

LEGISLATIVE BILL 172

Approved by the Governor May 30, 1981

Introduced by Carsten, 2; Warner, 25

AN ACT to amend section 66-410.06, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410.04, 66-474, 66-475, 66-476, 66-605.02, and 66-605.03, Revised Statutes Supplement, 1980, relating to taxes on motor vehicle fuels; to change provisions relating to the establishment of rates; to change provisions relating to the payment of motor fuel taxes; to provide an operative date; and to repeal the original sections.

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

Section 1. That section 66-410.04, Revised Statutes Supplement, 1980, be amended to read as follows:

66-410.04. Tax liability under sections 66-410.01 to 66-410.05 and 66-418.01 shall be computed on the total number of gallons of each kind of motor vehicle fuel and special fuel consumed in the operation in Nebraska of motor vehicles subject to the provisions of sections 66-410.01 to 66-410.05 and 66-418.01 at the same rate for each kind of fuel as would be applicable thereto if taxed under section 66-410, 66-428, 66-473, 66-477, 66-478, 66-605, 66-605.02 or 66-605.03. Credit against the tax liability so computed shall be allowed in the amount of fuel taxes paid under section 66-410, 66-428, 66-473, 66-477, 66-478, 66-605, 66-605.02 or 66-605.03, on motor vehicle fuel and special fuel used in motor vehicles the operation of which is subject to the provisions of such sections. Notwithstanding any provision in sections 66-410.01 to 66-410.05 and 66-418.01 to the contrary, the Tax Commissioner upon application, supported by such proof as the Tax Commissioner may reasonably require, shall issue a memorandum of credit for the amount of fuel tax paid on fuel in excess of the amount of fuel consumed by such vehicles in Nebraska which may be applied against subsequent fuel tax liability under the provisions of sections 66-410.01 to 66-410.05 and 66-418.01, or, if the applicant is no longer engaged in the operation of vehicles for which his or her permit was issued or has built up an excess of motor vehicle fuel tax credit amounting to one hundred dollars or more with the state, the Tax Commissioner may make proper refund to the permit holder after an audit or with approval of the motor fuel division chief.

To determine and collect the amount of taxes due under sections 66-410.01 to 66-410.05 and 66-418.01 and to prevent the evasion thereof, the Tax Commissioner may require reports on forms prescribed by the Tax Commissioner. The payment of taxes due shall be at the same time as the reports are required to be filed. These reports and tax payments may be required covering actual operation and fuel consumption in Nebraska for vehicles the operation of which is subject to sections 66-410.01 to 66-410.05 and 66-418.01 or on a basis of their average consumption of fuel in Nebraska determined by taking that proportion of the total gallons consumed everywhere in these vehicles that their mileage in Nebraska is to their total mileage everywhere.

Each person shall file the report on or before the last day of the next succeeding calendar month following the monthly-period end of the calendar quarter to which it relates unless an election to continue to file on a monthly basis has been made. Such election shall be in writing filed with the Department of Revenue in such form as the Tax Commissioner shall prescribe. Following the filing of such election, the person shall continue to file the report on or before the last day of the next succeeding calendar month following the monthly period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date; Provided, that for good cause the administrator may grant a taxpayer reasonable extensions of time for filing, but not to exceed ten days in the aggregate for any one return.

Sec. 2. That section 66-410.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-410.06. (1) If any taxpayer neglects or refuses to file the report due for any month reporting period, or to pay the tax provided by section 66-410.04, due for any month reporting period, within the time prescribed for the filing of such report or the payment of such tax, as provided in section 66-410.04, there shall automatically accrue a penalty of twenty-five dollars. If no motor vehicle fuel was used in the State of Nebraska during that period, a penalty of twenty-five dollars shall be assessed against such taxpayer for failure to make a report setting forth such fact. The Tax Commissioner may in his or her discretion waive any and all penalties incurred upon sufficient showing by the

taxpayer that such penalties should be waived.

(2) (a) As soon as practical after a report is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed. Such amount shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the Tax Commissioner within such thirty-day period.

(b) If the taxpayer fails to file a report, the Tax Commissioner shall estimate the taxpayer's liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency. Such amount shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the Tax Commissioner within such thirty-day period.

(c) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of Chapter 84, article 9.

