

LEGISLATIVE BILL 168

Approved by the Governor February 13, 2001

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Dierks, 40; Hartnett, 45; Janssen, 15; Landis, 46; Raikes, 25; Redfield, 12

AN ACT relating to motor fuels; to amend sections 66-4,124, 66-4,125, and 66-4,129, Reissue Revised Statutes of Nebraska, and sections 66-486, 66-487, 66-488, 66-4,128, 66-675, 66-676, 66-678, and 66-6,110, Revised Statutes Supplement, 2000; to eliminate the permit process and change claim procedures for tax credit gasoline as prescribed; to change reporting requirements relating to the taxation of motor, diesel, and compressed fuels; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 66-4,122 and 66-4,123, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 66-486, Revised Statutes Supplement, 2000, is amended to read:

66-486. (1) In lieu of the expense of collecting and remitting the gasoline tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each month reporting period.

(2) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(3) In consideration of receiving the commission, the supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor vehicle fuel.

(4) 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. 2. Section 66-487, Revised Statutes Supplement, 2000, is amended to read:

66-487. (1) Every licensed supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor vehicle fuel, to be based on gross gallons, received, purchased, or obtained and imported by a supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor vehicle fuel so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor vehicle fuel imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed supplier, distributor, wholesaler, or importer sells to another licensed supplier, distributor, wholesaler, importer, or exporter any motor vehicle fuel, such seller shall keep as part of its records the name, address, and license number of the supplier, distributor, wholesaler, importer, or exporter to whom the motor vehicle fuel was sold along with the date, quantity, and location where the motor vehicle fuel was sold.

(2) Every licensed supplier, distributor, wholesaler, exporter, and

importer shall include the information prescribed in subsection (1) of this section with the ~~monthly~~ return required by section 66-488.

(3) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

Sec. 3. Section 66-488, Revised Statutes Supplement, 2000, is amended to read:

66-488. (1) Every supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor vehicle fuel shall render and have on file with the department ~~by the twenty-fifth day of each calendar month if filed electronically or by the twentieth day of each calendar month if not filed electronically, on forms prescribed by the department,~~ a return reporting the number of gallons of motor vehicle fuel, 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 supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor vehicle fuel produced, refined, manufactured, blended, or compounded by such supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding ~~calendar month reporting period,~~ and defining the nature of such motor vehicle fuel. 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 considered filed on time if mailed in an envelope properly addressed to the department, postage prepaid, and postmarked before midnight of the final filing date.~~ The return shall be signed by the 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 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 supplier, distributor, wholesaler, importer, or exporter shall file the return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically, on forms prescribed by the department, 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 mailed in an envelope properly addressed to the department, postage prepaid, and postmarked before midnight of the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of ~~each~~ the next succeeding calendar month following the reporting period to which it relates regardless of whether it is filed electronically. ~~to report the motor vehicle fuel activity which occurred during the preceding calendar month.~~

(3) 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. 4. Section 66-4,124, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,124. ~~Every recipient of a permit described in section 66-4,122~~ Any person shall be regarded as a purchaser and claimant if he or she has at least one supply tank with a capacity of forty gallons or more and has paid for any one purchase the excise tax to a seller upon forty or more gallons of gasoline or motor vehicle fuel, which gasoline or motor vehicle fuel was or is to be used solely and exclusively by such person for propelling or operating a stationary gas engine, tractor, combine, or machinery used solely for agricultural, quarrying, or industrial purposes in the state or for some purpose not involving the use of any highways in this state. As such purchaser and claimant he or she shall be entitled to a credit against the purchaser's Nebraska income tax liability for the amount of tax so paid during the taxable year of purchase of the fuel by the taxpayer less two and one-quarter cents per gallon of the tax paid upon compliance with sections 66-4,118 to 66-4,132 and not otherwise. Each purchaser and claimant shall be entitled to a credit against the purchaser's Nebraska income tax liability for the amount of the taxes imposed by sections 66-4,140, 66-4,145, and 66-4,146 on motor vehicle fuel purchased during the taxable year, which tax credit

shall be established by the department. No credit shall be made to anyone other than the actual purchaser of such tax credit gasoline or motor vehicle fuel.

