

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 846

Introduced by Fischer, 43.

Read first time January 10, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 66-4,103, 66-697, and 66-6,109, Reissue Revised Statutes
3 of Nebraska, sections 39-2215, 66-482, 66-485, 66-488,
4 66-489.01, 66-495.01, 66-4,105, 66-4,114, 66-4,145,
5 66-4,146, 66-6,107, 66-6,111, and 66-726, Revised
6 Statutes Cumulative Supplement, 2006, and section 66-489,
7 Revised Statutes Supplement, 2007; to provide a tax on
8 motor fuels and change a tax on motor fuels; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-2215, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 39-2215 (1) There is hereby created in the state treasury
4 a special fund to be known as the Highway Trust Fund.

5 (2) All funds credited to the Highway Trust Fund pursuant
6 to sections 66-4,140, 66-4,147, and 66-6,108 and sections 10 and 16
7 of this act, and related penalties and interest, shall be allocated
8 as provided in such sections.

9 (3) All other motor vehicle fuel taxes, diesel fuel
10 taxes, compressed fuel taxes, and alternative fuel taxes related to
11 highway use retained by the state, all motor vehicle registration
12 fees retained by the state other than those fees credited to
13 the State Recreation Road Fund pursuant to subdivision (3) of
14 section 60-3,156, and other highway-user taxes imposed by state
15 law and allocated to the Highway Trust Fund, except for the
16 proceeds of the sales and use taxes derived from motor vehicles,
17 trailers, and semitrailers credited to the fund pursuant to section
18 77-27,132, are hereby irrevocably pledged for the terms of the
19 bonds issued prior to January 1, 1988, to the payment of the
20 principal, interest, and redemption premium, if any, of such bonds
21 as they mature and become due at maturity or prior redemption
22 and for any reserves therefor and shall, as received by the State
23 Treasurer, be deposited in the fund for such purpose.

24 (4) Of the money in the fund specified in subsection
25 (3) of this section which is not required for the use specified

1 in such subsection, (a) an amount equal to three dollars times
2 the number of motorcycles registered during the previous month
3 shall be placed in the Motorcycle Safety Education Fund, (b) an
4 amount to be determined annually by the Legislature through the
5 appropriations process may be transferred to the Motor Fuel Tax
6 Enforcement and Collection Cash Fund for use as provided in section
7 66-738 on a monthly or other less frequent basis as determined by
8 the appropriation language, (c) an amount to be determined annually
9 by the Legislature through the appropriations process shall be
10 transferred to the License Plate Cash Fund as certified by the
11 Director of Motor Vehicles, and (d) the remaining money may be
12 used for the purchase for retirement of the bonds issued prior to
13 January 1, 1988, in the open market.

14 (5) The State Treasurer shall monthly transfer, from the
15 proceeds of the sales and use taxes credited to the Highway Trust
16 Fund and any money remaining in the fund after the requirements of
17 subsections (2) through (4) of this section are satisfied, thirty
18 thousand dollars to the Grade Crossing Protection Fund.

19 (6) Except as provided in subsection (7) of this
20 section, the balance of the Highway Trust Fund shall be allocated
21 fifty-three and one-third percent, less the amount provided for
22 in section 39-847.01, to the Department of Roads, twenty-three
23 and one-third percent, less the amount provided for in section
24 39-847.01, to the various counties for road purposes, and
25 twenty-three and one-third percent to the various municipalities

1 for street purposes. If bonds are issued pursuant to subsection
2 (2) of section 39-2223, the portion allocated to the Department
3 of Roads shall be credited monthly to the Highway Restoration
4 and Improvement Bond Fund, and if no bonds are issued pursuant
5 to such subsection, the portion allocated to the department
6 shall be credited monthly to the Highway Cash Fund. The portions
7 allocated to the counties and municipalities shall be credited
8 monthly to the Highway Allocation Fund and distributed monthly as
9 provided by law. Vehicles accorded prorated registration pursuant
10 to section 60-3,198 shall not be included in any formula involving
11 motor vehicle registrations used to determine the allocation and
12 distribution of state funds for highway purposes to political
13 subdivisions.

