

October 2002

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subsection to
2 section 57-38-30.3 of the North Dakota Century Code, relating to an ethanol-blended gasoline
3 income tax credit for gasoline retailers; to amend and reenact section 57-43.1-02 of the North
4 Dakota Century Code, relating to variable rates of motor vehicle fuel taxes determined by sales
5 of alcohol-blended gasoline; and to provide an expiration date.

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

7 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Ethanol-blended gasoline - Tax credit - Eligibility.**

- 10 1. A retailer is eligible to claim an ethanol-blended gasoline tax credit against taxes as
11 determined under section 57-38-29, 57-38-30, or 57-38-30.3, provided the retailer:
12 a. Sells and dispenses gasoline by means of a metered pump at a retail location;
13 and
14 b. Operates at least one retail location at which more than sixty percent of the
15 total gallons of gasoline sold and dispensed through metered pumps during
16 the tax year is ethanol-blended gasoline.
- 17 2. The commissioner shall calculate the ethanol-blended gasoline tax credit
18 separately for each retail location operated by the taxpayer. The amount of the
19 ethanol-blended gasoline tax credit for each eligible retail location is two and
20 one-half cents multiplied by the total number of gallons of ethanol-blended gasoline
21 sold and dispensed through all metered pumps located at that service station
22 during the taxable year in excess of sixty percent of all gallons of gasoline sold and
23 dispensed through metered pumps at that service station during the taxable year.

1 3. Any credit in excess of the taxpayer's tax liability must be refunded. In lieu of
2 claiming a refund, the taxpayer may elect to have the overpayment shown on the
3 taxpayer's final, completed return credited to the taxpayer's tax liability for the
4 following taxable year. An individual may claim the tax credit allowed a
5 partnership, limited liability company, S corporation, estate, or trust if that entity has
6 filed an election to have the entity's income taxed directly to the individual. The
7 portion of the credit allocated to the individual must be based upon the pro rata
8 share of the individual's earnings from the partnership, limited liability company,
9 S corporation, estate, or trust.

10 **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code
11 is created and enacted as follows:

12 A taxpayer filing a return under this section is entitled to the credit provided under
13 section 1 of this Act.

14 **SECTION 3. AMENDMENT.** Section 57-43.1-02 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-43.1-02. Tax imposed on motor vehicle fuels.**

17 1. Except as otherwise provided in this section, a tax of twenty-one cents per gallon
18 [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

19 2. a. Notwithstanding the provisions of subsection 1, beginning July 1, 2004, the
20 rate of the tax imposed under subsection 1 must be based on the number of
21 gallons of ethanol-blended gasoline distributed in this state expressed as a
22 percentage of the number of gallons of motor fuel distributed in this state,
23 which is referred to as the distribution percentage. The commissioner shall
24 determine the distribution percentage for each determination period beginning
25 January first and ending December thirty-first. The rate for the tax must apply
26 for the period beginning July first and ending June thirtieth following the end of
27 the determination period.

28 b. The rate for the tax is:

29 (1) If the distribution percentage is not greater than fifty percent, the rate is
30 twenty cents for ethanol-blended gasoline and twenty-one cents for
31 motor vehicle fuel other than ethanol-blended gasoline.

- 1 (2) If the distribution percentage is greater than fifty percent but not greater
2 than fifty-five percent, the rate is twenty cents for ethanol-blended
3 gasoline and twenty-one and one-tenth cents for motor vehicle fuel
4 other than ethanol-blended gasoline.
- 5 (3) If the distribution percentage is greater than fifty-five percent but not
6 greater than sixty percent, the rate is twenty cents for ethanol-blended
7 gasoline and twenty-one and three-tenths cents for motor vehicle fuel
8 other than ethanol-blended gasoline.
- 9 (4) If the distribution percentage is greater than sixty percent but not
10 greater than sixty-five percent, the rate is twenty cents for
11 ethanol-blended gasoline and twenty-one and five-tenths cents for
12 motor vehicle fuel other than ethanol-blended gasoline.
- 13 (5) If the distribution percentage is greater than sixty-five percent but not
14 greater than seventy percent, the rate is twenty cents for
15 ethanol-blended gasoline and twenty-one and seven-tenths cents for
16 motor vehicle fuel other than ethanol-blended gasoline.
- 17 (6) If the distribution percentage is greater than seventy percent but not
18 greater than seventy-five percent, the rate is twenty cents for
19 ethanol-blended gasoline and twenty-two cents for motor vehicle fuel
20 other than ethanol-blended gasoline.
- 21 (7) If the distribution percentage is greater than seventy-five percent but
22 not greater than eighty percent, the rate is twenty and three-tenths
23 cents for ethanol-blended gasoline and twenty-one cents for motor
24 vehicle fuel other than ethanol-blended gasoline.
- 25 (8) If the distribution percentage is greater than eighty percent but not
26 greater than eighty-five percent, the rate is twenty and five-tenths cents
27 for ethanol-blended gasoline and twenty-one and seven-tenths cents for
28 motor vehicle fuel other than ethanol-blended gasoline.
- 29 (9) If the distribution percentage is greater than eighty-five percent but not
30 greater than ninety percent, the rate is twenty and seven-tenths cents

- 1 for ethanol-blended gasoline and twenty-one and four-tenths cents for
2 motor vehicle fuel other than ethanol-blended gasoline.
- 3 (10) If the distribution percentage is greater than ninety percent but not
4 greater than ninety-five percent, the rate is twenty and nine-tenths cents
5 for ethanol-blended gasoline and twenty-one and one-tenth cents for
6 motor vehicle fuel other than ethanol-blended gasoline.
- 7 (11) If the distribution percentage is greater than ninety-five percent, the rate
8 is twenty-one cents for ethanol-blended gasoline and for all other motor
9 vehicle fuels.

10 ~~3.~~ 3. A supplier or distributor shall remit the tax imposed by this section on motor vehicle
11 fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on
12 direct sales of motor vehicle fuel to a consumer.

13 ~~3.~~ ~~4.~~ 4. The tax imposed by this section does not apply on a sale by a supplier to another
14 supplier, on a sale by a supplier to a distributor, on a sale by a distributor to
15 another distributor, on an export, or on a sale to an exempt consumer.

16 ~~4.~~ 5. The person required to remit the tax imposed by this section shall pass the tax on
17 to the retailer and to the consumer. A retailer who paid the tax to the supplier or
18 distributor shall pass the tax on to the consumer.

19 ~~5.~~ 6. The person required to remit the tax imposed by this section shall pay the tax to
20 the commissioner by the twenty-fifth day of the calendar month after the month
21 during which the motor vehicle fuel was sold or used by the person. When the
22 twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday,
23 the due date is the first working day after the Saturday, Sunday, or legal holiday.
24 When payment is made by mail, the payment is timely if the envelope containing
25 the payment is postmarked by the United States postal service or other postal
26 carrier service before midnight of the due date.

27 ~~6.~~ 7. The commissioner shall pay over all of the money received during each calendar
28 month to the state treasurer.

29 **SECTION 4. EXPIRATION DATE.** Section 3 of this Act is effective through June 30,
30 2007, and after that date is ineffective.