

## LEGISLATIVE BILL 1121

Approved by the Governor April 16, 1996

Introduced by Warner, 25

AN ACT relating to motor fuel tax; to amend sections 66-489, 66-719, 66-720, 66-729, 66-731, and 66-738, Revised Statutes Supplement, 1994, and sections 66-482, 66-697, 66-727, 66-740, and 66-1344, Revised Statutes Supplement, 1995; to redefine a term; to exempt certain fuel; to eliminate a seal requirement for dispensing devices; to prohibit certain acts; to change provisions relating to collection of data; to continue the existence of the motor fuel tax task force; to change provisions relating to an ethanol tax credit; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections; to outright repeal sections 66-714 and 66-715, Revised Statutes Supplement, 1994; and to declare an emergency.

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

Section 1. Section 66-482, Revised Statutes Supplement, 1995, is amended to read:

66-482. For purposes of sections 66-482 to 66-4,149 and section 2 of this act:

(1) Motor vehicle shall have the same definition as in section 60-301;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, benzol, naphtha, and benzine with an initial boiling point under two hundred degrees Fahrenheit and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of or as may be used for operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States, and for the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor vehicle fuel imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state and any person who refines and stores motor vehicle fuel at a refinery in this state;

(6) Distributor shall mean any person who acquires ownership of motor vehicle fuel directly from a supplier at or from a barge, barge line, or pipeline terminal in this state;

(7) Wholesaler shall mean any person, other than a supplier, distributor, or importer, who acquires motor vehicle fuel for resale;

(8) Retailer shall mean any person who acquires motor vehicle fuel from a supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor vehicle fuel at the time such fuel enters the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor vehicle fuel in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the

engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor vehicle fuel from any licensed supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean any fuel defined as diesel fuel in section 66-654;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision; and

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue.

Sec. 2. Methanol, benzine, benzol, naphtha, and any other volatile, flammable, or combustible liquid suitable for use as a motor vehicle fuel blending agent or fuel expander shall be exempt from the taxes imposed under sections 66-489, 66-4,105, 66-4,140, 66-4,142, 66-4,145, and 66-4,146 unless and until such methanol, benzine, benzol, naphtha, or other blending agent or fuel expander is blended with motor vehicle fuel or placed directly into the supply tank of a licensed motor vehicle. Any person blending such products with motor vehicle fuel or placing such products into the supply tank of a licensed motor vehicle shall pay the taxes imposed under such sections directly to the department on forms provided by the department at the same time as the motor vehicle fuel with which it is blended becomes subject to taxation or, if the tax imposed on the motor vehicle fuel has already been paid, upon blending. The taxes imposed by this section shall not apply to fuel additives which are used to enhance engine performance or prevent fuel line freezing or clogging when placed directly into the supply tank of a motor vehicle in quantities of one quart or less.

Sec. 3. Section 66-489, Revised Statutes Supplement, 1994, is amended to read:

66-489. (1) At the time of filing the return required by section 66-488, such supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-4,140, 66-4,142, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax of ten and one-half cents per gallon upon all motor vehicle fuel as shown by such return, except that there shall be no tax on the motor vehicle fuel reported if (a) the required taxes on the motor vehicle fuel have been paid, (b) the motor vehicle fuel has been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor vehicle fuel has been sold from a Nebraska barge line terminal, pipeline terminal, or refinery by a licensed supplier to a licensed distributor, (d) the motor vehicle fuel has been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor vehicle fuel directly from a licensed supplier at or from a refinery, barge, barge line, or pipeline terminal in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(2) Agricultural ethyl alcohol shall be exempt from the taxes imposed under this section and sections 66-4,140, 66-4,142, 66-4,145, and 66-4,146 and any other taxes provided for by law until the agricultural ethyl alcohol is (a) sold to any person who is not a Nebraska licensed motor vehicle fuels supplier, distributor, wholesaler, or importer, (b) placed directly into a motor vehicle, or (c) blended with gasoline. Agricultural ethyl alcohol that is blended with gasoline shall become subject to the taxes imposed under this section and sections 66-4,140, 66-4,142, 66-4,145, and 66-4,146 and any other taxes provided for by law at the same time as the gasoline with which it is blended becomes subject to such taxes or upon blending if such taxes have already been paid on the gasoline.

(3)(a) Motor vehicle fuel, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-4,140, 66-4,142, 66-4,145, and 66-4,146, when the fuel is used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee

of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor vehicle fuel to be sold tax exempt. The department shall refund tax paid on motor vehicle fuel used in buses deemed exempt by this section.

Sec. 4. Section 66-697, Revised Statutes Supplement, 1995, is amended to read:

66-697. Sections 66-697 to 66-6,116 and section 5 of this act shall be known and may be cited as the Compressed Fuel Tax Act.