14 (7) If it is determined by December 20 of any year that a
15 county will receive from its allocation of state-collected highway
16 revenue and from any funds relinquished to it by municipalities
17 within its boundaries an amount in such year which is less than
18 such county received in state-collected highway revenue in calendar
19 year 1969, based upon the 1976 tax rates for highway-user fuels and
20 registration fees, the Department of Roads shall notify the State
21 Treasurer that an amount equal to the sum necessary to provide such
22 county with funds equal to such county's 1969 highway allocation
23 for such year shall be transferred to such county from the Highway
24 Trust Fund. Such makeup funds shall be matched by the county as
25 provided in sections 39-2501 to 39-2510. The balance remaining in

1 the fund after such transfer shall then be reallocated as provided
2 in subsection (6) of this section.

3 (8) The State Treasurer shall disburse the money in the
4 Highway Trust Fund as directed by resolution of the commission.
5 All disbursements from the fund shall be made upon warrants drawn
6 by the Director of Administrative Services. Any money in the fund
7 available for investment shall be invested by the state investment
8 officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act and the earnings, if any,
10 credited to the fund.

11 Sec. 2. Section 66-482, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 66-482 For purposes of sections 66-482 to 66-4,149 and
14 section 10 of this act:

15 (1) Motor vehicle shall have the same definition as in
16 section 60-339;

17 (2) Motor vehicle fuel shall include all products and
18 fuel commonly or commercially known as gasoline, including casing
19 head or natural gasoline, and shall include any other liquid and
20 such other volatile and inflammable liquids as may be produced,
21 compounded, or used for the purpose of operating or propelling
22 motor vehicles, motorboats, or aircraft or as an ingredient in
23 the manufacture of such fuel. Agricultural ethyl alcohol produced
24 for use as a motor vehicle fuel shall be considered a motor
25 vehicle fuel. Motor vehicle fuel shall not include the products

1 commonly known as methanol, kerosene oil, kerosene distillate,
2 crude petroleum, naphtha, and benzine with a boiling point over
3 two hundred degrees Fahrenheit, residuum gas oil, smudge oil,
4 leaded automotive racing fuel with an American Society of Testing
5 Materials research method octane number in excess of one hundred
6 five, and any petroleum product with an initial boiling point under
7 two hundred degrees Fahrenheit, a ninety-five percent distillation
8 (recovery) temperature in excess of four hundred sixty-four degrees
9 Fahrenheit, an American Society of Testing Materials research
10 method octane number less than seventy, and an end or dry point of
11 distillation of five hundred seventy degrees Fahrenheit maximum;

12 (3) Agricultural ethyl alcohol shall mean ethyl alcohol
13 produced from cereal grains or agricultural commodities grown
14 within the continental United States and which is a finished
15 product that is a nominally anhydrous ethyl alcohol meeting
16 American Society for Testing and Materials D4806 standards. For
17 the purpose of sections 66-482 to 66-4,149 and section 10 of this
18 act, the purity of the ethyl alcohol shall be determined excluding
19 denaturant and the volume of alcohol blended with gasoline for
20 motor vehicle fuel shall include the volume of any denaturant
21 required pursuant to law;

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

25 (5) Supplier shall mean any person who owns motor fuels

1 imported by barge, barge line, or pipeline and stored at a barge,
2 barge line, or pipeline terminal in this state;

3 (6) Distributor shall mean any person who acquires
4 ownership of motor fuels directly from a producer or supplier
5 at or from a barge, barge line, pipeline terminal, or ethanol or
6 biodiesel facility in this state;

7 (7) Wholesaler shall mean any person, other than a
8 producer, supplier, distributor, or importer, who acquires motor
9 fuels for resale;

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

13 (9) Importer shall mean any person who owns motor fuels
14 at the time such fuels enter the State of Nebraska by any means
15 other than barge, barge line, or pipeline. Importer shall not
16 include a person who imports motor fuels in a tank directly
17 connected to the engine of a motor vehicle, train, watercraft, or
18 airplane for purposes of providing fuel to the engine to which the
19 tank is connected;

20 (10) Exporter shall mean any person who acquires
21 ownership of motor fuels from any licensed producer, supplier,
22 distributor, wholesaler, or importer exclusively for use or resale
23 in another state;

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

1 (12) Diesel fuel shall mean all combustible liquids and
2 biodiesel which are suitable for the generation of power for
3 diesel-powered vehicles, except that diesel fuel shall not include
4 kerosene;

