

**FIRST ENGROSSMENT
with Conference Committee Amendments**

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 use of dyed special fuel in a licensed motor vehicle, administration, enforcement, administrative
6 fees, and penalties; to amend and reenact sections 57-43.1-02, 57-43.1-14, 57-43.1-16,
7 57-43.1-24, 57-43.1-26, 57-43.2-01, 57-43.2-02, 57-43.2-03, 57-43.2-04.1, 57-43.2-05,
8 57-43.2-07, 57-43.2-11, 57-43.2-21, and 57-43.3-02 of the North Dakota Century Code, relating
9 to collection by suppliers of motor vehicle, special fuels, aviation fuels, and alternative fuels
10 taxes, taxation of inventories, administration, enforcement, and penalties; to repeal sections
11 57-43.1-27, 57-43.2-02.2, and 57-43.3-24 of the North Dakota Century Code, relating to motor
12 vehicle fuels tax imposition and credit for losses, refunds of special fuels taxes, and aviation
13 fuel taxes collection allowances; and to provide an effective date.

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

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

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

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

1 must be considered sold and the tax imposed when the fuel is removed from a
2 terminal by the supplier. A distributor who is an importer shall remit the tax
3 imposed by this section on motor vehicle fuel imported into the state.

4 3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the~~
5 ~~dealer may collect the tax imposed by this chapter, but on sales in the original~~
6 ~~package to persons other than licensed dealers, the dealer is liable for the tax.~~

7 The tax imposed by this section does not apply on a sale by a supplier to another
8 supplier, or on an export by a licensed exporter.

9 4. A supplier required to remit the tax imposed by this section shall pass the tax on to
10 the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer
11 or consumer. A retailer shall pass the tax on to a consumer.

12 5. The person required to remit the tax imposed by this section shall pay the tax to
13 the commissioner by the twenty-fifth day of the calendar month after the month
14 during which the motor vehicle fuel was acquired, sold, or used by the person.

15 When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or
16 legal holiday, the due date is the first working day after the Saturday, Sunday, or
17 legal holiday. When payment is made by mail, the payment is timely if the
18 envelope containing the payment is postmarked by the United States postal
19 service or other postal carrier service before midnight of the due date.

20 6. A licensed distributor may delay the payment of the tax required to be paid to a
21 supplier until one day prior to the date the tax is due and payable by the supplier.

22 To be timely, a distributor's tax payment must be available to the supplier for
23 deposit on or before the date the distributor's tax payment is due. The licensed
24 distributor may make the payment to a supplier by electronic funds transfer or by
25 mail.

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

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

29 1. Except as otherwise provided in this section, a tax of seventeen cents per gallon
30 [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

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

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

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

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

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

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

28 If the commissioner is notified that a distributor has failed to pay the supplier by the date
29 the tax is due, the commissioner may revoke the distributor's license. In addition, the
30 commissioner may pursue payment from the distributor's bonding company to satisfy the
31 liability. If the commissioner revokes the distributor's license, the commissioner shall advise the

1 supplier, and so advised, the supplier is no longer afforded the protection under this section. If
2 a distributor's license is reinstated, the commissioner shall notify the supplier.

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

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

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

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

1 ~~longer necessary to require the deposit to be maintained by the depositor, shall~~
2 ~~certify that information to the director of the office of management and budget who~~
3 ~~shall pay the unused money to the depositor. A surety bond or letter of credit~~
4 ~~provided as security must be kept in the custody of the commissioner and may be~~
5 ~~used by the commissioner, without notice to the principal, if it becomes necessary~~
6 ~~to cover the motor vehicle fuel tax, penalties, and interest due.~~

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

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

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

1 ~~the president or secretary, and if a foreign corporation, by the resident general agent, attorney~~
2 ~~in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability company,~~
3 ~~the statement must be signed by the president or treasurer, and if a foreign limited liability~~
4 ~~company, by the resident agent, president, or treasurer. If the dealer is a firm, or an~~
5 ~~association of individuals, the statement must be made by the managing agent or owner.~~

6 1. A refiner, supplier, importer, or exporter shall file a monthly report with the
7 commissioner no later than the twenty-fifth day of each calendar month covering
8 motor vehicle fuel acquired, sold, and used during the preceding calendar month.
9 When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or
10 legal holiday, the due date is the first working day after the Saturday, Sunday, or
11 legal holiday. When the report is filed by mail, the report is timely if the envelope
12 containing the report is postmarked by the United States postal service or other
13 postal carrier service before midnight of the due date.

14 2. The report to the commissioner must be on a form prescribed and furnished by the
15 commissioner. The commissioner may require that all or part of the report be
16 submitted in an electronic format approved by the commissioner, provided the
17 person required to file the report is able to use an electronic format. The report
18 must contain the information as required by the commissioner including:

- 19 a. A detailed schedule of gallons of motor vehicle fuel refined, purchased,
20 imported, and exported.
- 21 b. A detailed schedule of gallons of motor vehicle fuel sold to a person eligible to
22 purchase the motor vehicle fuel without the tax imposed by this chapter.
- 23 c. A detailed schedule of gallons of motor vehicle fuel sold tax-paid for resale,
24 including a list of persons who purchased the motor vehicle fuel for resale.
- 25 d. The total number of gallons of motor vehicle fuel sold and used subject to the
26 tax imposed by this chapter.
- 27 e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified
28 consumer.
- 29 f. The number of gallons of motor vehicle fuel in inventory at the beginning of
30 the calendar month, the number of gallons in inventory at the close of the
31 calendar month, and any gains or losses experienced.

