporation does  
2 not discharge an officer's liability for a prior failure of the corporation to make a return or remit  
3 the tax due. The sum due for such a liability may be assessed and collected under the  
4 provisions of this chapter for the assessment and collection of other liabilities.

5 **57-43.4-24. Governor and manager liability.** If a limited liability company is an  
6 employer and fails for any reason to file the required returns or to pay the taxes due under this  
7 chapter, the governor or manager, jointly or severally charged with the responsibility of  
8 supervising the preparation of such returns and payments, is personally liability for such failure.  
9 The dissolution of a limited liability company does not discharge a manager's liability for a prior  
10 failure of the limited liability company to file a return or remit the taxes due. The taxes, penalty,  
11 and interest may be assessed and collected under the provisions of this chapter.

12 **57-43.4-25. Lien of tax - Collection - Action authorized.**

13 1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay  
14 the tax, the amount, including any interest, penalty, or addition to the tax, together  
15 with the costs that may accrue in addition to the tax, is a lien in favor of the state of  
16 North Dakota upon all property and rights to property, whether real or personal,  
17 belonging to the taxpayer, and in the case of property in which a deceased  
18 taxpayer held an interest as joint tenant or otherwise with right of survivorship at  
19 the time of death, the lien continues as a lien against the property in the hands of  
20 the survivors to the extent of the deceased taxpayer's interest therein, which  
21 interest is determined by dividing the value of the entire property at the time of the  
22 taxpayer's death by the number of joint tenants or persons interested therein.

23 2. The lien attaches at the time the tax becomes due and payable and continues until  
24 the liability for the amount is satisfied. For the purposes of this section, the words  
25 "due" and "due and payable" mean the first instant at which the tax becomes due.

26 3. To preserve the lien against subsequent mortgagees, purchasers, or judgment  
27 creditors, for value and without notice of the lien, on any property situated in a  
28 county, the commissioner shall file a notice of the lien with the secretary of state.

29 4. The secretary of state shall endorse each notice of lien the day, hour, and minute  
30 when received and preserve the same, and shall index the notice in the central  
31 indexing system and the lien is effective from the time of indexing.

- 1           5. The commissioner is exempt from the payment of the filing fees as otherwise  
2           provided by law for the filing of a lien or the satisfaction of a lien.
- 3           6. Upon payment of a tax as to which the commissioner has filed notice with the  
4           secretary of state, the commissioner shall file with the secretary of state a  
5           satisfaction of tax and the secretary of state shall enter the satisfaction on the  
6           notice on file and indicate the fact on the central indexing system.
- 7           7. Upon the request of the commissioner, the attorney general shall bring an action at  
8           law or in equity, as the facts may justify, without bond to enforce payment of any  
9           taxes and any penalties, or to foreclose the lien in the manner provided for  
10          mortgages on real or personal property, and in the action the attorney general shall  
11          have the assistance of the state's attorney of the county in which the action is  
12          pending.
- 13          8. The foregoing remedies of the state are cumulative and no action taken by the  
14          commissioner or attorney general may be construed to be an election on the part  
15          of the state or any of its officers to pursue any remedy hereunder to the exclusion  
16          of any other remedy provided by law.

17           **57-43.4-26. Erroneously or illegally collected taxes.** If any taxes, penalties, or  
18          interest imposed by this chapter have been erroneously or illegally collected from any person,  
19          the commissioner may permit that person to take credit against a subsequent tax return for the  
20          amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall  
21          present a voucher to the office of management and budget for payment of the amount  
22          erroneously or illegally collected and a warrant-check must be prepared by that office drawn on  
23          the state treasurer payable to that person. The refund must be paid from undistributed funds  
24          received from the tax imposed by this chapter and any such refund may not be approved or  
25          paid unless it is an amount which is in excess of five dollars.

26           **57-43.4-27. Inventory gains - Losses.**

- 27          1. A supplier, distributor, or retailer shall take a physical reading of all alternative fuel  
28          located in a terminal, underground tank, aboveground tank, and in a railcar,  
29          storage tank of a tank truck, and the storage tank of a bulk delivery truck on a  
30          regular basis and shall report the physical readings, inventory gains, and inventory  
31          losses to the commissioner in increments not to exceed a twelve-month period.

1           The inventory reconciliation shall include alternative fuel stored in a barrel, drum,  
2           or other receptacle.

3           2. Except as otherwise provided in this chapter, a supplier, distributor, or retailer is  
4           liable for the tax imposed under section 57-43.4-02 or 57-43.4-05, based on  
5           average sales taxed under these sections, on all alternative fuel not accounted for.

6           3. When sold or used by a supplier, distributor, or retailer, a gain in alternative fuel  
7           inventories is subject to the tax imposed by this chapter in the same manner as  
8           alternative fuel refined, purchased, or imported or otherwise acquired.

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

12           **57-43.4-28. Administration - Assistance authorized - Rules.** The commissioner  
13 shall enforce the provisions of this chapter. The commissioner may employ such assistance  
14 and conduct such investigation as may be necessary for the administration and enforcement of  
15 this chapter and may adopt and enforce reasonable rules relating to the administration and  
16 enforcement of this chapter.

17           **57-43.4-29. Deposit, transfer, and distribution of funds.** All taxes, license fees,  
18 penalties, and interest collected under this chapter must be transferred to the state treasurer  
19 who shall deposit such moneys in the highway tax distribution fund.

20           **SECTION 26. REPEAL.** Section 57-43.1-27 of the North Dakota Century Code and  
21 section 57-43.3-24 of the North Dakota Century Code as created by Senate Bill No. 2177, as  
22 approved by the fifty-sixth legislative assembly, are repealed.

23           **SECTION 27. EFFECTIVE DATE.** This Act is effective for taxable events occurring  
24 after, and taxable inventories held on, December 31, 1999.