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

7 (14) Person shall mean any individual, firm, partnership,
8 limited liability company, company, agency, association,
9 corporation, state, county, municipality, or other political
10 subdivision. Whenever a fine or imprisonment is prescribed or
11 imposed in sections 66-482 to 66-4,149 and section 10 of this act,
12 the word person as applied to a partnership, a limited liability
13 company, or an association shall mean the partners or members
14 thereof;

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

17 (16) Semiannual period shall mean either the period which
18 begins on January 1 and ends on June 30 of each year or the period
19 which begins on July 1 and ends on December 31 of each year;

20 (17) Producer shall mean any person who manufactures
21 agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel
22 facility in this state;

23 (18) Highway shall mean every way or place generally open
24 to the use of the public for the purpose of vehicular travel,
25 even though such way or place may be temporarily closed or travel

1 thereon restricted for the purpose of construction, maintenance,
2 repair, or reconstruction;

3 (19) Kerosene shall mean kerosene meeting the
4 specifications as found in the American Society for Testing and
5 Materials publication D3699 entitled Standard Specifications for
6 Kerosene;

7 (20) Biodiesel shall mean mono-alkyl esters of long
8 chain fatty acids derived from vegetable oils or animal fats
9 which conform to American Society for Testing and Materials D6751
10 specifications for use in diesel engines. Biodiesel refers to the
11 pure fuel before blending with diesel fuel;

12 (21) Motor fuels shall mean motor vehicle fuel, diesel
13 fuel, aircraft fuel, or compressed fuel;

14 (22) Ethanol facility shall mean a plant which produces
15 agricultural ethyl alcohol under the provisions described in
16 section 66-1344; and

17 (23) Biodiesel facility shall mean a plant which produces
18 biodiesel.

19 Sec. 3. Section 66-485, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 66-485 The department, for the first year of a new
22 license or whenever it deems it necessary to insure compliance with
23 sections 66-482 to 66-4,149 and section 10 of this act, may require
24 any producer, supplier, distributor, wholesaler, exporter, or
25 importer subject to such sections to place with the department such

1 security as it determines. The amount and duration of the security
2 shall be fixed by the department and shall be approximately three
3 times the total estimated average monthly tax liability payable
4 by such producer, supplier, distributor, wholesaler, or importer
5 pursuant to such sections. Such security shall consist of a surety
6 bond executed by a surety company duly licensed and authorized
7 to do business within this state in the amount specified by the
8 department. In the case of an exporter, the amount and duration
9 of the security shall be fixed by the department. Such security
10 shall run to the Department of Revenue and be conditioned upon the
11 payment of all taxes, interest, penalties, and costs for which such
12 producer, supplier, distributor, wholesaler, exporter, or importer
13 is liable, whether such liability was incurred prior to or after
14 such security is filed.

15 Sec. 4. Section 66-488, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 66-488 (1) Every producer, supplier, distributor,
18 wholesaler, importer, and exporter who engages in the sale,
19 distribution, delivery, and use of motor fuels shall render and
20 have on file with the department a return reporting the number
21 of gallons of motor fuels, based on gross gallons, received,
22 imported, or exported and unloaded and emptied or caused to
23 be received, imported, or exported and unloaded and emptied by
24 such producer, supplier, distributor, wholesaler, or importer in
25 the State of Nebraska and the number of gallons of motor fuels

1 produced, refined, manufactured, blended, or compounded by such
2 producer, supplier, distributor, wholesaler, or importer within
3 the State of Nebraska, during the preceding reporting period, and
4 defining the nature of such motor fuels. The return shall also
5 show such information as the department reasonably requires for
6 the proper administration and enforcement of sections 66-482 to
7 66-4,149 and section 10 of this act. The return shall contain a
8 declaration, by the person making the same, to the effect that the
9 statements contained therein are true and are made under penalties
10 of perjury, which declaration shall have the same force and effect
11 as a verification of the return and shall be in lieu of such
12 verification. The return shall be signed by the producer, supplier,
13 distributor, wholesaler, importer, or exporter or a principal
14 officer, general agent, managing agent, attorney in fact, chief
15 accountant, or other responsible representative of the producer,
16 supplier, distributor, wholesaler, importer, or exporter, and such
17 return shall be entitled to be received in evidence in all courts
18 of this state and shall be prima facie evidence of the facts
19 therein stated. The producer, supplier, distributor, wholesaler,
20 importer, or exporter shall file the return in such format as
21 prescribed by the department on or before the twenty-fifth day of
22 the next succeeding calendar month following the reporting period
23 to which it relates. If the final filing date for such return
24 falls on a Saturday, Sunday, or legal holiday, the next secular
25 or business day shall be the final filing date. The return shall

1 be considered filed on time if transmitted or postmarked before
2 midnight of the final filing date.