- 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.
- 3 4. The tax commissioner may prescribe alternative methods for signing, subscribing,
4 or verifying a return 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. ~~The report must contain a statement of the~~
7 ~~quantities of motor vehicle fuel sold, used, received, and delivered within this state~~
8 ~~from the dealer's place of business. If any motor vehicle fuel has been sold and~~
9 ~~delivered by the dealer to customers in the original package, whether in tank car,~~
10 ~~barrel, or other package, and in the form and condition in which the same was~~
11 ~~imported, the statement must show the amount of motor vehicle fuel so sold and~~
12 ~~delivered, and the names and addresses of the persons to whom it was sold and~~
13 ~~delivered.~~

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

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

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

28 **57-43.1-26. Inventory gains - Losses ~~-Deductions allowed to dealer~~ ~~-Remedies.~~**
29 ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of~~
30 ~~motor fuel received during each calendar month from the statement submitted as required in~~
31 ~~section 57-43.1-16, but the allowance may not exceed one percent of the total received during~~

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

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

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

25 **57-43.2-01. Definitions.** As used in this chapter, unless the context otherwise
26 requires:

- 27 1. "Agricultural purpose" means the science, art, and business of farming. It includes
28 raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges
29 and universities, custom combining, manure spreading, and stack moving
30 operations. Fuel used for an agricultural purpose includes fuel used in a vehicle,

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

1 rented, the importer for use means the lessee or renter unless the commissioner
2 has designated the lessor, renter, or some other person as the importer for use.

3 9- 10. "Industrial purpose" means:

- 4 a. A manufacturing, warehousing, or loading dock operation;
- 5 b. Construction;
- 6 c. Sand and gravel processing;
- 7 d. Well drilling, well testing, or well servicing;
- 8 e. Maintenance of business premises, golf courses, or cemeteries;
- 9 f. A commercial or contract painting operation;
- 10 g. Electrical services;
- 11 h. A refrigeration unit on a truck;
- 12 i. A power take-off unit; and
- 13 j. Other similar business activity.

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

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

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

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

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

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

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

3 **57-43.2-02. (Effective through December 31, 1999) Tax imposed.**

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

- 1 6. A licensed distributor may delay the payment of the tax required to be paid to a
2 supplier until one day prior to the date the tax is due and payable by the supplier.
3 To be timely, a distributor's tax payment must be available to the supplier for
4 deposit on or before the date the distributor's tax payment is due. The licensed
5 distributor may make the payment to a supplier by electronic funds transfer or by
6 mail.
- 7 7. The commissioner shall pay over all of the moneys received during each calendar
8 month to the state treasurer.

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

- 10 1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per
11 gallon [3.79 liters] is imposed on ~~the sale or delivery of all~~ special fuel ~~to any~~
12 ~~consumer~~ sold or used in this state. For the purpose of determining the tax upon
13 ~~compressed natural gas under this section, one hundred twenty cubic feet [3.40~~
14 ~~cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other~~
15 ~~special fuel.~~
- 16 2. ~~The dealer~~ A supplier shall remit the tax imposed by this section on ~~all sales to~~
17 ~~consumers~~ special fuel used, on the wholesale distribution of special fuel to a
18 distributor or retailer, and on direct sales of special fuel to a consumer. For a
19 supplier who is also a distributor or retailer, the special fuel must be considered
20 sold and the tax imposed when the fuel is removed from a terminal by the supplier.
21 A distributor who is an importer shall remit the tax imposed by this section on
22 special fuel imported into the state.
- 23 3. ~~The dealer may make sales of special fuel to another dealer free of the tax~~
24 ~~imposed by this chapter.~~ The tax imposed by this section does not apply on sales
25 by a supplier to another supplier, or on an export by a licensed exporter.
- 26 4. A supplier required to remit the tax imposed by this section shall pass the tax on to
27 the distributor, retailer, or consumer. A distributor shall pass the tax on to a retailer
28 or consumer. A retailer shall pass the tax on to a consumer.
- 29 5. The person required to remit the tax imposed by this section shall pay the tax to
30 the commissioner by the twenty-fifth day of the calendar month after the month
31 during which the special fuel was acquired, sold, or used by the person. When the

1 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal
2 holiday, the due date is the first working day after the Saturday, Sunday, or legal
3 holiday. When payment is made by mail, the payment is timely if the envelope
4 containing the payment is postmarked by the United States postal service or other
5 postal carrier service before midnight of the due date.