Sec. 3. That section 66-474, Revised Statutes Supplement, 1980, be amended to read as follows:

66-474. (1) The Department of Revenue shall implement, administer, collect, and audit the tax imposed by sections 66-473 and 66-605.02 in an efficient and effective manner. Upon receipt of the cost figures required by section 66-475, the department shall determine the statewide average cost by dividing the total amount paid for motor vehicle fuels and special fuels by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor vehicle fuels and special fuels purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-476.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other

computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor vehicle fuel dealers, special fuel dealers, and interstate motor vehicle operators who choose to be subject to sections 66-410.01 to 66-410.05, at least five days prior to the first day of any month calendar quarter during which the tax is to be adjusted. Such tax rate shall be utilized in computing the tax due for the period specified by the Tax Commissioner.

(5) Until information has been received to determine the statewide average cost pursuant to reports filed under section 66-475, the Tax Commissioner shall assume the statewide average cost to be ninety cents per gallon.

Sec. 4. That section 66-475, Revised Statutes Supplement, 1980, be amended to read as follows:

66-475. (1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of each the second calendar month following the end of a calendar quarter submit to the Tax Commissioner a report providing the total cost and number of gallons of motor vehicle fuels and special fuels purchased by the State of Nebraska during the preceding month. In providing such information to the Tax Commissioner the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The Tax Commissioner shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Sec. 5. That section 66-476, Revised Statutes Supplement, 1980, be amended to read as follows:

66-476. (1) In order to insure that there shall be maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, within fifteen days after the adjournment of the regular session of the Legislature in 1981 and within fifteen days after the adjournment of each regular session of the Legislature thereafter, the State Board of Equalization and Assessment shall set the rate of the excise tax imposed by sections 66-473 and 66-605.02 which

will be effective from July 1 through June 30 of the succeeding year.

(2) The Department of Roads, with assistance from the Department of Revenue, shall prepare and provide the necessary information to each member of the State Board of Equalization and Assessment at least five days before each meeting. Such information shall include, but not be limited to, the unobligated balance in the Highway Cash Fund anticipated on the subsequent June 30, monthly estimates of anticipated receipts to the Highway Cash Fund for the subsequent fiscal year, and the appropriations made from the Highway Cash Fund for the subsequent fiscal year.

(3) The board shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The board shall then fix the rate of excise tax in an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one per cent. For the period commencing on October 1, 1980, and until adjusted by such board, the excise tax shall be two per cent of the statewide average cost.

(4) On or before the fifteenth day of each month the Department of Roads shall provide to each member of the State Board of Equalization and Assessment and the Clerk of the Legislature a report reflecting the Highway Cash Fund deposits for the preceding calendar month and the limitations of information contained in such report. If the accumulative total deposits to the Highway Cash Fund, under the provisions of Chapter 66, articles 4 and 6, for the fiscal year shall at any time be less than ninety per cent or greater than one hundred ten per cent of the projected deposits for such period, the Governor may call a meeting of the State Board of Equalization and Assessment to determine whether the rate shall be changed. If such a change is required, the board shall set the new rate which shall become effective on the first day of the following month calendar quarter.

(5) Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Sec. 6. That section 66-605.02, Revised Statutes Supplement, 1980, be amended to read as follows:

66-605.02. (1) Each special fuel dealer as defined in subdivision (6) of section 66-602, shall, in addition to all other taxes provided by law, pay an excise tax at a rate, set pursuant to section 66-476, for special fuels as defined in Chapter 66, article 6, ~~received, imported, produced, refined, manufactured, blended, or compounded by such special fuel dealer within the State of Nebraska as a special fuel, suitable for retail sale~~ and subject to taxation under section 66-605. All sums of money received under this act shall be credited to the Highway Cash 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 special fuel dealers under this act.

(2) Special fuel dealers subject to taxation under subsection (1) of this section shall pay such excise tax and make a report concerning the tax in like manner, form, and time and be allowed the same exemptions, deductions, and rights of reimbursement as are authorized dealers for taxes paid pursuant to Chapter 66, article 6.

Sec. 7. That section 66-605.03, Revised Statutes Supplement, 1980, be amended to read as follows:

66-605.03. In addition to the tax imposed by sections 66-605 and 66-605.02, each dealer shall pay an additional tax of one cent per gallon on all special fuels ~~received, imported, produced, refined, manufactured, blended, or compounded by such dealer within the State of Nebraska~~ subject to taxation under section 66-605.

Sec. 8. This act shall become operative on October 1, 1981.

Sec. 9. That original section 66-410.06, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410.04, 66-474, 66-475, 66-476, 66-605.02, and 66-605.03, Revised Statutes Supplement, 1980, are repealed.