Sec. 5. (1) Compressed fuel shall be exempt from the taxes imposed under the Compressed Fuel Tax Act and section 66-4,142 when the fuel is used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(2) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in the act and section 66-4,142, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(3) Nothing in this section shall be construed as permitting compressed fuel to be sold tax exempt. The department shall refund tax paid on compressed fuel used in buses deemed exempt by this section.

Sec. 6. Section 66-719, Revised Statutes Supplement, 1994, is amended to read:

66-719. (1) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars.

(2) Until January 1, 1994, any motor vehicle fuel importer or special fuel importer who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall be subject to the larger of:

- (a) The penalty in subsection (1) of this section; or
- (b)(i) A penalty of ten percent of the tax not paid if the act was committed through negligence;
- (ii) A penalty of fifteen percent of the tax not paid if the act was committed in intentional disregard of the law, rules, or regulations;
- (iii) A penalty of fifty percent of the tax not paid if the act was committed with intent to evade the tax; or
- (iv) A penalty of one hundred percent of the tax not paid if the act involved fraud and was committed with intent to evade the tax.

(3) On and after January 1, 1994, any Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within ten days after the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall, in addition to the penalty in subsection (1) of this section, be subject to the larger of:

- (a) A penalty of one hundred dollars; or
  - (b) A penalty of ten percent of the tax not paid.
- (3) of this section to the contrary, no penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return and paying such tax if such amended return is filed and payment is made within thirty days after the date such tax was due.

(b) Except as provided in subsection (8) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(4) Any person who neglects or refuses to report and pay motor fuel tax on methanol, naphtha, benzine, benzol, kerosene, or any other volatile, flammable, or combustible liquid that is blended with motor vehicle fuel or undyed diesel fuel shall be subject to a penalty equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger. Such penalty shall be in addition to the motor fuel tax due and all other penalties provided by law.

(5) If any person knowingly files a false report or return, the

penalty shall be equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger, which penalty shall be in addition to all other penalties provided by law.

(6) Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, or canceled shall automatically accrue a penalty of one hundred dollars per day for each day such violation continues.

(7) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(8)(a) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(b) Interest may only be waived if:

(i) Interest is due to an error or unreasonable delay by the department;

(ii) Interest is due to erroneous written advice by the department when the advice was a direct response to a written request for advice from the taxpayer and the taxpayer reasonably relied upon the advice; or

(iii) Interest is due because of an amount erroneously refunded if the taxpayer did not request the refund and the refund was not caused by information provided by the taxpayer.

Sec. 7. Section 66-720, Revised Statutes Supplement, 1994, is amended to read:

66-720. (1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

(a) Cancellation of security;

(b) Failure to provide additional security as required;

(c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;

(d) Failure to pay taxes due within the time provided;

(e) Filing of any false report, return, statement, or affidavit, knowing it to be false;

(f) Delivering motor fuel to a Nebraska destination if Nebraska is not listed as the destination state on the original bill of sale, bill of lading, or manifest except as authorized under section 66-503;

(g) Failure to remain in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(h) Failure to remain in compliance with requirements of the Department of Agriculture regarding weights and measures, and ~~sealing of dispensing equipment~~;

(i) Using tax credit gasoline in a motor vehicle;

(j) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-681;

(k) No longer being eligible to obtain a license or permit; or

(l) Any other violation of the motor fuel laws or the rules and regulations.

(2) The department shall mail notice of suspension of any license or permit.

(3) The licensee or permit holder may, within thirty days after the mailing of the notice of such suspension, petition the Department of Revenue in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within ten days of receipt of the petition, set a hearing date at which the licensee or permit holder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permit holder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or canceling such license or permit.

(4) If a petition is not filed within the thirty-day period, the suspended license or permit shall be canceled by the department at the expiration of the period.

(5) The department shall not issue a new permit or license to the same person for one year from the date of cancellation. Any reissuance of a permit or license to the same person within three years from the date of cancellation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(6) Suspension or cancellation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

Sec. 8. Section 66-727, Revised Statutes Supplement, 1995, is amended to read:

66-727. (1) It shall be unlawful for any person to:

(a) Knowingly import, distribute, sell, produce, refine, compound, blend, or use any motor vehicle fuel, or diesel fuel, or compressed fuel in the State of Nebraska without remitting the full amount of tax imposed by the provisions of the motor fuel laws;

(b) Refuse or knowingly and intentionally fail to make and file any return, report, or statement required by the motor fuel laws in the manner or within the time required;

