

## LEGISLATIVE BILL 343

Approved by the Governor March 6, 1972

Introduced by Herbert J. Duis, 39th District; Richard Maresh, 32nd District

AN ACT to amend sections 66-448, 66-449, 66-450, 66-451, 66-453, 66-454, 66-455, 66-457, 66-458, 66-460, 66-461, 66-461.01, 66-462, 66-464, and 66-466, Reissue Revised Statutes of Nebraska, 1943, sections 66-445, 66-447, 66-456, 66-459, and 66-465, Revised Statutes Supplement, 1969, section 66-452, Revised Statutes Supplement, 1971, and section 66-421, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1065, Eighty-second Legislature, Second Session, 1972, relating to motor fuels; to provide for tax credit motor fuel or tax credit gasoline rather than refund tax motor fuel or refund tax gasoline; to provide for credits on income tax returns or refunds as prescribed; to amend section 77-27,132, Revised Statutes Supplement, 1971; to provide for transition; to provide an operative date; to repeal the original sections, and also section 66-463, Revised Statutes Supplement, 1969.

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

Section 1. That section 66-421, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1065, Eighty-second Legislature, Second Session, 1972, be amended to read as follows:

66-421. All sums of money received under sections 66-410 and 66-428 by the State Treasurer shall be placed by him in a fund to be known as the Highway Trust Fund, except that the State Treasurer shall first transfer such amounts to the Tax Refund Fund as the Tax Commissioner shall determine to be equal to the credits and refunds allowed under the provisions of sections 66-445 to 66-466 and shall transfer to the Grain Alcohol Fuel Tax Fund the amounts required by section 66-452. Any money in the Highway Trust Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 2. That section 66-445, Revised Statutes Supplement, 1969, be amended to read as follows:

66-445. As used in sections 66-445 to 66-466, unless the context otherwise requires:

(1) The word state shall mean the State of Nebraska;

(2) The word administrator shall mean the Tax Commissioner;

(3) The words motor vehicles or motor vehicle fuels shall be construed as defined in section 66-401; and

(4) The word distributor shall mean any person, firm, copartnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof, who obtains a license to sell and thereby becomes authorized to sell refund tax credit motor vehicle fuel in accordance with the provisions of sections 66-445 to 66-466; Provided, that if a motor vehicle fuel dealer, as defined in section 66-401 also becomes a distributor of refund tax credit motor vehicle fuel, then all that part of his ordinary business transactions carried on as such distributor shall be governed and controlled by the requirements of said sections; and

(5) The words tax credit motor vehicle fuel or tax credit gasoline shall mean gasoline and motor vehicle fuels used for agricultural, industrial or nonhighway purposes, and the purchaser or user of such fuels shall be entitled to a Nebraska income tax credit.

Sec. 3. That section 66-447, Revised Statutes Supplement, 1969, be amended to read as follows:

66-447. The administrator may, from time to time, make and promulgate such reasonable rules and regulations, not inconsistent with sections 66-445 to 66-466, as are necessary for their prompt and effective enforcement. It shall be unlawful for anyone to use such refund tax credit gasoline or motor vehicle fuels in any motor vehicle operated or intended to be operated upon any public streets or highways of the state or for a purpose other than for an agricultural, industrial, or nonhighway purpose as provided in sections 66-445 to 66-466.

Sec. 4. That section 66-448, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-448. All refund tax credit gasoline shall be placed, when delivered by distributor to purchaser, in a special storage container, and each container must be labeled refund tax credit gasoline in large legible letters.

Sec. 5. That section 66-449, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-449. Every person who desires to be eligible to receive gasoline tax refunds credits and who desires to be classified for that purpose as a purchaser and claimant as defined in section 66-452, shall, before purchasing any refund tax credit gasoline and before making any claim for a refund credit, make application upon a form prescribed by the administrator, for such classification, and for a permit to purchase such gasoline and obtain such refunds credits. The application for classification and permit shall contain the name of the applicant, his address, his occupation, the uses to which the applicant intends to put such gasoline or motor fuel upon which he will claim refund a tax credit, the make, horsepower, and other mechanical description of machinery in which the same is to be used, and such other information as may be deemed necessary by the administrator. Upon investigation by the administrator, if the statements contained in the application shall be found to be true, the administrator shall thereupon issue to the applicant a permit which shall be valid unless canceled as hereinafter provided. The permit so issued shall contain a number to be given to each applicant, and shall be in such form as may be prescribed by the administrator.