3 (2) For purposes of this section, reporting period means
4 calendar month unless otherwise provided by rules and regulations
5 of the department, but under no circumstance shall such reporting
6 period extend beyond an annual basis.

7 Sec. 5. Section 66-489, Revised Statutes Supplement,
8 2007, is amended to read:

9 66-489 (1) At the time of filing the return required by
10 section 66-488, such producer, supplier, distributor, wholesaler,
11 or importer shall, in addition to the tax imposed pursuant to
12 sections 66-4,140, 66-4,145, and 66-4,146 and section 10 of this
13 act and in addition to the other taxes provided for by law, pay a
14 tax of ~~ten~~ two and one-half cents per gallon upon all motor fuels
15 as shown by such return, except that there shall be no tax on the
16 motor fuels reported if (a) the required taxes on the motor fuels
17 have been paid, (b) the motor fuels have been sold to a licensed
18 exporter exclusively for resale or use in another state, (c) the
19 motor fuels have been sold from a Nebraska barge line terminal,
20 pipeline terminal, refinery, or ethanol or biodiesel facility,
21 including motor fuels stored offsite in bulk, by a licensed
22 producer or supplier to a licensed distributor, (d) the motor fuels
23 have been sold by a licensed distributor or licensed importer to
24 a licensed distributor or to a licensed wholesaler and the seller
25 acquired ownership of the motor fuels directly from a licensed

1 producer or supplier at or from a refinery, barge, barge line,
2 pipeline terminal, or ethanol or biodiesel facility, including
3 motor fuels stored offsite in bulk, in this state or was the first
4 importer of such fuel into this state, or (e) as otherwise provided
5 in this section. Such producer, supplier, distributor, wholesaler,
6 or importer shall remit such tax to the department.

7 (2) As part of filing the return required by section
8 66-488, each producer of ethanol shall, in addition to other
9 taxes imposed by the motor fuel laws, pay an excise tax of one
10 and one-quarter cents per gallon through December 31, 2004, and
11 commencing January 1, 2010, and two and one-half cents per gallon
12 commencing January 1, 2005, through December 31, 2009, on natural
13 gasoline purchased for use as a denaturant by the producer at
14 an ethanol facility. All taxes, interest, and penalties collected
15 under this subsection shall be remitted to the State Treasurer
16 for credit to the Agricultural Alcohol Fuel Tax Fund, except that
17 commencing January 1, 2005, through December 31, 2009, one and
18 one-quarter cents per gallon of such excise tax shall be credited
19 to the Ethanol Production Incentive Cash Fund. For fiscal years
20 2007-08 through 2011-12, if the total receipts from the excise
21 tax authorized in this subsection and designated for deposit in
22 the Agricultural Alcohol Fuel Tax Fund exceed five hundred fifty
23 thousand dollars, the State Treasurer shall deposit amounts in
24 excess of five hundred fifty thousand dollars in the Ethanol
25 Production Incentive Cash Fund.

1 (3) (a) Motor fuels, methanol, and all blending agents
2 or fuel expanders shall be exempt from the taxes imposed by this
3 section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and
4 section 10 of this act, when the fuels are used for buses equipped
5 to carry more than seven persons for hire and engaged entirely in
6 the transportation of passengers for hire within municipalities or
7 within a radius of six miles thereof.

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

17 (c) Nothing in this section shall be construed as
18 permitting motor fuels to be sold tax exempt. The department
19 shall refund tax paid on motor fuels used in buses deemed exempt by
20 this section.

21 (4) Natural gasoline purchased for use as a denaturant
22 by a producer at an ethanol facility as defined in section 66-1333
23 shall be exempt from the motor fuels tax imposed by subsection (1)
24 of this section as well as the tax imposed pursuant to sections
25 66-4,140, 66-4,145, and 66-4,146 and section 10 of this act.