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

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

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

16 **57-43.2-03. Special excise tax levied.**

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

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

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

28 4. ~~3.~~ If any fuel subject to tax by this section was subject to tax in any other state or its
29 political subdivisions, the tax in this section applies but at a rate measured by the
30 difference between the rate imposed in this section and the rate imposed by the
31 other state or its political subdivisions. If the tax imposed by the other state or its

- 1 political subdivisions is the same or greater than the tax imposed by this section,
2 no tax is due.
- 3 ~~5-~~ 4. An invoice, sales ticket, or other sales document issued or created covering a sale
4 taxable under this section must ~~identify the consumer to whom the sale was made,~~
5 specify the purpose for which the special fuel was sold; and specify whether the
6 fuel was dyed for tax exemption purposes.
- 7 ~~6-~~ 5. The tax imposed by this section does not apply on sales by a supplier to another
8 supplier or on an export by a licensed exporter.
- 9 ~~6.~~ The dealer A supplier shall remit the tax imposed by this section on all sales to a
10 and shall pass the tax on to the distributor, retailer, or consumer. A distributor
11 shall pass the tax on to a retailer or consumer. A retailer shall pass the tax on to a
12 consumer.
- 13 7. The person required to remit the tax imposed by this section shall pay the tax to
14 the commissioner by the twenty-fifth day of the calendar month after the month
15 during which the special fuel was acquired, sold, or used by the person. When the
16 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal
17 holiday, the due date is the first working day after the Saturday, Sunday, or legal
18 holiday. When payment is made by mail, the payment is timely if the envelope
19 containing the payment is postmarked by the United States postal service or other
20 postal carrier service before midnight of the due date. A licensed distributor may
21 delay the payment of the tax required to be paid to the supplier until one day prior
22 to the date the tax is due and payable by the supplier.
- 23 8. A licensed distributor may delay the payment of the tax required to be paid to a
24 supplier until one day prior to the date the tax is due and payable by the supplier.
25 To be timely, a distributor's tax payment must be available to the supplier for
26 deposit on or before the date the distributor's tax payment is due. The licensed
27 distributor may make the payment to a supplier by electronic funds transfer or by
28 mail.
- 29 9. The commissioner shall pay over all of the moneys received during each calendar
30 month to the state treasurer.

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

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

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

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

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

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

1 noncollectible taxes. If the worthless account is subsequently collected, the tax must be
2 remitted on the amount collected.

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

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

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

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

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

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

31 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 - Administrative fees - 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 administrative fees as follows:
- 11 a. A two hundred fifty dollar fee for the first violation.
- 12 b. A five hundred dollar fee for a second violation occurring within three years of
13 a previous violation.
- 14 c. A one thousand dollar fee for a third violation occurring within three years of
15 two previous violations.
- 16 d. A five thousand dollar fee 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 before the tax
6 commissioner in the manner provided in chapter 28-32 if, within thirty days after
7 receiving a citation, the person requests a hearing.

8 5. This section does not apply to:

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

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

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

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

22 **~~57-43.3-02. Imposition and collection of tax~~ Tax imposed on aviation fuel.** An
23 ~~excise tax of eight cents per gallon [3.79 liters] is hereby imposed on the sale or delivery of~~
24 ~~aviation fuel by a dealer to a user. The dealer shall collect the tax from the user and pay the~~
25 ~~tax to the commissioner.~~

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

28 2. A supplier shall remit the tax imposed by this section on aviation fuel used, on the
29 wholesale distribution of aviation fuel to a distributor or retailer, and on direct sales
30 of aviation fuel to a consumer. For a supplier who is also a distributor or retailer,
31 the aviation fuel must be considered sold and the tax imposed when the fuel is

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

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

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

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

3 **57-43.3-09. Bond or letter of credit required.** As a condition precedent to the
4 issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety
5 bond, a cash bond, or an approved letter of credit as security to guarantee the payment of
6 aviation fuel tax liabilities. A refiner, a terminal operator, a distributor who is not an importer, or
7 an exporter who is not also licensed as a supplier, 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 must 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 the aviation fuel tax, penalties, and
19 interest due.
- 20 5. Money deposited with the commissioner as a cash bond must be made in the form
21 of a cashier's check or bank money order payable to the tax commissioner. The
22 money received must be paid by the commissioner to the state treasurer and
23 credited by the treasurer into a special fund to be known as the motor fuel tax
24 security trust fund. The money deposited may be used by the commissioner,
25 without notice to the depositor, if it becomes necessary to cover tax, penalties, and
26 interest due. If the money deposited is to be used to cover unpaid liabilities, the
27 commissioner shall certify the information to the director of the office of
28 management and budget. The office of management and budget shall transmit the
29 money to the commissioner who shall apply as much of the money deposited by
30 the person as is necessary to satisfy the liabilities. When in the commissioner's
31 judgment it is no longer necessary to require the deposit to be maintained, the

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

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

5 **57-43.3-14. Monthly report by refiner, supplier, importer, or exporter required.**

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

- 1 f. The number of gallons of aviation fuel in inventory at the beginning of the
2 calendar month, 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.
- 6 4. The tax commissioner may prescribe alternative methods for signing, subscribing,
7 or verifying a return 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 **SECTION 23.** Section 57-43.3-18 of the North Dakota Century Code is created and
11 enacted as follows:

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

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

29 If the commissioner is notified that a distributor has failed to pay the supplier by the date
30 the tax is due, the commissioner may revoke the distributor's license. In addition, the
31 commissioner may pursue payment from the distributor's bonding company to satisfy the

1 liability. If the commissioner revokes the distributor's license, the commissioner shall advise the
2 supplier, and so advised, the supplier is no longer afforded the protection under this section. If
3 a distributor's license is reinstated, the commissioner shall notify the supplier.

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

6 **57-43.3-28. Inventory gains - Losses.**

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

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

23 **57-43.4-01. 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.