Sec. 6. That section 66-450, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-450. The administrator shall make a charge of one dollar for the issuing of the permit; and the fund so derived shall be used for the cost of administration of sections 66-445 to 66-466; Provided, that in the event the fees collected by the administrator for the issuance of permits and licenses under said sections are not sufficient to pay the costs of the efficient administration of said sections, the administrator is directed to ascertain from time to time the estimated amounts by which such cost exceeds the receipts from permit and license fees, and thereafter to deduct upon a pro rata basis the cost of administration from all refunds claims for credit allowable under said sections.

Sec. 7. That section 66-451, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-451. If any purchaser or claimant for refund credit, as defined in section 66-452, makes any false statement on any of the reports required by the administrator, including the statement of all types of motor vehicle fuels, other than refund tax credit gasoline, purchased or required by the purchaser or claimant during the period which the claim for refund credit covers, or upon any application for a permit or upon any claim for a refund credit, or if any recipient of a permit to obtain gasoline tax refunds credits, uses refund tax credit gasoline as provided in sections 66-445 to 66-466 in any motor vehicle upon the highways of the State of Nebraska, the administrator shall forthwith cancel recipient's permit, and the recipient shall not be issued a new permit for one year from the date of such cancellation.

Sec. 8. That section 66-452, Revised Statutes Supplement, 1971, be amended to read as follows:

66-452. Every recipient of a permit, as described in section 66-449, shall be regarded as purchaser and claimant if he has paid for any one purchase the excise tax to a distributor upon forty or more gallons of gasoline or motor vehicle fuel, which gasoline or motor vehicle fuel was or is to be used solely and exclusively by such person for propelling or operating a stationary gas engine, tractor, combine, or machinery used solely for agricultural, or quarrying, or industrial purposes in the state or for some purpose not involving the use of any highways in this state. As such purchaser and claimant he shall be entitled to a refund of one-and-one-eighth-cent-less-than-the-amount-of-tax-so-paid-per-gallon-under-the-provisions--of--section--66-440 credit against the purchaser's Nebraska income tax liability for the amount of tax so paid during the taxable year of purchase of the fuel by the taxpayer less one and one-eighth cent per gallon of the tax paid upon compliance with the provisions of sections 66-445 to 66-466 and not otherwise. One-eighth of one cent of the refundable tax shall be deposited in the Grain Alcohol Fuel Tax Fund. No refund credit shall be made to anyone other than the actual purchaser of such refund tax credit gasoline or motor vehicle fuel.

Sec. 9. That section 66-453, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-453. Any distributor desiring to sell motor vehicle fuel on which a refund credit of the tax is authorized by sections 66-445 to 66-466, shall, before making such sale, make application to the administrator, upon forms prescribed by the administrator and containing such information as the administrator may require, for a license to sell such refund tax credit motor vehicle fuel. It shall be unlawful for any person to sell any motor vehicle fuel upon which a refund credit of tax will be made, or is intended to be made, without first having obtained from the administrator a license to sell such motor vehicle fuel. A separate application shall be made to the administrator by each distributor for each place of business from which refund tax credit motor vehicle fuel is to be distributed by such distributor; and the administrator shall issue a separate license for each such place of business. The administrator shall examine each application for license received by him, and, if found in due form, and if, in the discretion of the administrator, the applicant is entitled to such license, it shall be issued. Specimen signatures of every distributor and of truck drivers and other employees authorized to act as agents for distributors, shall accompany the application for distributor's license to sell refund tax credit gasoline.

Sec. 10. That section 66-454, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-454. Each license issued under section 66-453 shall remain in full force and effect until March January 1 following its date of issue; and annually on March January 1, each applicant, person or dealer, desiring to sell motor vehicle fuel upon which a refund-of credit for the tax is authorized, must obtain from the administrator a license, or a renewal of his existing license, to sell such motor vehicle fuel as provided in said section. Any license issued under said section is not transferable unless such transfer is authorized by the administrator.

