

LEGISLATIVE BILL 258

Approved by the Governor May 25, 1989

Introduced by Government, Military & Veterans Affairs
Committee, Baack, 47, Chairperson;
Korshoj, 16; Coordsen, 32; Conway, 17;
Withem, 14; Bernard-Stevens, 42

AN ACT relating to revenue and taxation; to amend sections 37-432.01, 37-439, 39-2215, 66-421, 66-467.01, 66-479, 66-605, and 77-2791, Reissue Revised Statutes of Nebraska, 1943, and sections 66-473, 66-605.02, 77-27,132, and 77-4025, Revised Statutes Supplement, 1988; to eliminate the Tax Refund Fund; to provide for the payment of credits and refunds as prescribed; to create the Revenue Distribution Fund; to provide for the transfer of funds; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 37-432.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-432.01. The Legislature hereby declares that nongame, threatened, and endangered species have need of special protection and that it is in the public interest to preserve, protect, perpetuate, and enhance such species of this state through preservation of a satisfactory environment and an ecological balance. The purpose of sections ~~37-430 to 37-432-01~~, 37-439, and 77-27,119.01, ~~and 77-27,132~~ is to provide a means by which such protection may be financed through a voluntary checkoff designation on state income tax return forms. The intent of the Legislature is that the program of income tax checkoff is supplemental to any funding and in no way is intended to take the place of the funding that would otherwise be appropriated for such purpose.

Sec. 2. That section 37-439, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-439. There is hereby created the Nongame and Endangered Species Conservation Fund which shall be used to assist in carrying out the Nongame and

Endangered Species Conservation Act and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. Money shall be transferred into such fund from the ~~Tax Refund~~ General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Nongame and Endangered Species Conservation Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-~~1269~~ 72-1276.

Sec. 3. That section 39-2215, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-2215. (1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-473, 66-479, and 66-605.02 shall be allocated as provided in such sections. The State Treasurer shall make the transfer to the ~~Tax Refund~~ General Fund required by section 66-421.

(3) All other motor fuel taxes and special fuel taxes related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to section 60-302, and ~~such~~ other highway-user taxes ~~which may~~ be imposed by state law and allocated to the ~~fund~~ Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount equal to one dollar and fifty cents times the number of motorcycles registered during the previous month shall be placed in the Motorcycle Safety Education Fund, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred

to the License Plate Cash Fund as needed to meet the current obligations associated with the manufacture of license plates and stickers or tabs provided for in sections 60-311, 60-311.02, and 60-1804, as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market or for any other lawful purpose.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) ~~to~~ through (4) of this section are satisfied, (a) thirty thousand dollars to the Grade Crossing Protection Fund and (b) the amount calculated pursuant to section 13-1210 for financing the operating costs of public transportation systems to the Highway Cash Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Roads, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. The portion allocated to the Department of Roads shall be credited monthly to the Highway Restoration and Improvement Bond Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-305.09 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the Department of Roads shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the

Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the Highway Trust Fund fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the Highway Trust Fund fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276 and the earnings, if any, credited to the fund.

Sec. 4. That section 66-421, Reissue Revised Statutes of Nebraska, 1943, 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 in the Highway Trust Fund. The State Treasurer shall then transfer such amounts to the Tax Refund General Fund as the Tax Commissioner shall determine to be equal to the credits and refunds allowed under sections 66-445 to 66-466 and the amounts required by section 66-452.

Sec. 5. That section 66-467.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-467.01. The Tax Commissioner shall transmit monthly to the State Treasurer a report of the number of gallons of tax credit gasoline or motor vehicle fuel for which credits have been approved, and the treasurer shall thereupon transfer from the Tax Refund General Fund to the Agricultural Alcohol Fuel Tax Fund three-fourths of one cent per gallon approved for credit.

Sec. 6. That section 66-473, Revised Statutes Supplement, 1988, be amended to read as follows:

66-473. (1) Each dealer required by section 66-410 to pay motor vehicle fuel taxes shall, in addition to all other taxes provided by law, pay an excise tax at a rate set pursuant to section 66-476 for motor vehicle fuels, as defined in section 66-401, received, imported, produced, refined, manufactured, blended, or compounded by such dealer within the State of Nebraska as a motor vehicle fuel suitable for retail sale. All sums of money received under this section shall be credited to the Highway Trust Fund, ~~for allocation to the Highway Restoration and Improvement~~

Bond 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 Credits and refunds of such tax allowed to dealers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund.

(2) Dealers of motor vehicle fuels subject to taxation under subsection (1) of this section shall pay such excise tax and shall 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 4.