- 1 2. "Alternative fuel" means combustible gases and liquids suitable for the generation
2 of power for propulsion of motor vehicles which meet the specifications as
3 determined by the state department of health pursuant to the provisions of section
4 19-10-10 and are commonly known as liquefied petroleum gases and compressed
5 natural gas. It does not include motor vehicle fuel as defined in section
6 57-43.1-01, special fuel as defined in section 57-43.2-01, or aviation fuel as
7 defined in section 57-43.3-01.
- 8 3. "Commissioner" means the state tax commissioner.
- 9 4. "Common carrier" or "contract carrier" means a person involved in the movement
10 of alternative fuel from a terminal or movement of alternative fuel imported into this
11 state, who is not the owner of the alternative fuel.
- 12 5. "Consumer" means a user of alternative fuel including any person purchasing
13 alternative fuel in this state for use in a licensed motor vehicle; any person
14 importing alternative fuel into this state or purchasing alternative fuel in this state
15 for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any
16 person purchasing alternative fuel in this state for use in recreational or any other
17 types of motor vehicles. It does not include a person importing or purchasing
18 alternative fuel for resale.
- 19 6. "Destination state" means any state, territory, foreign country, or sovereign nation,
20 to which alternative fuel is directed for delivery into a storage facility, receptacle,
21 container, or any type of transportation equipment, for purposes of resale or use.
- 22 7. "Director" means the director of the department of transportation.
- 23 8. "Distributor" means a person, other than a retailer, who acquires alternative fuel
24 from a refiner or supplier for subsequent wholesale distribution in bulk or transport
25 load by truck, railcar, or in a barrel, drum, or other receptacle.
- 26 9. "Export" means the delivery of alternative fuel across the boundaries of this state
27 from a place of origin in this state by or for a refiner, supplier, distributor, or retailer.
- 28 10. "Exporter" means a refiner, supplier, or distributor who exports alternative fuel out
29 of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
30 receptacle.

- 1 11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume
2 basis.
- 3 12. "Gross volume" means measurement in United States gallons without temperature
4 or barometric adjustments.
- 5 13. "Heating fuel use" means use of alternative fuel to heat homes, private and public
6 office buildings, or private and public commercial buildings or use of alternative
7 fuel in stoves or burners or for any other heating purpose.
- 8 14. "Highway purpose" means any use of alternative fuel in any motor vehicle in any
9 phase of construction, reconstruction, repair, or maintenance of public roads or
10 highways, but does not include that alternative fuel used for heating of oils, gravel,
11 bituminous mixture, or in any equipment used in the preparation of any materials to
12 be used on any type of road or highway surfacing.
- 13 15. "Import" means the delivery of alternative fuel across the boundaries of this state
14 from a place of origin outside this state by a refiner, supplier, or distributor.
- 15 16. "Importer" means a refiner, supplier, or distributor who imports alternative fuel into
16 this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other
17 receptacle.
- 18 17. "Industrial purpose" means:
- 19 a. A manufacturing, warehousing, or loading dock operation;
- 20 b. Construction;
- 21 c. Sand and gravel processing;
- 22 d. Well drilling, well testing, or well servicing;
- 23 e. Maintenance of business premises, golf courses, or cemeteries;
- 24 f. A commercial or contract painting operation;
- 25 g. Electrical services;
- 26 h. A refrigeration unit on a truck;
- 27 i. A power take-off unit; and
- 28 j. Other similar business activity.
- 29 Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or
30 machine, movable or immovable, operated in whole or in part by internal

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

- 1 in a motor vehicle for purposes of construction, reconstruction, repair, and
2 maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 3 26. "Refiner" means a person who produces, manufactures, or refines alternative fuels
4 in this state.
- 5 27. "Retailer" means a person who acquires alternative fuel from a supplier or
6 distributor for resale to a consumer at a retail location.
- 7 28. "Retail location" means a site at which alternative fuel is dispensed through a
8 pump from an underground or aboveground storage unit or pipeline into the supply
9 tank of a motor vehicle, is available in barrels or drums, or is dispensed into a
10 cylinder or other container from a retail storage unit.
- 11 29. "Sale" means, with respect to alternative fuel, the transfer of title or possession,
12 exchange, or barter, conditional or otherwise, in any manner or by any means, for
13 a consideration.
- 14 30. "Supplier" means a refiner who distributes alternative fuel from a terminal in the
15 state or any person who acquires alternative fuel by pipeline from a state, territory,
16 or possession of the United States, or from a foreign country, for storage at and
17 distribution from a terminal, or a person who acquires alternative fuel by truck or
18 railcar for storage at and distribution from a terminal in this state.
- 19 31. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal
20 operator, or retailer.
- 21 32. "Terminal" means an alternative fuel storage and distribution facility that is
22 supplied by a refinery or pipeline and from which the alternative fuel may be
23 removed at a rack.
- 24 33. "Terminal operator" means a person who by ownership or contractual agreement
25 is charged with the responsibility for, or physical control over, and operation of a
26 terminal. If a terminal is owned by co-venturers, "terminal operator" means the
27 person appointed to exercise the responsibility for, or physical control over, and
28 operation of the terminal.
- 29 34. "Wholesale distribution" means the sale of alternative fuel by a supplier or
30 distributor.