Sec. 11. That section 66-455, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-455. Any person, as distributor, who sells motor vehicle fuel upon which a refund-of credit for the tax may be authorized, or is claimed, under the provisions of sections 66-445 to 66-466, without having first obtained a license, as provided in said sections, shall be deemed guilty of a misdemeanor and shall, and upon conviction thereof, shall be subject to the penalty and governed by the procedure provided in section 66-466.

Sec. 12. That section 66-456, Revised Statutes Supplement, 1969, be amended to read as follows:

66-456. Any person licensed as distributor under the provisions of section 66-453 shall be required to maintain the records prescribed in section 66-465 for a period of three years, and in addition thereto shall affix his license number to each invoice of sale of refund tax credit gasoline that he may issue under the provisions of sections 66-445 to 66-466.

Sec. 13. That section 66-457, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-457. No refund-of credit for the tax shall be granted on any motor vehicle fuel to any person, claimant, firm, corporation, or otherwise, unless such motor vehicle fuel has been purchased from or used by a licensed distributor as provided in sections 66-445 to 66-466. The administrator is prohibited from approving any claim for the payment of any refund tax credit gasoline on any motor vehicle fuel that is not purchased from a licensed distributor of refund tax credit gasoline.

Sec. 14. That section 66-458, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-458. All refund tax credit gasoline shall be delivered by the distributor only to the premises of the applicant for refund credit; Provided, that a barrel, tank or other container, properly labeled as provided in section 66-448, may be filled by the distributor off the premises of the permittee, if such container also bears the name of the recipient of a permit to obtain gasoline tax refunds credits. Upon each delivery of motor vehicle fuel upon which a refund-of credit for the tax may be claimed, an invoice of refund credit shall be made out at the time of such delivery, which shall contain a serial number, which shall not be repeated through any one calendar year, and which shall state the following: (1) The name of the distributor (printed or rubber stamped) selling the refund tax credit gasoline and his license number; (2) the number of the permit of the purchaser; (3) the number of gallons of motor vehicle fuel thus purchased and delivered; (4) the date on which purchase was made; (5) the purpose for which such motor vehicle fuel will be used, or is intended to be used; (6) the price paid for such motor vehicle fuel, and the date and place of delivery; (7) the name of the purchaser or user; (8) the name of the agent or employee actually making the

purchase, if any; (9) the seller, and place of business of seller; (10) a statement showing that the motor vehicle fuel on the invoice has been dyed or chemically treated, if required by the administrator; and (11) the amount of such other motor vehicle fuels, if any, purchased for use or usable for the purpose of generating power for the propulsion of motor vehicles, regardless of whether a refund-of credit for the tax may be due or claimed under the provisions of sections 66-445 to 66-466, and the manner of delivery. The invoice of refund for credit shall show thereon such other information as the administrator may require. No refund credit shall be allowed unless the seller or licensed distributor, at the time of any such delivery and not thereafter, executed such an invoice of--refund for credit.

Sec. 15. That section 66-459, Revised Statutes Supplement, 1969, be amended to read as follows:

66-459. The licensed distributor selling refund tax credit motor vehicle fuel, in issuing invoices of refund-tax credit to the user or purchaser of such motor vehicle fuel, shall make such invoices in triplicate. The original shall be delivered to the user or purchaser of such motor vehicle fuel for attachment to his application claim for refund credit with his Nebraska income tax return as a part thereof; the first duplicate shall be retained by the distributor for a period of three years at the place of business designated in the distributor's license, in the same manner and subject to the same examination as required of other records of motor vehicle fuels; and the second duplicate shall be forwarded to the office of the administrator for his files.

Sec. 16. That section 66-460, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-460. Each invoice of refund credit issued by the distributor shall be issued at the time of delivery by the distributor or his employee, and shall also be signed by the purchaser and claimant of such motor vehicle fuel, or by his duly authorized agent. The distributor or his employee shall not sign for the purchaser when issuing the invoice of refund credit. Double face carbon shall be used in making up the serially numbered triplicate invoices. In filling out the invoice, the distributor or his agent shall record in words and not in figures the number of gallons of tax refund credit gasoline purchased.

