

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1478
(Representatives Berg, Belter, Nelson, Pollert)
(Senators Espegard, Klein)

AN ACT to create and enact a new subsection to section 57-43.1-01 of the North Dakota Century Code, relating to a definition of E85 fuel; to amend and reenact sections 57-43.1-02 and 57-43.1-28 of the North Dakota Century Code, relating to reduced motor vehicle fuels tax rate for sales of E85 fuel, deposit of taxes on that fuel in the township highway aid fund, and to provide for transfer of funds to the highway tax distribution fund; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-43.1-01 of the North Dakota Century Code is created and enacted as follows:

"E85 fuel" means a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains eighty-five percent ethanol by volume, but at a minimum must contain sixty percent ethanol by volume. E85 produced for use as a motor fuel must comply with ASTM specification D 5798-96.

SECTION 2. AMENDMENT. Section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise provided in this section, a tax of twenty-one cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. Sale of E85 fuel is exempt from the tax imposed under subsection 1 and is instead subject to a tax of one cent per gallon [3.79 liters] on all E85 fuel sold or used in this state. The tax imposed under this subsection is not subject to refund under section 57-43.1-03 or 57-43.1-03.1. Within the scope of this section, the entire amount of this tax exemption must be available to consumers of E85.
3. A supplier or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.
- ~~3.~~ 4. The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
- ~~4.~~ 5. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
- ~~5.~~ 6. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail,

the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

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

SECTION 3. AMENDMENT. Section 57-43.1-28 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-28. Transfer, deposit, and distribution of funds. Taxes, license fees, penalties, and interest collected under the provisions of this chapter must be transferred to the state treasurer who shall deposit the moneys collected to the highway tax distribution fund, except the entire proceeds of the tax imposed on E85 fuel under subsection 2 of section 57-43.1-02 must be deposited in the township highway aid fund and allocated as provided in section 54-27-19.1. At the time of each transfer for deposit in the highway tax distribution fund, the tax commissioner shall certify to the state treasurer the number of gallons of E85 fuel sold or used in this state during the time period covered by that transfer and exempt from the tax under subsection 1 of section 57-43.1-02. The department of commerce shall seek approval for the transfer to the state treasurer of twenty cents for each gallon certified by the tax commissioner, from the agricultural products utilization commission funding for deposit in the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2005, and through the month in which a cumulative total of 1,200,000 gallons of E85 fuel has been reported to the commissioner as required in section 57-43.1-02, and after that date is ineffective.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1478.

House Vote: Yeas 82 Nays 9 Absent 3

Senate Vote: Yeas 33 Nays 14 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State