31 **57-43.4-02. (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 of all alternative fuel sold or used in this
3 state. For the purpose of determining the tax upon compressed natural gas under
4 this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed
5 natural gas is equal to one gallon [3.79 liters] of motor vehicle fuel or special fuel.
- 6 2. A supplier, distributor, or retailer shall remit the tax imposed by this section on
7 alternative fuel used and on direct sales of alternative fuel to a consumer.
- 8 3. The tax imposed by this section does not apply to a sale by a supplier to another
9 supplier, a sale by a supplier to a distributor, a sale by a distributor to another
10 distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt
11 consumer.
- 12 4. The person required to remit the tax imposed by this section shall pass the tax on
13 to the 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 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 the 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 6. The commissioner shall pay over all of the moneys received during each calendar
23 month to the state treasurer.

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

- 25 1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per
26 gallon [3.79 liters] is imposed on the sale of all alternative fuel sold or used in this
27 state. For the purpose of determining the tax upon compressed natural gas under
28 this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed
29 natural gas is equal to one gallon [3.79 liters] of motor vehicle fuel or special fuel.
- 30 2. A supplier, distributor, or retailer shall remit the tax imposed by this section on
31 alternative fuel used and on direct sales of alternative fuel to a consumer.

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

17 **57-43.4-03. Refund of tax for alternative fuel used for heating or for an**
18 **agricultural, industrial, or railroad purpose.** A consumer who purchases or uses any
19 alternative fuel for heating or for an agricultural, industrial, or railroad purpose, except
20 alternative fuel used to operate a licensed motor vehicle, on which the alternative fuel tax
21 imposed by section 57-43.4-02 has been paid, may file a claim with the commissioner for a
22 refund pursuant to the refund provisions in chapter 57-43.1. The tax imposed by section
23 57-43.4-05 shall be deducted from the refund.

24 **57-43.4-04. Exemptions.**

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

1 retail is exempt from the tax imposed by section 57-43.4-02 and is not subject to
2 the tax imposed by section 57-43.4-05.

3 **57-43.4-05. Special excise tax levied.**

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

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

1 **57-43.4-07. Credit for taxes paid on worthless accounts and refunds.** Taxes paid
2 on alternative fuel represented by accounts found to be worthless and actually charged off for
3 income tax purposes, may be taken as a credit against subsequent taxes due provided the
4 accounts charged off included the cost of the fuel as well as the taxes due. If in any case the
5 credit, or any part of it, cannot be utilized by the person because of a discontinuance of a
6 business or for other valid reason, the amount may be refunded. If the worthless account is
7 subsequently collected, the tax must be remitted on the amount collected.

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

19 **57-43.4-09. Refund of tax on tax-exempt sales.** When a person purchasing
20 alternative fuel for resale purposes pays the tax imposed by this chapter later makes a sale of
21 the fuel to an agency of the United States government, the person may apply to the
22 commissioner for a refund of the tax.

23 **57-43.4-10. Refiner, supplier, distributor, importer, exporter, terminal operator, or**
24 **retailer required to secure license - License fees.**

- 25 1. A person may not engage in business in this state as a refiner, supplier, distributor,
26 importer, exporter, terminal operator, or retailer of alternative fuel unless that
27 person holds an unrevoked license issued by the commissioner.
- 28 2. The person shall file an application for a license with the commissioner providing
29 such information as required by the commissioner and on a form or in a format as
30 required by the commissioner. The information shall include:
- 31 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.** The applicant for a single or multiple license as a refiner, supplier, distributor,
26 importer, exporter, terminal operator, or retailer shall pay to the commissioner a
27 license fee of twenty dollars. The license fee must be paid at the time the
28 application is made.

29 **57-43.4-11. Qualification for exporter license.** As a condition precedent to the
30 issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a
31 valid unrevoked license required by the jurisdiction of import.

1 **57-43.4-12. Qualification for importer license.** As a condition precedent to the
2 issuance of a license to an importer, the importer shall furnish proof that the importer has a
3 valid unrevoked license required by the jurisdiction of export. An importer must also apply for a
4 license in this state as a refiner, supplier, distributor, or retailer.

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

- 10 1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by
11 the commissioner, but not less than five hundred dollars.
- 12 2. The surety bond, cash bond, or letter of credit is subject to approval by the
13 commissioner.
- 14 3. After a single or multiple license has been in effect for five or more years, the
15 commissioner may review the person's records and may waive the requirement for
16 a security. The requirement for a security may be reinstated at the discretion of
17 the commissioner.
- 18 4. A surety bond or letter of credit provided as security shall be kept in the custody of
19 the commissioner and may be used by the commissioner, without notice to the
20 principal, if it becomes necessary to cover tax, penalties, and interest due.
- 21 5. Money deposited with the commissioner as a cash bond shall be made in the form
22 of a cashier's check or bank money order payable to the tax commissioner. The
23 money received must be paid by the commissioner to the state treasurer and
24 credited by the treasurer into an alternative fund to be known as the motor fuel tax
25 security trust fund. The money deposited may be used by the commissioner,
26 without notice to the depositor, if it becomes necessary to cover tax, penalties, and
27 interest due. If the money deposited is to be used to cover unpaid liabilities, the
28 commissioner shall certify the information to the director of the office of
29 management and budget. The office of management and budget shall transmit the
30 money to the commissioner who shall apply as much of the money deposited by
31 the person as is necessary to satisfy the liabilities due. When in the

1 commissioner's judgment it is no longer necessary to require the deposit to be
2 maintained, the commissioner shall certify the information to the director of the
3 office of management and budget who shall pay the unused money to the
4 depositor.