1 (5) Unless otherwise provided by an agreement entered
2 into between the State of Nebraska and the governing body of any
3 federally recognized Indian tribe within the State of Nebraska,
4 motor fuels purchased on a Nebraska Indian reservation where the
5 purchaser is a Native American who resides on the reservation shall
6 be exempt from the motor fuels tax imposed by this section as well
7 as the tax imposed pursuant to sections 66-4,140, 66-4,145, and
8 66-4,146 and section 10 of this act.

9 (6) Motor fuels purchased for use by the United States
10 Government or its agencies shall be exempt from the motor fuels
11 tax imposed by this section as well as the tax imposed pursuant to
12 sections 66-4,140, 66-4,145, and 66-4,146 and section 10 of this
13 act.

14 (7) In the case of diesel fuel, there shall be no tax on
15 the motor fuels reported if (a) the diesel fuel has been indelibly
16 dyed and chemically marked in accordance with regulations issued by
17 the Secretary of the Treasury of the United States under 26 U.S.C.
18 4082 or (b) the diesel fuel contains a concentration of sulphur
19 in excess of five-hundredths percent by weight or fails to meet
20 a cetane index minimum of forty and has been indelibly dyed in
21 accordance with regulations promulgated by the Administrator of the
22 Environmental Protection Agency pursuant to 42 U.S.C. 7545.

23 Sec. 6. Section 66-489.01, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 66-489.01 Methanol, benzine, benzol, naphtha, kerosene,

1 and any other volatile, flammable, or combustible liquid suitable
2 for use as a motor fuels blending agent or fuel expander shall
3 be exempt from the taxes imposed under sections 66-489, 66-4,105,
4 66-4,140, 66-4,145, and 66-4,146 and section 10 of this act unless
5 and until such methanol, benzine, benzol, naphtha, kerosene, or
6 other blending agent or fuel expander is blended with motor fuels
7 or placed directly into the supply tank of a licensed motor
8 vehicle. Any person blending such products with motor fuels or
9 placing such products into the supply tank of a licensed motor
10 vehicle shall pay the taxes imposed under such sections directly
11 to the department on forms provided by the department at the same
12 time as the motor fuels with which it is blended become subject
13 to taxation or, if the tax imposed on the motor fuels has already
14 been paid, upon blending. The taxes imposed by this section shall
15 not apply to fuel additives which are used to enhance engine
16 performance or prevent fuel line freezing or clogging when placed
17 directly into the supply tank of a motor vehicle in quantities of
18 one quart or less.

19 Sec. 7. Section 66-495.01, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 66-495.01 (1) Except as provided in subsection (5) of
22 this section, the fuel supply tank of a motor vehicle registered
23 or required to be registered for operation on the highway shall
24 not contain or be used with undyed diesel fuel that has not been
25 taxed or diesel fuel which contains any evidence of the dye or

1 chemical marker added pursuant to the regulations promulgated under
2 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or
3 high-sulphur diesel fuel.

4 (2) No retailer of diesel fuel shall sell or offer
5 to sell diesel fuel that contains any evidence of the dye or
6 chemical marker added pursuant to the regulations promulgated under
7 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur
8 or high-sulphur diesel fuel unless the fuel dispensing device is
9 clearly marked with a notice that the fuel is dyed or chemically
10 marked.

11 (3) Any law enforcement officer, any carrier enforcement
12 officer, or any agent of the department who has reasonable grounds
13 to suspect a violation of this section may inspect the fuel in
14 the fuel supply tank of any motor vehicle or the fuel storage
15 facilities and dispensing devices of any diesel fuel retailer
16 to determine compliance with this section. Fuel inspections may
17 also be conducted in the course of safety or other inspections
18 authorized by law.

19 (4) Any person who violates any provision of this section
20 or who refuses to permit an inspection authorized by this section
21 shall be guilty of a Class IV misdemeanor and shall be subject
22 to an administrative penalty of two hundred fifty dollars for the
23 first such violation. If the person had another violation under
24 this section within the last five years, the person shall be
25 subject to an administrative penalty of one thousand dollars for

1 the current violation. If the person had two or more violations
2 under this section within the last five years, the person shall be
3 subject to an administrative penalty of two thousand five hundred
4 dollars for the current violation. All such penalties shall be
5 assessed against the owner of the vehicle as of the date of the
6 violation. The penalty shall be assessed and collected by the
7 department. All such penalties collected shall be remitted to the
8 State Treasurer for credit to the Highway Trust Fund.