(c) Knowingly and with intent to evade or to aid or abet any other person in the evasion of the tax imposed by the motor fuel laws (i) make any false or incomplete report, return, or statement, (ii) conceal any material fact in any record, report, return, or affidavit provided for in the motor fuel laws, or (iii) improperly claim any exemption from tax imposed by the motor fuel laws, or (iv) create or submit any false documentation purporting to show that tax-free fuel has been purchased or sold tax paid or that tax-paid fuel has been used for a tax-exempt purpose;

(d) Knowingly conduct any activities requiring a license under the provisions of the Petroleum Release Remedial Action Act, the Diesel Fuel Tax Act, the Compressed Fuel Tax Act, and Chapter 66, articles 4, 5, and 7, without a license or after a license has been surrendered, suspended, or canceled;

(e) Knowingly conduct any activities requiring a license under the Interstate Motor Carriers Base State Fuel Tax Compact Act or any activities requiring a permit under the provisions of the motor fuel laws without such license or permit or after such license or permit has been surrendered, suspended, or canceled;

(f) Knowingly assign or attempt to assign a license or permit;

(g) Knowingly fail to keep and maintain books and records required by the motor fuel laws;

(h) Knowingly fail or refuse to pay a fuel tax when due;

(i) Knowingly make any false statement in connection with an application for the refund of any money or tax;

(j) Fail or refuse to produce for inspection any license or permit issued under the motor fuel laws; or

(k) Knowingly violate any of the motor fuel laws or any rule or regulation under the motor fuel laws.

(2) Any person who violates subdivision (1)(b), (f), (h), or (k) of this section shall be guilty of a Class IV felony. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(3) Any person who violates subdivision (1)(a), (c), (d), (g), or (i) of this section shall be guilty of a Class IV felony if the amount of tax involved is less than five thousand dollars and a Class III felony if the amount of tax is five thousand dollars or more. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(4) Any person who violates subdivision (1)(e) or (j) of this section shall be guilty of a separate Class IV misdemeanor for each day of operation.

Sec. 9. Section 66-729, Revised Statutes Supplement, 1994, is amended to read:

66-729. After reviewing an application received in proper form, the department may issue to the applicant a permit or license. The department may refuse to issue a permit or license to any person:

(1) Who previously had a permit or license issued under the motor fuel laws of any state which, prior to the time of filing the application, has been suspended or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been suspended or canceled for cause;

(3) Which has as a partner, limited liability company member, or shareholder, with a ten percent or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;

(4) Who is not in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(5) Who is not in compliance with the Department of Agriculture regarding weights and measures, or the sealing of dispensing devices;

(6) Who has been convicted of a felony in the last ten years; or

(7) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant him or her at least ten days' written notice of the time and place.

Sec. 10. Section 66-731, Revised Statutes Supplement, 1994, is amended to read:

66-731. (1) The department shall develop, implement, and maintain a computer system for the automated recording and analysis of the motor vehicle fuel tax, the diesel fuel tax, and related information. The system shall be capable of directly accepting and recording data filed by magnetic media.

(2) ~~The department shall develop, implement, and maintain a shared data base for share information pertaining to motor fuel use, tax collection, and related information with the Department of Agriculture, the State Fire Marshal, and the Nebraska State Patrol. The information shall be made available to these agencies and to any other state, federal, or local agency with a valid need for the information as determined by the Department of Revenue.~~

(3) The department may forward to any agency in this state, to the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, and the provinces or the Dominion of Canada, or to any other person any information which the department may have relative to the receipt, storage, delivery, sale, use, or other disposition of motor fuel.

(4) The department may forward to any person statistical information, lists of licensees or permitholders, or totals for any licensee or permitholder.

Sec. 11. Section 66-738, Revised Statutes Supplement, 1994, is amended to read:

66-738. The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded by a separate appropriation program within the department. All provisions of Chapter 66, articles 4, 5, 6, 12, and 14, and sections 66-712 to 66-737 and the provisions of Chapter 3, article 1, and Chapter 66, article 15, pertaining to the Department of Revenue, the Tax Commissioner, or the division shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to biennial audit by the Auditor of Public Accounts, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of each even-numbered year. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such articles and sections. The auditors and field investigators in the division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

~~Funds appropriated to the division may also be used to contract with the Department of Agriculture to aid in enforcing section 66-715, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.~~

Funds appropriated to the division may also be used to contract with the Nebraska State Patrol to aid in the issuance of motor fuel delivery permit numbers as provided in subsection (2) of section 66-503, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.