5 **57-43.4-14. Application for license - Issuance of license - Denial of license.**

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

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

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

20 **57-43.4-15. Revocation of license - Hearing to show cause - Reinstatement.**

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

27 2. Before a new license can be issued to a person whose license was revoked and
28 who is obligated to remit the tax imposed by this chapter, the person must pay to
29 the commissioner the amount of any delinquent tax, penalties, and interest
30 remaining unpaid and must file with the commissioner a surety bond upon which
31 the person is the obligor. The bond must be in an amount determined by the

1 commissioner, but not less than five thousand dollars. The bond must be payable
2 to the commissioner and must be conditioned upon the prompt filing of correct tax
3 reports and the prompt payment of the full amount of the tax due at the times, in
4 the manner, and at the place required under the provisions of this chapter. If the
5 person fails to file the monthly report required and to pay the full amount of the tax
6 due promptly, the commissioner may require an increase in the amount of the
7 surety bond conditioned to secure at all times the payment of any tax due to the
8 state under the provisions of this chapter. If the person fails to provide an
9 increased bond, the commissioner shall revoke the license.

10 **57-43.4-16. Report by refiner, supplier, distributor, importer, exporter, or retailer**
11 **required.**

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

- 1 e. The number of gallons of alternative fuel sold tax exempt to a qualified
2 consumer.
- 3 f. The number of gallons of alternative fuel in inventory at the beginning of the
4 calendar month and the number of gallons in inventory at the close of the
5 calendar month and any gains or losses experienced.
- 6 3. The report must be signed by the taxpayer to be valid and must contain a written
7 declaration that it is made and subscribed under penalties of perjury. The
8 commissioner may prescribe alternative methods for signing, subscribing, or
9 verifying a report filed by electronic means, including telecommunications, that
10 shall have the same validity and consequence as the actual signature and written
11 declaration for a paper return.

12 **57-43.4-17. Report by terminal operator required.**

- 13 1. A terminal operator shall file a monthly report with the commissioner no later than
14 the twenty-fifth day of each calendar month covering alternative fuel received into
15 and removed from the terminal during the preceding calendar month. When the
16 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal
17 holiday, the due date is the first working day after the Saturday, Sunday, or legal
18 holiday. When the report is filed by mail, the report is timely if the envelope
19 containing the report is postmarked by the United States postal service or other
20 postal carrier service before midnight of the due date.
- 21 2. The report to the commissioner by a terminal operator must be on a form
22 prescribed and furnished by the commissioner. The commissioner may require
23 that all or part of the report be submitted in an electronic format approved by the
24 commissioner, provided the terminal operator is able to file the report in an
25 electronic format. The report must contain such information as required by the
26 commissioner and may include:
- 27 a. A detailed schedule of gallons of alternative fuel received into the terminal for
28 or on behalf of the position holder.
- 29 b. A detailed schedule of gallons of alternative fuel removed from the terminal by
30 or on behalf of a position holder.

1 c. 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 for each position holder.

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

12 1. A common or contract carrier shall obtain a license issued by the commissioner.
13 The application for license must be made on a form prescribed by the
14 commissioner and must contain the information required by the commissioner.

15 2. A common or contract carrier transporting alternative fuel in a vehicle, railcar, or
16 vessel into this state from another state or country, shall ensure that a bill of lading
17 has been issued by the terminal or bulk plant from which the fuel was removed
18 indicating North Dakota as the destination. If the bill of lading issued by the
19 terminal or bulk plant indicates a destination other than North Dakota, the
20 transporter shall issue a diversion ticket indicating North Dakota as the destination
21 state. If a bill of lading was not issued by the terminal or bulk plant, the transporter
22 shall issue a bill of lading for each shipment indicating North Dakota as the
23 destination state. A copy of a diversion ticket and a copy of a bill of lading
24 prepared by the transporter shall be mailed, faxed, or electronically transmitted to
25 the commissioner before the fuel enters the state.

26 3. A common or contract carrier transporting alternative fuel in the state shall provide
27 a copy of the bill of lading accompanying the shipment, along with any drop load
28 tickets and diversion tickets issued for the delivered fuel, to the refiner, supplier,
29 distributor, importer, retailer, or consumer to whom delivery of the shipment was
30 made.

- 1 4. A refiner, supplier, distributor, importer, retailer, or consumer, may not knowingly
2 accept delivery of alternative fuel into storage facilities in this state if that delivery is
3 not accompanied by a bill of lading or diversion ticket issued by the terminal
4 operator, bulk plant operator, or transporter, that sets out on its face North Dakota
5 as the destination state of the alternative fuel.
- 6 5. If a common or contract carrier unloads only a portion of a shipment at a location,
7 or if the load is unloaded at a location other than what is indicated on the bill of
8 lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is
9 dropped at more than one location, the drop load ticket shall identify the name and
10 address of all locations in addition to the type of fuel and gallonage dropped. A
11 copy of the ticket must be maintained on board and a copy must accompany the
12 bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or
13 consumer taking delivery of the fuel.
- 14 6. A diversion ticket must include the following information:
- 15 a. The transporter's name and address.
- 16 b. The date and time of issuance.
- 17 c. The diversion ticket number.
- 18 d. The name and address of the consignee indicated on the original bill of
19 lading.
- 20 e. The destination on the original bill of lading, including the address and
21 destination state.
- 22 f. The original bill of lading number.
- 23 g. The location diverted to, including the address and destination state.
- 24 h. The number of gallons of fuel being diverted.
- 25 i. The type of fuel being diverted.
- 26 j. Any other information required by the commissioner.
- 27 7. A drop load ticket must include the following:
- 28 a. The transporter's name and address.
- 29 b. The date and time of issuance.
- 30 c. The partial load ticket number.