9 (5) Any motor vehicle owned or leased by any state,
10 county, municipality, or other political subdivision may be
11 operated on the highways of this state with dyed diesel fuel,
12 except high-sulphur diesel fuel dyed in accordance with regulations
13 promulgated by the Administrator of the Environmental Protection
14 Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by sections
15 66-482 to 66-4,149 and section 10 of this act are paid to the
16 department by the state, county, municipality, or other political
17 subdivision. The state, county, municipality, or other political
18 subdivision shall pay the tax and file a return concerning the tax
19 to the department in like manner and form as is required under
20 sections 66-4,105 and 66-4,106 and section 10 of this act.

21 (6) For purposes of this section:

22 (a) Owner means registered owner, titleholder, lessee
23 entitled to possession of the motor vehicle, or anyone otherwise
24 maintaining a possessory interest in the motor vehicle, but does
25 not include anyone who, without participating in the use or

1 operation of the motor vehicle and otherwise not engaged in the
2 purpose for which the motor vehicle is being used, holds indicia
3 of ownership primarily to protect his or her security interest in
4 the motor vehicle or who acquired ownership of the motor vehicle
5 pursuant to a foreclosure of a security interest in the motor
6 vehicle; and

7 (b) Use means to operate, fuel, or otherwise employ.

8 Sec. 8. Section 66-4,103, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 66-4,103 The provisions of sections 66-482 to 66-4,103
11 and section 10 of this act shall not apply or be construed to apply
12 to foreign or interstate commerce, except insofar as the same may
13 be permitted under the provisions of the Constitution and laws of
14 the United States.

15 Sec. 9. Section 66-4,105, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 66-4,105 There is hereby levied and imposed an excise
18 tax of ~~ten~~ two and one-half cents per gallon, increased by the
19 amounts imposed or determined under sections 66-4,140, 66-4,145,
20 and 66-4,146 and section 10 of this act, upon the use of all
21 motor fuels used in this state and due the State of Nebraska under
22 section 66-489. Users of motor fuels subject to taxation under
23 this section shall be allowed the same exemptions, deductions,
24 and rights of reimbursement as are authorized and permitted by
25 Chapter 66, article 4, other than any commissions provided under

1 such article. For purposes of this section and section 66-4,106,
2 use shall mean the purchase or consumption of motor fuels in this
3 state.

4 Sec. 10. (1) At the time of filing the return required
5 by section 66-488, the producer, supplier, distributor, wholesaler,
6 or importer shall, in addition to the other taxes provided for
7 by law, pay a tax at the rate of five percent of the average
8 wholesale price of gasoline for the gallons of the motor fuels as
9 shown by the return, except that there shall be no tax on the motor
10 fuels reported if they are otherwise exempted by sections 66-482 to
11 66-4,149.

12 (2) The department shall calculate the average wholesale
13 price of gasoline on October 1, 2008, and on each April 1 and
14 October 1 thereafter. The average wholesale price on April 1 shall
15 apply to returns for the tax months beginning July 1, and the
16 average wholesale price on October 1 shall apply to returns for the
17 tax months beginning January 1. The average wholesale price shall
18 be determined using data available from the Energy Information
19 Administration of the United States Department of Energy and shall
20 be a single, statewide average wholesale price per gallon of
21 gasoline sold in the state over the previous six-month period,
22 excluding any state or federal excise tax or environmental fees.
23 The change in the average wholesale price between two six-month
24 periods shall not exceed an increase or decrease of twenty-five
25 percent.

1 (3) All sums of money received under this section shall
 2 be credited to the Highway Trust Fund. Credits and refunds of such
 3 tax allowed to producers, suppliers, distributors, wholesalers, or
 4 importers shall be paid from the Highway Trust Fund. The balance of
 5 the amount credited, after credits and refunds, shall be allocated
 6 as follows:

7 (a) Sixty-six percent to the Highway Cash Fund for the
 8 Department of Roads;

9 (b) Seventeen percent to the Highway Allocation Fund for
 10 allocation to the various counties for road purposes; and

11 (c) Seventeen percent to the Highway Allocation Fund for
 12 allocation to the various municipalities for street purposes.