Sec. 7. That section 66-479, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-479. The receipts from the tax established under sections 66-477, 66-478, and 66-605.03 shall be credited to the Highway Trust Fund, ~~for allocation to the Highway Allocation 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 Credits and refunds of such tax allowed to dealers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Allocation Fund.

Sec. 8. That section 66-605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-605. In addition to the tax imposed pursuant to sections 66-605.02 and 66-605.03, there is hereby levied and imposed an excise tax of ten and one-half cents per gallon on the use, within the meaning of the word use as defined in subdivision (5) of section 66-602, of special fuel in any motor vehicle as defined in subdivision (8) of section 66-602. The tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such dealer and be paid over to the ~~motor fuel tax administrator~~ Tax Commissioner as provided by sections 66-601 to 66-649. The tax, with respect to all special fuel delivered by a special fuel dealer into special fuel storage facilities designed or equipped to fuel motor vehicles, shall attach at the time of such delivery; unless the recipient of the

special fuel provides a certificate of exemption. Such tax shall be collected by the dealer and be paid over to the motor fuel tax administrator Tax Commissioner as provided in sections 66-601 to 66-649.

All sums of money received by the State Treasurer under this section shall be placed in the Highway Trust Fund. Credits, except that the State Treasurer shall first transfer such amounts to the Tax Refund Fund as the motor fuel tax administrator determines to be equal to the credits and refunds of such tax allowed to special fuel dealers shall be paid from the Highway Trust Fund.

Sec. 9. That section 66-605.02, Revised Statutes Supplement, 1988, 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, and subject to taxation under section 66-605. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits for allocation to the Highway Restoration and Improvement Bond 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 of such tax allowed to special fuel dealers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund.

(2) Special fuel dealers subject to taxation under subsection (1) of this section shall pay such excise tax and shall 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. 10. That section 77-2791, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2791. (1) The Tax Commissioner, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by the tax laws of this state on the person who made the overpayment, and the balance shall be refunded by the State Treasurer out of the Tax Refund General

Fund, provided for in section 77-27,132-

(2) If the amount allowable as a credit for income tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(3) If there has been an overpayment of tax required to be deducted and withheld under section 77-2753, refund shall be made to the employer or the payor only to the extent that the amount of the overpayment was not deducted and withheld by the employer or the payor.

(4) The Tax Commissioner may ~~prescribe~~ adopt and promulgate rules and regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

(5) If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

Sec. 11. That section 77-27,132, Revised Statutes Supplement, 1988, be amended to read as follows:

77-27,132. (1) There is hereby created a fund to be designated the Tax Refund Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue. State Treasurer for prompt payments of all tax refunds under Chapter 66, article 4, the Special Fuel Tax Act, the Tobacco Products Tax Act, and the Nebraska Revenue Act of 1967 and for transfers to the Nongame and Endangered Species Conservation Fund pursuant to sections 37-439 and 77-27,119-01. Such fund shall be in such amount as the State Treasurer, with the advice of the Tax Commissioner, shall determine is necessary to meet current refunding requirements under such provisions. Any money in the Tax Refund Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of

1967. 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; (b) then, commencing with all amounts credited on or after July 1, 1986, and on or before June 30, 1987, credit to the Highway Trust Fund the portion of the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers which is attributable to a sales and use tax rate of three and one-half percent; and (c) commencing with all amounts credited on or after July 1, 1987, credit to the Highway Trust 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. 12. That section 77-4025, Revised Statutes Supplement, 1988, be amended to read as follows:

77-4025. There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products Tax Act shall be deposited in the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Credits and refunds allowed under the act shall be paid from the Tobacco Products Administration Cash Fund. Any receipts, after credits and refunds, in excess of the amounts sufficient to cover the costs of administration shall lapse to the General Fund, except that the State Treasurer shall first transfer such amount to the Tax Refund Fund as the Tax Commissioner determines to be equal to the credits and refunds allowed under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 72-1276.

Sec. 13. The balance of the Tax Refund Fund shall, on the operative date of this act, be transferred by the State Treasurer to the Revenue Distribution Fund and shall be allocated as required by the sections crediting amounts to the Tax Refund Fund prior to such date.

Sec. 14. This act shall become operative on June 30, 1989.

Sec. 15. That original sections 37-432.01, 37-439, 39-2215, 66-421, 66-467.01, 66-479, 66-605, and 77-2791, Reissue Revised Statutes of Nebraska, 1943, and sections 66-473, 66-605.02, 77-27,132, and 77-4025, Revised Statutes Supplement, 1988, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.