- 1 d. The name and address of the consignee indicated on the original bill of
- 2 lading.
- 3 e. The destination on the original bill of lading or diversion ticket, if issued,
- 4 including the address and destination state.
- 5 f. The original bill of lading number and, if available, the diversion ticket number.
- 6 g. The number of gallons off-loaded at each location.
- 7 h. The type of fuel off-loaded at each location.
- 8 i. Any other information required by the commissioner.

9 8. Except as otherwise provided in this section, the commissioner may audit the
10 records of a common or contract carrier, whether or not licensed by the
11 commissioner, and may impose such penalties as authorized by this chapter.

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

19 **57-43.4-20. Commissioner to audit reports and assess tax.**

- 20 1. The commissioner, or an authorized representative, may audit the records, books,
21 and papers and examine fuel and any equipment used to store, transport, or
22 dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal
23 operator, retailer, or common or contract carrier. For a person required to file a
24 report, the examination and audit must be done no later than three years after the
25 due date of the report or three years after the report was filed, whichever period
26 expires later. The commissioner is authorized to make assessments of tax, plus
27 penalty and interest, or to issue tax credits or make tax refunds as determined on
28 the basis of the examination and audit.
- 29 2. If it is determined upon audit that the tax due was twenty-five percent or more
30 above the amount reported on a report, the tax may be assessed, or a proceeding
31 in court for the collection of the tax may be begun without such assessment, at any

- 1 time within six years after the due date of the return, or six years after the return
2 was filed, whichever period expires later.
- 3 3. Except as otherwise provided in this chapter, the commissioner may audit any
4 consumer's claim for a refund of tax and, not later than three years after the due
5 date of the claim or three years after the claim was filed, whichever period expires
6 later, assess additional tax or issue an additional refund. If additional tax is found
7 due or if an additional tax refund applies, the commissioner shall notify the
8 claimant in detail of the reason for the increase or decrease. For any claim
9 selected for audit, the claimant shall provide additional verification, as required by
10 the commissioner, of fuel purchases, payment of the tax, use of the fuel for a
11 purpose entitling the claimant to a refund, and use of the fuel other than in a
12 licensed motor vehicle.
- 13 4. If a person gives false or fraudulent information in a report or in a claim for refund,
14 or if the failure by a person to file a tax report is due to the fraudulent intent or the
15 willful attempt of the person in any manner to evade the tax, the time limitations in
16 this section do not apply, and the tax may be assessed, or a proceeding in court
17 for the collection of the tax may be begun without the assessment, at any time.
- 18 5. If before the expiration of the time prescribed in this chapter for the assessment of
19 tax, the commissioner and the person consent in writing to an extension of time for
20 the assessment of the tax, the tax may be assessed at any time prior to the
21 expiration of the period agreed upon. The period so agreed upon may be
22 extended by subsequent agreements in writing made before the expiration of the
23 period previously agreed upon.
- 24 6. A determination of additional tax due issued to a person fixes the tax finally and
25 irrevocably unless the person against whom it is assessed, 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 7. A determination that a claim for a tax credit or refund is disallowed becomes finally
29 and irrevocably fixed unless the person claiming the refund, within thirty days after
30 the giving of notice of the determination, protests the determination under rules
31 adopted by the commissioner and in the manner provided in chapter 28-32.

1 **57-43.4-21. Penalty and interest - Violations - Penalties.**

- 2 1. If a person fails to file the required report or to pay the full amount of the tax as
3 required by this chapter, there is imposed a penalty of five dollars or a sum equal
4 to five percent of the tax due, for each calendar month or fraction of a month
5 during which the delinquency continues, excepting the month within which the tax
6 became due. If a person files a false or fraudulent report with intent to evade the
7 tax imposed by this chapter, there is imposed a penalty equal to ten percent of the
8 deficiency, with interest at the rate of two percent per month on the deficiency, for
9 each calendar month or fraction of a month during which the deficiency continues.
- 10 2. If a consumer fails to pay any tax due under this chapter, the commissioner shall
11 impose a penalty of five dollars or a sum equal to five percent of the tax due,
12 whichever is greater, together with interest at the rate of one percent per month on
13 the tax due, for each calendar month or fraction of a month during which the
14 delinquency continues, not including the month within which the tax became due.
15 The commissioner, for good cause shown, may waive all or part of the penalty or
16 the interest provided by this subsection. A refiner, supplier, distributor, importer,
17 exporter, or retailer may not be held liable for taxes due directly from a consumer.
- 18 3. A person is guilty of a class A misdemeanor if:
- 19 a. The person refuses or knowingly or intentionally fails to make and file any
20 report required by this chapter in the manner or within the time required; or
- 21 b. The person knowingly or with intent to evade or aid in the evasion of the tax
22 imposed by this chapter makes any false statement or conceals any material
23 fact in any application, record, report, or claim for refund provided for in this
24 chapter.