13 Sec. 11. Section 66-4,114, Revised Statutes Cumulative
 14 Supplement, 2006, is amended to read:

15 66-4,114 Motor fuels in the supply tank of any qualified
 16 motor vehicle as defined in section 66-1416 which is regularly
 17 connected with the carburetor of the engine of any such vehicle and
 18 which is brought into this state shall be liable for the payment
 19 of the tax imposed by this state upon motor fuels under sections
 20 66-489 and 66-4,105 and section 10 of this act except when a trip
 21 permit is used as provided in the International Fuel Tax Agreement
 22 Act.

23 Sec. 12. Section 66-4,145, Revised Statutes Cumulative
 24 Supplement, 2006, is amended to read:

25 66-4,145 In addition to the tax imposed by sections

1 66-489 and 66-4,140 and section 10 of this act, each producer,
2 supplier, distributor, wholesaler, and importer required by section
3 66-489 to pay motor fuels taxes shall pay an excise tax of two
4 cents per gallon on all motor fuels received, imported, produced,
5 refined, manufactured, blended, or compounded by such producer,
6 supplier, distributor, wholesaler, or importer within the State of
7 Nebraska.

8 Sec. 13. Section 66-4,146, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 66-4,146 In addition to the tax imposed by sections
11 66-489, 66-4,140, and 66-4,145 and section 10 of this act, each
12 producer, supplier, distributor, wholesaler, and importer required
13 by section 66-489 to pay motor fuels taxes shall pay an excise tax
14 of two cents per gallon on all motor fuels used in the State of
15 Nebraska.

16 Sec. 14. Section 66-697, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 66-697 Sections 66-697 to 66-6,116 and section 16 of this
19 act shall be known and may be cited as the Compressed Fuel Tax Act.

20 Sec. 15. Section 66-6,107, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 66-6,107 In addition to the tax imposed pursuant to
23 sections 66-6,108 and 66-6,109 and section 16 of this act, an
24 excise tax of ~~ten~~ two and one-half cents per gallon or gallon
25 equivalent is levied and imposed on all compressed fuel sold for

1 use in registered motor vehicles.

2 Sec. 16. (1) At the time of filing the return required
3 by section 66-6,110, the retailer shall, in addition to the other
4 taxes provided for by law, pay a tax at the rate of five percent
5 of the average wholesale price of gasoline for the gallons of the
6 compressed fuel as shown by the return, except that there shall be
7 no tax on the compressed fuel reported if it is otherwise exempted
8 by the Compressed Fuel Tax Act.

9 (2) All sums of money received under this section shall
10 be credited to the Highway Trust Fund. Credits and refunds of such
11 tax allowed to producers, suppliers, distributors, wholesalers, or
12 importers shall be paid from the Highway Trust Fund. The balance of
13 the amount credited, after credits and refunds, shall be allocated
14 as follows:

15 (a) Sixty-six percent to the Highway Cash Fund for the
16 Department of Roads;

17 (b) Seventeen percent to the Highway Allocation Fund for
18 allocation to the various counties for road purposes; and

19 (c) Seventeen percent to the Highway Allocation Fund for
20 allocation to the various municipalities for street purposes.

21 Sec. 17. Section 66-6,109, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 66-6,109 In addition to the tax imposed by sections
24 66-6,107 and 66-6,108 and section 16 of this act, each retailer
25 shall pay an excise tax of two cents per gallon or gallon

1 equivalent on all compressed fuel sold for use in registered motor
2 vehicles.

3 Sec. 18. Section 66-6,111, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 66-6,111 ~~The tax imposed by the Compressed Fuel Tax Act~~
6 taxes imposed by sections 66-6,107, 66-6,108, and 66-6,109 shall be
7 computed by each retailer by multiplying the tax rate established
8 in sections 66-6,107, 66-6,108, and 66-6,109 by the number of
9 gallons or gallon equivalents of compressed fuel sold for use in
10 registered motor vehicles.

11 Sec. 19. Section 66-726, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 66-726 (1) The department may adjust all errors in
14 payment, refund tax paid on motor fuel destroyed, refund tax
15 overpaid on motor fuel, and refund an amount equal to the
16 per-gallon tax imposed by this state on sales of motor fuel
17 on which tax was paid in this state but which was sold in a state
18 other than Nebraska.