Sec. 17. That section 66-461, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-461. After a purchaser and claimant purchases or acquires for use motor vehicle fuel upon which a refund-of credit for the tax may be due, he may file with the--administrator his Nebraska income tax return a statement of claim, hereinafter called claim, on such forms as may be prescribed by the administrator; Provided, the claimant shall not file more than four claims one claim annually and no claim shall be allowed after seven months have elapsed--from--the--time--of--the purchase except those claims resulting from tax credit gasoline purchases made during the taxable year for which the taxpayer is filing his Nebraska income tax return. A refund shall be allowed to the extent the credit for tax credit gasoline exceeds the income tax or franchise tax levied by sections 77-2701 to 77-27,135 but no refund shall be made in any amount less than two dollars. The claim shall include a statement (1) as to the source or place of business where such motor vehicle fuel, used solely for agricultural, industrial, or nonhighway purposes, was acquired, together with a statement, on such standard form as the administrator shall provide and furnish, supported by invoices for all types of motor vehicle fuels, other than refund tax credit gasoline, purchased by recipient during the period for which claim for refund credit is filed; (2) of the location of the land upon which such gasoline or motor fuel was used, together with, if for agricultural purposes, the number of cultivated acres of such land and the acreage of each kind of crops grown or produced on such land; (3) that the information stated in the attached original copy of the invoice of refund credit is true and correct; (4) as to the manner in which such motor vehicle fuel was used; (5) that no part of such motor vehicle fuel was used in propelling motor vehicles over the highways of this state; and (6) that the motor vehicle fuel, for which refund-of credit for the tax thereon is claimed, was used solely for agricultural, industrial, or nonhighway purposes as provided in sections 66-445 to 66-466; Provided, claims for refund credit shall in no event be considered or allowed upon a total quantity of less than forty gallons of refund tax credit gasoline. The administrator shall neither receive nor allow such a claim for refund credit unless such claim shall include a statement that the tractor or tractors, engine or engines, machinery, or motor vehicle owned by the claimant, were included in the claimant's personal tax list for the preceding year, or that he owned no such tractor or engine upon which personal taxes might have been levied during such year. The claim shall be



accompanied by the original copy of the invoice for refund credit, referred to in subdivision (3) of this section, and the administrator may require other evidence in addition to the claim, in such form and at such time as he may deem advisable, or refer the same to a field representative for investigation.

Sec. 18. That section 66-461.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-461.01. Any claimant for refund credit of motor vehicle fuel tax under the provisions of sections 66-445 to 66-466, who shall be unable to produce the original copy of any invoice for refund credit required by section 66-461, for the reason that the same has been lost, mutilated, or destroyed, may make proof of his claim by affidavit and such other evidence as may be required by the administrator, and if such claim is verified by investigation and by the records of the administrator, such claim may be allowed, ~~but only after the expiration of seven months from the date of the last invoice for which claim for refund is made for any refund made upon proof other than original copies of invoices for refund.~~ For proofs of claim made under this section, a charge of one dollar shall be made and deducted from the amount of such refund credit in addition to the other costs of administration deducted under authority of section 66-450.

Sec. 19. That section 66-462, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-462. No claim for gasoline tax refund credit shall be allowed on motor vehicle fuel used in any registered or licensed motor vehicle, nor in any motor vehicle which, if operated on the public highways, would require registration and licensing under the provisions of the laws of this state; Provided, the limitation of this section shall not apply to any vehicle or machine which cannot lawfully be licensed for highway use.