25 **57-43.4-22. Determination if no report is filed.** If a person fails, neglects, or refuses
26 to file an alternative fuel report when due, the commissioner, on the basis of available
27 information, shall determine the tax liability for the period during which no report was filed, and
28 to the tax thus determined the commissioner shall add the penalty and interest as provided in
29 section 57-43.4-21. An assessment made by the commissioner under this section or section
30 57-43.4-20 is presumed to be correct, and if the validity of the assessment is in question, the

1 burden is on the person who challenges the assessment to establish by fair preponderance of
2 evidence that it is erroneous or excessive.

3 **57-43.4-23. Corporate officer liability.** If a corporation holding a license issued under
4 this chapter fails for any reason to file the required returns or to pay the taxes due, any of its
5 officers having control or supervision of, or charged with the responsibility for making, such
6 returns and payments is personally liable for the failure. The dissolution of a corporation does
7 not discharge an officer's liability for a prior failure of the corporation to make a return or remit
8 the tax due. The sum due for such a liability may be assessed and collected under the
9 provisions of this chapter for the assessment and collection of other liabilities.

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

17 **57-43.4-25. Lien of tax - Collection - Action authorized.**

- 18 1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay
19 the tax, the amount, including any interest, penalty, or addition to the tax, together
20 with the costs that may accrue in addition to the tax, is a lien in favor of the state of
21 North Dakota upon all property and rights to property, whether real or personal,
22 belonging to the taxpayer, and in the case of property in which a deceased
23 taxpayer held an interest as joint tenant or otherwise with right of survivorship at
24 the time of death, the lien continues as a lien against the property in the hands of
25 the survivors to the extent of the deceased taxpayer's interest therein, which
26 interest is determined by dividing the value of the entire property at the time of the
27 taxpayer's death by the number of joint tenants or persons interested therein.
- 28 2. The lien attaches at the time the tax becomes due and payable and continues until
29 the liability for the amount is satisfied. For the purposes of this section, the words
30 "due" and "due and payable" mean the first instant at which the tax becomes due.

- 1 3. To preserve the lien against subsequent mortgagees, purchasers, or judgment
2 creditors, for value and without notice of the lien, on any property situated in a
3 county, the commissioner shall file a notice of the lien with the secretary of state.
- 4 4. The secretary of state shall endorse each notice of lien the day, hour, and minute
5 when received and preserve the same, and shall index the notice in the central
6 indexing system and the lien is effective from the time of indexing.
- 7 5. The commissioner is exempt from the payment of the filing fees as otherwise
8 provided by law for the filing of a lien or the satisfaction of a lien.
- 9 6. Upon payment of a tax as to which the commissioner has filed notice with the
10 secretary of state, the commissioner shall file with the secretary of state a
11 satisfaction of tax and the secretary of state shall enter the satisfaction on the
12 notice on file and indicate the fact on the central indexing system.
- 13 7. Upon the request of the commissioner, the attorney general shall bring an action at
14 law or in equity, as the facts may justify, without bond to enforce payment of any
15 taxes and any penalties, or to foreclose the lien in the manner provided for
16 mortgages on real or personal property, and in the action the attorney general shall
17 have the assistance of the state's attorney of the county in which the action is
18 pending.
- 19 8. The foregoing remedies of the state are cumulative and no action taken by the
20 commissioner or attorney general may be construed to be an election on the part
21 of the state or any of its officers to pursue any remedy hereunder to the exclusion
22 of any other remedy provided by law.

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

1 **57-43.4-27. Inventory gains - Losses.**

- 2 1. A supplier, distributor, or retailer shall take a physical reading of all alternative fuel
3 located in a terminal, underground tank, aboveground tank, and in a railcar,
4 storage tank of a tank truck, and the storage tank of a bulk delivery truck on a
5 regular basis and shall report the physical readings, inventory gains, and inventory
6 losses to the commissioner in increments not to exceed a twelve-month period.
7 The inventory reconciliation shall include alternative fuel stored in a barrel, drum,
8 or other receptacle.
- 9 2. Except as otherwise provided in this chapter, a supplier, distributor, or retailer is
10 liable for the tax imposed under section 57-43.4-02 or 57-43.4-05, based on
11 average sales taxed under these sections, on all alternative fuel not accounted for.
- 12 3. When sold or used by a supplier, distributor, or retailer, a gain in alternative fuel
13 inventories is subject to the tax imposed by this chapter in the same manner as
14 alternative fuel refined, purchased, or imported or otherwise acquired.
- 15 4. The commissioner may allow a tax credit to a supplier, distributor, or retailer for
16 actual inventory losses due to casualty loss subject to the discretion of the
17 commissioner and based on proof of the loss as required by the commissioner.

18 **57-43.4-28. Administration - Assistance authorized - Rules.** The commissioner
19 shall enforce the provisions of this chapter. The commissioner may employ such assistance
20 and conduct such investigation as may be necessary for the administration and enforcement of
21 this chapter and may adopt and enforce reasonable rules relating to the administration and
22 enforcement of this chapter.

23 **57-43.4-29. Deposit, transfer, and distribution of funds.** All taxes, license fees,
24 penalties, and interest collected under this chapter must be transferred to the state treasurer
25 who shall deposit such moneys in the highway tax distribution fund.

26 **SECTION 26. REPEAL.** Section 57-43.1-27 of the North Dakota Century Code,
27 section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code, and section
28 57-43.3-24 of the North Dakota Century Code as created by Senate Bill No. 2177, as approved
29 by the fifty-sixth legislative assembly, are repealed.

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