19 (2) (a) Motor fuels shall be exempt from the taxes imposed
20 by sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and
21 section 10 of this act when the fuels are used for agricultural,
22 quarrying, industrial, or other nonhighway use.

23 (b) The department shall refund tax paid on motor fuels
24 used for an exempt purpose. The purchaser of tax-paid motor fuels
25 used for an exempt purpose shall file a claim for refund with the

1 department on forms prescribed by the department and shall provide
2 such documentation and maintain such records as the department
3 reasonably requires to substantiate that the fuels were used for
4 exempt purposes.

5 (c) The refund claim shall include: (i) The name
6 of claimant; (ii) the make, horsepower, and other mechanical
7 description of machinery in which the motor fuels were used; (iii)
8 a statement as to the source or place of business where such
9 motor fuels, used solely for agricultural, quarrying, industrial,
10 or other nonhighway uses, were acquired; that no part of such motor
11 fuels were used in propelling licensed motor vehicles; and that
12 the motor fuels for which refund of the tax thereon is claimed
13 were used solely for agricultural, quarrying, industrial, or other
14 nonhighway uses; and (iv) any other information deemed necessary by
15 the department.

16 (d) The department shall deduct (i) from each claim for
17 refund of tax paid on purchases of motor vehicle fuels under this
18 subsection two and one-quarter cents per gallon through December
19 31, 2004, and commencing January 1, 2010, and three and one-half
20 cents per gallon commencing January 1, 2005, through December 31,
21 2009, of the tax paid and (ii) from each claim for refund of tax
22 paid on purchases of diesel fuel under this subsection one cent per
23 gallon of the tax paid.

24 (e) The department shall transmit monthly to the State
25 Treasurer a report of the number of gallons of motor vehicle fuel

1 for which refunds have been approved under this subsection. Through
2 December 31, 2004, and commencing January 1, 2010, the State
3 Treasurer shall thereupon transfer from the Highway Trust Fund to
4 the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents
5 per gallon approved for refund, and commencing January 1, 2005,
6 through December 31, 2009, the State Treasurer shall thereupon
7 transfer from the Highway Trust Fund (a) to the Ethanol Production
8 Incentive Cash Fund one and one-quarter cents per gallon approved
9 for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one
10 and one-quarter cents per gallon approved for refund.

11 (3) No refund shall be allowed unless a claim is filed
12 setting forth the circumstances by reason of which refund should be
13 allowed. Such claim shall be filed with the department within three
14 years from the date of the payment of the tax.

15 (4) In each calendar year, no claim for refund related to
16 motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel
17 can be for an amount less than twenty-five dollars.

18 (5) The department shall administer and enforce this
19 section. The department may call to its aid when necessary any
20 member of the Nebraska State Patrol, any police officer, any county
21 attorney, or the Attorney General. The employees of the department
22 are empowered to stop and inspect motor vehicles, to inspect
23 premises, and temporarily to impound motor vehicles or motor fuels
24 when necessary to administer this section.

25 (6) The department may adopt and promulgate such rules

1 and regulations as are necessary for the prompt and effective
2 enforcement of this section.

3 (7) Any claimant for refund of motor fuels tax under this
4 section who is unable to produce the original copy of any invoice
5 to substantiate the refund for the reason that the same has been
6 lost, mutilated, or destroyed may make proof of his or her claim
7 by affidavit and such other evidence as may be required by the
8 department, and if such claim is verified by investigation, such
9 claim may be allowed.

10 (8) The changes made to this section by Laws 2004, LB
11 983, apply to motor fuels purchased during any tax year ending
12 or deemed to end on or after January 1, 2005, under the Internal
13 Revenue Code.

14 Sec. 20. Original sections 66-4,103, 66-697, and
15 66-6,109, Reissue Revised Statutes of Nebraska, sections 39-2215,
16 66-482, 66-485, 66-488, 66-489.01, 66-495.01, 66-4,105, 66-4,114,
17 66-4,145, 66-4,146, 66-6,107, 66-6,111, and 66-726, Revised
18 Statutes Cumulative Supplement, 2006, and section 66-489, Revised
19 Statutes Supplement, 2007, are repealed.