Sec. 12. Section 66-740, Revised Statutes Supplement, 1995, is amended to read:

66-740. The motor fuel tax task force created pursuant to Laws 1989, LB 813, section 30, composed of representatives from the Department of Roads, the Department of Revenue, the Attorney General, the Nebraska State Patrol, the Department of Agriculture, and the State Fire Marshal, shall ~~continue to function until June 30, 1997, to carry out the duties prescribed~~

in this section. The task force shall meet at least quarterly to review the activities of the state agencies that are involved in motor fuel tax collection, prosecution, investigation, and information gathering. The task force shall study and assess the diesel fuel tax exemption for undyed diesel fuel purchased for use in temperature control units or power take-off units as set forth in section 66-673 to determine whether such exemption should be continued in light of federal and state motor fuel tax collection and enforcement efforts. The task force shall study and assess the successes and problems associated with the passage of Laws 1991, LB 627, and make recommendations for further administrative, statutory, or budgetary improvements to the Appropriations Committee and Revenue Committee of the Legislature on December 1 of each year through 1996.

On June 30, 1997, the task force shall issue a ~~final~~ report to the committees. The report shall summarize for the period from January 1, 1992, until the date of the report: (1) The activities of the task force; (2) the total expenses of state agencies associated with the implementation of Laws 1991, LB 627; and (3) the estimated increases in motor fuel tax collection that are related to Laws 1991, LB 627, or any associated legislation.

The remaining balance of the amount reappropriated pursuant to Laws 1991, LB 627A, section 5, to support the activities of the task force shall be reappropriated for FY1994-95, FY1995-96, and FY1996-97.

All state agencies shall cooperate, to the extent possible, with all national initiatives intended to enhance motor fuel tax collection at the federal and state levels. State activity in this area should include efforts to have Nebraska designated as a leading state in these initiatives, should the opportunity be made available.

Sec. 13. Section 66-1344, Revised Statutes Supplement, 1995, is amended to read:

66-1344. (1) Each producer of ethanol shall receive a credit pursuant to this section of twenty cents per gallon of ethanol produced in Nebraska, which credit shall be in the form of a nonrefundable transferable motor vehicle fuel tax credit certificate. After July 1, 1994, no such credit shall be given for ethanol produced at an ethanol facility which was in production on or before January 1, 1992, unless on or before July 1, 1994, the name plate design capacity for the production of ethanol, before denaturing, at the facility has been expanded to equal at least two times the name plate design capacity for production of ethanol, before denaturing, existing at the facility as of January 1, 1992.

(2) Any ethanol facility which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production of ethanol, before denaturing, on or before December 31, 1992, shall receive a credit of twenty cents per gallon of ethanol produced beginning with the first month for which it is eligible to receive such credit and ending not later than December 31, 1997.

(3) Any ethanol facility which is not in production on or before December 31, 1992, but which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production of ethanol, before denaturing, on or before December 31, 1995, shall receive a credit of twenty cents per gallon of ethanol produced for sixty months beginning with the first month for which it is eligible to receive such credit and ending not later than December 31, 2000, if the ethanol facility maintains an average production rate of at least twenty-five percent of its name plate design capacity for at least six months after the first month for which it is eligible to receive such credit.

(4) Any ethanol facility eligible for a credit under subsection (1), (2), or (3) of this section shall also receive a credit of twenty cents per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or before December 31, 1995. Such credit shall be for sixty months beginning with the first month for which production from the expanded facility is eligible to receive such credit and ending not later than December 31, 2000.

(5) The credit shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of distilled spirits. Not less than two million gallons and not more than twenty-five million gallons of ethanol produced annually at an ethanol facility shall be eligible for the credit, and the credit may only be claimed by a producer for the period specified in subsection (2), (3), or (4) of this section. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the sixty-month period set forth in subsection (3) or (4) of this section shall be eligible for the credit under such subsection, in addition to the ethanol entitled to credit

under subsection (1) or (2) of this section.

(6) The Department of Revenue shall prescribe an application form and procedures for claiming the credit and shall adopt and promulgate rules and regulations to carry out this section.

(7) For purposes of ascertaining the correctness of any application for claiming the credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

Sec. 14. The Revisor of Statutes shall assign section 2 of this act to Chapter 66, article 4.

Sec. 15. Sections 3, 4, 5, and 16 of this act become operative on December 1, 1993. The other sections of this act become operative on July 1, 1996.

Sec. 16. Original section 66-489, Revised Statutes Supplement, 1994, and section 66-697, Revised Statutes Supplement, 1995, are repealed.

Sec. 17. Original sections 66-719, 66-720, 66-729, 66-731, and 66-738, Revised Statutes Supplement, 1994, and sections 66-482, 66-727, 66-740, and 66-1344, Revised Statutes Supplement, 1995, are repealed.

Sec. 18. The following sections are outright repealed: Sections 66-714 and 66-715, Revised Statutes Supplement, 1994.

Sec. 19. Since an emergency exists, this act takes effect when passed and approved according to law.