Sec. 20. That section 66-464, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-464. The administrator shall issue free of cost to each licensed distributor, a book or books of blank invoices of refund credit required by sections 66-445 to 66-466. The administrator shall keep accurate records of the number of books of invoices of refund credit issued and furnished to each licensed distributor,

and the licensed distributor shall, at all times, account for all such books of invoices of refund credit received by him. Any invoices of refund credit which are mutilated or unusable must be returned to the administrator by the licensed distributor; and any unused invoice of refund credit which is lost or destroyed must be reported to the administrator by such licensed distributor. The administrator shall not issue any additional books of invoices of refund credit to a licensed distributor until such licensed distributor has made proper accounting for each invoice of refund credit theretofore issued to him. The book of invoices of refund credit issued to a licensed distributor is not transferable or assignable by such licensed distributor unless such transfer or assignment is authorized by the administrator; and failure by such licensed distributor to make proper accounting for all invoices or exemption issued to him by the administrator shall be cause for the revocation of his license. No forms of invoice of refund credit shall be used by the licensed distributor of tax refund credit motor vehicle fuel other than those issued and furnished to him by the administrator.

Sec. 21. That section 66-465, Revised Statutes Supplement, 1969, be amended to read as follows:

66-465. The administrator shall make rules and regulations for the keeping of records of the sale, distribution and use of refund credit motor vehicle fuel. Such records shall be kept by distributors, dealers and service station operators who are licensed to deal in tax refund credit motor vehicle fuel for a period of three years.

Sec. 22. That section 66-466, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-466. Any person, firm or corporation, their agents, employees or servants, who shall violate the provisions of sections 66-445 to 66-466, or who shall violate any rule or regulation made and promulgated thereunder, for which penalty is not elsewhere provided, shall be deemed guilty of a misdemeanor, ~~and upon conviction thereof shall~~ and shall, upon conviction thereof, be imprisoned in the county jail for not more than six months or shall be fined not more than five hundred dollars, or both. As part of the judgment of conviction, the trial judge may order that the license or permit of the person so convicted shall be revoked, and in such case the court shall forthwith transmit to the administrator a certified copy of such judgment of conviction. Upon receipt of the certified copy of the

judgment of conviction, the administrator shall cancel the license for the period of time that the court directs in the judgment. When the administrator cancels any distributor's license in the manner this section directs, then all books containing invoices of refund credit held by such distributor shall be accounted for and surrendered to the administrator. Upon conviction in any court within the state of operating upon the public highways thereof any motor vehicle by using therein refund tax credit gasoline, the trial judge shall suspend the operator's driver's license of such convicted person for a period of time not less than twelve months.

Sec. 23. That section 77-27,132, Revised Statutes Supplement, 1971, be amended to read as follows:

77-27, 132. (1) There is hereby created a fund to be designated Tax Refund Fund which shall be set apart and maintained by the State Treasurer for prompt payments of all tax refunds under the provisions of sections 77-2701 to 77-27, 135. Such fund shall be in such amount as the Tax Commissioner shall determine is necessary to meet current refunding requirements under the provisions of section 66-461 and sections 77-2701 to 77-27, 135. Any money in the Tax Refund Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the provisions of sections 77-2701 to 77-27, 135. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the aforementioned bank and of the amounts so deposited the State Treasurer shall (a) first credit to the Tax Refund Fund such amounts as are necessary to maintain such Tax Refund Fund at the level required by subsection (1) of this section, and (b) then credit to the Highway Allocation Fund all of the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers. The balance of the amounts so paid shall be credited to the General Fund.

Sec. 24. The provisions of this act shall become operative January 1, 1973 for tax credit gasoline purchased after that date. For the purpose of facilitating the administration of the credit for refund tax gasoline purchased prior to January 1, 1973, during the transitional period, a claim for credit may be made in accordance with section 66-461 as it appears prior to its amendment by this act.

Sec. 25. That original sections 66-448, 66-449, 66-450, 66-451, 66-453, 66-454, 66-455, 66-457, 66-458, 66-460, 66-461, 66-461.01, 66-462, 66-464, and 66-466, Reissue Revised Statutes of Nebraska, 1943, sections 66-445, 66-447, 66-456, 66-459, and 66-465, Revised Statutes Supplement, 1969, sections 66-452 and 77-27, 132, Revised Statutes Supplement, 1971, and section 66-421, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1065, Eighty-second Legislature, Second Session, 1972, and also section 66-463, Revised Statutes Supplement, 1969, are repealed.