

LEGISLATIVE BILL 846

Approved by the Governor April 21, 2008

Introduced by Fischer, 43.

FOR AN ACT relating to revenue and taxation; to amend sections 66-4,103, 66-697, and 66-6,109, Reissue Revised Statutes of Nebraska, sections 39-2215, 66-482, 66-485, 66-488, 66-489.01, 66-495.01, 66-499, 66-4,105, 66-4,114, 66-4,145, 66-4,146, 66-6,107, 66-6,111, and 66-726, Revised Statutes Cumulative Supplement, 2006, and sections 66-489 and 84-612, Revised Statutes Supplement, 2007; to provide and change taxes on motor fuels; to change allocation of tax proceeds; to provide for transfers from the Cash Reserve Fund; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

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

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 66-499, 66-4,140, 66-4,147, and 66-6,108 and sections 11 and 17 of this act, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative 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 subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the 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 three dollars 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 may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (c) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (d) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(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) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection 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. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the Department of Roads shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash 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 60-3,198 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 fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

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

66-482 For purposes of sections 66-482 to 66-4,149 and section 11 of this act:

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

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of 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 which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149 and section 11 of this act, 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 fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;

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

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

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

(9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels 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 fuels from any licensed producer, 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 all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(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. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149 and section 11 of this act, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

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

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

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

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

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

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

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

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

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

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

66-485 The department, for the first year of a new license or whenever it deems it necessary to insure compliance with sections 66-482 to 66-4,149 and section 11 of this act, may require any producer, supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately three times the total estimated average monthly tax liability payable by such producer, supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such producer, supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

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

66-488 (1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also

show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149 and section 11 of this act. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

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

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

66-489 (1) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act and in addition to the other taxes provided for by law, pay a tax of ~~ten~~ seven and one-half cents per gallon upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (a) the required taxes on the motor fuels have been paid, (b) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (d) the motor fuels have 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 fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

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

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act, when the fuels are 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 fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act.

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

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

(8) The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

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

66-489.01 Methanol, benzine, benzol, naphtha, kerosene, and any other volatile, flammable, or combustible liquid suitable for use as a motor fuels blending agent or fuel expander shall be exempt from the taxes imposed under sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act unless and until such methanol, benzine, benzol, naphtha, kerosene, or other blending agent or fuel expander is blended with motor fuels or placed directly into the supply tank of a licensed motor vehicle. Any person blending such products with motor fuels 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 fuels with which it is blended become subject to taxation or, if the tax imposed on the motor fuels 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. 7. Section 66-495.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-495.01 (1) Except as provided in subsection (5) of this section, the fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel.

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

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

law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of one thousand dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of two thousand five hundred dollars for the current violation. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation. The penalty shall be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

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

(6) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

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

Sec. 8. Section 66-499, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-499 Unless otherwise provided, all sums of money received under sections 66-489 and 66-4,105 by the State Treasurer shall be credited to the Highway Trust Fund. Credits and refunds of the tax provided for in such sections allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Cash Fund.

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

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

Sec. 10. Section 66-4,105, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-4,105 There is hereby levied and imposed an excise tax of ~~ten~~ seven and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act, upon the use of all motor fuels used in this state and due the State of Nebraska under section 66-489. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by Chapter 66, article 4, other than any commissions provided under such article. For purposes of this section and section 66-4,106, use shall mean the purchase or consumption of motor fuels in this state. The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

Sec. 11. (1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor, wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The

average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the Energy Information Administration of the United States Department of Energy and shall be a single, statewide average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 17 of this act does not exceed one cent per gallon.

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

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

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

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

Sec. 12. Section 66-4,114, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-4,114 Motor fuels in the supply tank of any qualified motor vehicle as defined in section 66-1416 which is regularly connected with the carburetor of the engine of any such vehicle and which is brought into this state shall be liable for the payment of the tax imposed by this state upon motor fuels under sections 66-489 and 66-4,105 and section 11 of this act except when a trip permit is used as provided in the International Fuel Tax Agreement Act.

Sec. 13. Section 66-4,145, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-4,145 In addition to the tax imposed by sections 66-489 and 66-4,140 and section 11 of this act, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska. The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

Sec. 14. Section 66-4,146, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-4,146 In addition to the tax imposed by sections 66-489, 66-4,140, and 66-4,145 and section 11 of this act, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels used in the State of Nebraska. The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

Sec. 15. Section 66-697, Reissue Revised Statutes of Nebraska, is amended to read:

66-697 Sections 66-697 to 66-6,116 and section 17 of this act shall be known and may be cited as the Compressed Fuel Tax Act.

Sec. 16. Section 66-6,107, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-6,107 In addition to the tax imposed pursuant to sections 66-6,108 and 66-6,109 and section 17 of this act, an excise tax of ~~ten~~ seven and one-half cents per gallon or gallon equivalent is levied and imposed on all compressed fuel sold for use in registered motor vehicles. The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

Sec. 17. (1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-6,110, the retailer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline calculated pursuant to section 11 of this act for the gallons of the compressed fuel as shown by the return, except that there shall be no tax on the compressed fuel reported if it is otherwise exempted by the Compressed Fuel Tax Act.

