

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 742

Introduced by Smith, 48; Erdman, 47; Schrock, 38

Read first time January 22, 2003

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend section 66-1344, Revised
2 Statutes Supplement, 2002; to change provisions relating
3 to production credits; and to repeal the original
4 section.

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

1 Section 1. Section 66-1344, Revised Statutes Supplement,
2 2002, is amended to read:

3 66-1344. (1) Any ethanol facility which is not in
4 production on or before December 31, 1992, but which is in
5 production at the rate of at least twenty-five percent of its name
6 plate design capacity for the production of ethanol, before
7 denaturing, on or before December 31, 1995, shall receive a credit
8 of twenty cents per gallon of ethanol produced for sixty months
9 beginning with the first month for which it is eligible to receive
10 such credit and ending not later than December 31, 2000, if the
11 ethanol facility maintains an average production rate of at least
12 twenty-five percent of its name plate design capacity for at least
13 six months after the first month for which it is eligible to
14 receive such credit.

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

23 (3) Beginning June 1, 2000, during such period as funds
24 remain in the Ethanol Production Incentive Cash Fund, any ethanol
25 facility shall receive a credit of seven and one-half cents per
26 gallon of ethanol, before denaturing, for new production for a
27 period not to exceed thirty-six consecutive months. For purposes
28 of this subsection, new production means production which results

1 from the expansion of an existing facility's capacity by at least
2 two million gallons first placed into service after June 1, 1999,
3 as certified by the facility's design engineer to the Department of
4 Revenue. For expansion of an existing facility's capacity, new
5 production means production in excess of the average of the highest
6 three months of ethanol production at an ethanol facility during
7 the twenty-four-month period immediately preceding certification of
8 the facility by the design engineer. No credits shall be allowed
9 under this subsection for expansion of an existing facility's
10 capacity until production is in excess of twelve times the
11 three-month average amount determined under this subsection during
12 any twelve-consecutive-month period beginning no sooner than June
13 1, 2000. New production shall be approved by the Department of
14 Revenue based on such ethanol production records as may be
15 necessary to reasonably determine new production. Ethanol
16 production eligible for credits under this subsection shall be
17 measured by a device approved by the Division of Weights and
18 Measures of the Department of Agriculture. Confirmation of
19 approval by the division shall be provided by the ethanol facility
20 at the time the initial claim for credits provided under this
21 subsection is submitted to the Department of Revenue. This credit
22 must be earned on or before December 31, 2003.

23 (4)(a) Beginning January 1, 2002, any new ethanol
24 facility which is in production at the minimum rate of one hundred
25 thousand gallons annually for the production of ethanol, before
26 denaturing, on or before June 30, ~~2004~~ 2005, shall receive a credit
27 of eighteen cents per gallon of ethanol produced for ninety-six
28 consecutive months beginning with the first calendar month for

1 which it is eligible to receive such credit and ending not later
2 than June 30, ~~2012~~ 2013, if the facility is defined by subdivision
3 (b)(i) of this subsection, and for forty-eight consecutive months
4 beginning with the first calendar month for which it is eligible to
5 receive such credit and ending not later than June 30, ~~2008~~ 2009,
6 if the facility is defined by subdivision (b)(ii) of this
7 subsection.

8 (b) For purposes of this section, a new ethanol facility
9 means an ethanol facility which (i) is not in production on or
10 before September 1, 2001, or (ii) has not received credits prior to
11 June 1, 1999.

12 (c) Not more than fifteen million six hundred twenty-five
13 thousand gallons of ethanol produced annually at an ethanol
14 facility shall be eligible for credits under this subsection. Not
15 more than one hundred twenty-five million gallons of ethanol
16 produced at an ethanol facility by the end of the
17 ninety-six-consecutive-month period or
18 forty-eight-consecutive-month period set forth in this subsection
19 shall be eligible for credits under this subsection.

20 (5) The credits described in this section shall be given
21 only for ethanol produced at a plant in Nebraska at which all
22 fermentation, distillation, and dehydration takes place. No credit
23 shall be given on ethanol produced for or sold for use in the
24 production of beverage alcohol. Not more than twenty-five million
25 gallons of ethanol produced annually at an ethanol facility shall
26 be eligible for the credits in subsections (1) and (2) of this
27 section, and the credits may only be claimed by a producer for the
28 periods specified in subsections (1) and (2) of this section. Not

1 more than ten million gallons of ethanol produced during any
2 twelve-consecutive-month period at an ethanol facility shall be
3 eligible for the credit described in subsection (3) of this
4 section. Not more than one hundred twenty-five million gallons of
5 ethanol produced at an ethanol facility by the end of the
6 sixty-month period set forth in subsection (1) or (2) of this
7 section shall be eligible for the credit under such subsection. An
8 ethanol facility which receives a credit for ethanol produced under
9 subsection (1) or (2) of this section shall not receive a credit
10 under subsection (3) of this section until its eligibility to
11 receive a credit under subsection (1) or (2) has been completed.
12 The credits described in this section shall be in the form of a
13 nonrefundable, transferable motor vehicle fuel tax credit
14 certificate.

15 (6) The Department of Revenue shall prescribe an
16 application form and procedures for claiming credits under this
17 section.

18 (7) For purposes of ascertaining the correctness of any
19 application for claiming a credit provided in this section, the Tax
20 Commissioner (a) may examine or cause to have examined, by any
21 agent or representative designated by him or her for that purpose,
22 any books, papers, records, or memoranda bearing upon such matters,
23 (b) may by summons require the attendance of the person responsible
24 for rendering the application or other document or any officer or
25 employee of such person or the attendance of any other person
26 having knowledge in the premises, and (c) may take testimony and
27 require proof material for his or her information, with power to
28 administer oaths or affirmations to such person or persons. The

1 time and place of examination pursuant to this subsection shall be
2 such time and place as may be fixed by the Tax Commissioner and as
3 are reasonable under the circumstances. In the case of a summons,
4 the date fixed for appearance before the Tax Commissioner shall not
5 be less than twenty days from the time of service of the summons.
6 No taxpayer shall be subjected to unreasonable or unnecessary
7 examinations or investigations. All records obtained pursuant to
8 this subsection shall be subject to the confidentiality
9 requirements and exceptions thereto as provided in section
10 77-27,119.

11 Sec. 2. Original section 66-1344, Revised Statutes
12 Supplement, 2002, is repealed.