(2) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid

from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

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

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

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

Sec. 18. Section 66-6,109, Reissue Revised Statutes of Nebraska, is amended to read:

66-6,109 In addition to the tax imposed by sections 66-6,107 and 66-6,108 and section 17 of this act, each retailer shall pay an excise tax of two and eight-tenths cents per gallon or gallon equivalent on all compressed fuel sold for use in registered motor vehicles. The changes made to this section by this legislative bill apply for tax periods beginning on and after July 1, 2009.

Sec. 19. Section 66-6,111, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

Sec. 20. Section 66-726, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(2)(a) Motor fuels shall be exempt from the taxes imposed by sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and section 11 of this act when the fuels are used for agricultural, quarrying, industrial, or other nonhighway use.

(b) The department shall refund tax paid on motor fuels used for an exempt purpose. The purchaser of tax-paid motor fuels used for an exempt purpose shall file a claim for refund with the department on forms prescribed by the department and shall provide such documentation and maintain such records as the department reasonably requires to substantiate that the fuels were used for exempt purposes.

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

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

(e) The department shall transmit monthly to the State Treasurer a report of the number of gallons of motor vehicle fuel for which refunds have been approved under this subsection. Through December 31, 2004, and commencing January 1, 2010, the State Treasurer shall thereupon transfer from the Highway Trust Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund, and commencing January 1, 2005, through December 31, 2009, the State Treasurer shall thereupon transfer from the Highway Trust Fund (a) to the Ethanol Production Incentive Cash Fund one and one-quarter cents per gallon approved for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund.

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

(4) In each calendar year, no claim for refund related to motor

vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel can be for an amount less than twenty-five dollars.

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

(6) The department may adopt and promulgate such rules and regulations as are necessary for the prompt and effective enforcement of this section.

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

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

Sec. 21. Section 84-612, Revised Statutes Supplement, 2007, is amended to read:

84-612 (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer such amounts not to exceed seven million seven hundred fifty-three thousand two hundred sixty-three dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2003, and June 30, 2007.

(4) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (3) of this section from the General Fund to the Cash Reserve Fund on or before June 30, 2008.

(5) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(6) On June 15, 2007, the State Treasurer shall transfer fifteen million six hundred seventy-four thousand one hundred seven dollars from the Cash Reserve Fund to the General Fund.

(7) On June 16, 2008, the State Treasurer shall transfer seventeen million nine hundred thirty-one thousand thirty dollars from the Cash Reserve Fund to the General Fund.

(8) On June 15, 2009, the State Treasurer shall transfer four million nine hundred ninety thousand five hundred five dollars from the Cash Reserve Fund to the General Fund.

(9) On or before June 16, 2008, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(10) On or before June 16, 2009, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(11) From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, forty million dollars of the Cash Reserve Fund shall be deemed to constitute the Early Childhood Education Endowment Fund. Such funds shall remain part of the Cash Reserve Fund for all purposes, except that the interest earned on such forty million dollars shall accrue as provided in section 84-613.

(12) The State Treasurer, at the direction of the budget administrator, shall transfer such amounts, as certified by the Director of Administrative Services, for employee health insurance claims and expenses, not to exceed twelve million dollars in total from the Cash Reserve Fund to the State Employees Insurance Fund between May 1, 2007, and June 30, 2011.

(13) On July 9, 2007, the State Treasurer shall transfer twelve million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(14) On July 9, 2007, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(15) On July 7, 2008, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(16) On or before August 1, 2007, the State Treasurer, at the direction of the budget administrator, shall transfer seventy-five million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(17) On or before June 30, 2009, the State Treasurer shall transfer nine million five hundred ninety thousand dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(18) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (12) of this section from the appropriate health insurance accounts of the State Employees Insurance Fund in such amounts as certified by the Director of Administrative Services to the Cash Reserve Fund on or before June 30, 2011.

(19) On July 9, 2007, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(20) On July 9, 2007, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

(21) On July 7, 2008, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(22) On July 7, 2008, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

(23) On July 7, 2009, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(24) On July 7, 2010, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(25) On July 7, 2011, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

Sec. 22. Sections 5, 8, 10, 13, 14, 16, 18, and 23 of this act become operative on July 1, 2009. The other sections of this act become operative on their effective date.

Sec. 23. Original section 66-6,109, Reissue Revised Statutes of Nebraska, sections 66-499, 66-4,105, 66-4,145, 66-4,146, and 66-6,107, Revised Statutes Cumulative Supplement, 2006, and section 66-489, Revised Statutes Supplement, 2007, are repealed.

Sec. 24. Original sections 66-4,103 and 66-697, Reissue Revised Statutes of Nebraska, sections 39-2215, 66-482, 66-485, 66-488, 66-489.01, 66-495.01, 66-4,114, 66-6,111, and 66-726, Revised Statutes Cumulative Supplement, 2006, and section 84-612, Revised Statutes Supplement, 2007, are repealed.