Sec. 5. Section 66-4,125, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,125. All tax credit gasoline shall be delivered by the seller only to the premises of the ~~applicant~~ purchaser and claimant for credit, except that a barrel, tank, or other container properly labeled as provided in section 66-4,121 may be filled by the seller off the premises of the ~~permittee~~ purchaser and claimant if such container also bears the name of the ~~recipient of a permit purchaser and claimant~~ to obtain gasoline tax credits. Upon each delivery of motor vehicle fuel upon which a credit for the tax may be claimed, an invoice of credit shall be made out at the time of such delivery which shall contain a serial number, ~~which number shall not be repeated through any one calendar year,~~ and which shall state the following: (1) The name of the seller (printed or rubber stamped) selling the tax credit gasoline; (2) the number of gallons of motor vehicle fuel thus purchased and delivered; (3) the date on which purchase was made; (4) the date of delivery; (5) the place of delivery; (6) the name of the purchaser or user; (7) the name of the agent or employee actually making the purchase, if any; (8) the seller and place of business of seller; and (9) a statement showing that the motor vehicle fuel on the invoice has been dyed or chemically treated if required by the department, ~~and (10) the amount of such other motor vehicle fuel, if any, purchased for use or usable for the purpose of generating power for the propulsion of motor vehicles, regardless of whether a credit for the tax may be due or claimed under sections 66-4,118 to 66-4,132, and the manner of delivery. The invoice for credit shall show thereon such other information as the department requires.~~

Sec. 6. Section 66-4,128, Revised Statutes Supplement, 2000, is amended to read:

66-4,128. (1) After a purchaser and claimant purchases or acquires for use motor vehicle fuel upon which a credit for the tax may be due, he or she may file with his or her Nebraska income tax return a statement of claim, hereinafter called claim, on such forms as may be prescribed by the department. The claimant shall not file more than one claim annually and no claim shall be allowed except those claims resulting from tax credit gasoline purchases made during the taxable year for which the taxpayer is filing a Nebraska income tax return, except that any claimant who during the taxable year is entitled to a credit in excess of sixty thousand dollars, based on the claims filed for the preceding taxable year, may file a claim each month for tax credit gasoline purchased during the preceding month. Monthly claims shall be filed on the first day of the month.

(2) A refund shall be allowed to the extent the credit for tax credit gasoline exceeds the income tax or franchise tax levied by the Nebraska Revenue Act of 1967, but no refund shall be made in any amount less than two dollars.

(3) The claim shall include:

(a) The name of claimant;

(b) The make, horsepower, and other mechanical description of machinery in which the tax credit gasoline was used;

(c) A a statement (1) (i) as to the source or place of business where such motor vehicle fuel, used solely for agricultural, quarrying, industrial, or nonhighway purposes, was acquired, (2) (ii) that no part of such motor vehicle fuel was used in propelling motor vehicles, and (3) (iii) that the motor vehicle fuel for which credit for the tax thereon is claimed was used solely for agricultural, quarrying, industrial, or nonhighway purposes as provided in sections 66-4,118 to 66-4,132; and

(d) Any other information deemed necessary by the department.

(4) Claims for credit shall in no event be considered or allowed upon a total quantity of less than forty gallons of tax credit gasoline. ~~The department shall neither receive nor allow such a claim for credit unless such claim includes a statement that the tractor, engine, or machinery owned by the claimant was included in the claimant's personal tax list for the preceding year or that he or she owned no such tractor, engine, or machinery upon which personal taxes might have been levied during such year.~~

(5) The department may require other evidence in addition to the claim in such form and at such time as the department deems advisable or may refer the same to a field representative for investigation.

Sec. 7. Section 66-4,129, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,129. Any claimant for credit of motor vehicle fuel tax under sections 66-4,118 to 66-4,132 who is unable to produce the original copy of

any invoice for credit required by section 66-4,128 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, ~~and by the records of the department,~~ such claim may be allowed. ~~For proofs of claim made under this section, a charge of one dollar shall be made and deducted from the amount of such credit in addition to the other costs of administration deducted under authority of section 66-4,123.~~

Sec. 8. Section 66-675, Revised Statutes Supplement, 2000, is amended to read:

66-675. (1) Each supplier, distributor, wholesaler, importer, and exporter shall file with the department, on forms prescribed by the department, a monthly tax return for each reporting period. The return shall contain a declaration by the person making the return 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 show such information as the department reasonably requires for the proper administration and enforcement of the Diesel Fuel Tax Act. The supplier, distributor, wholesaler, importer, or exporter shall file the return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically of the next succeeding calendar month following the monthly reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such return shall be considered filed on time if mailed in an envelope properly addressed to the department, postage paid, and postmarked before midnight of the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of the next succeeding calendar month following the monthly reporting period to which it relates regardless of whether it is filed electronically.

(3) 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. 9. Section 66-676, Revised Statutes Supplement, 2000, is amended to read:

66-676. (1) The tax imposed by section 66-668 shall be computed by each supplier, distributor, wholesaler, or importer by multiplying the tax rate per gallon established in section 66-668 by the number of gross gallons of undyed diesel fuel received, imported, produced, refined, manufactured, blended, or compounded by such supplier, distributor, wholesaler, or importer within the State of Nebraska which are not otherwise exempt under section 66-668.

(2) The monthly tax return shall be accompanied by remittance covering the tax due pursuant to sections 66-668 to 66-670 on diesel fuel received, imported, produced, refined, manufactured, blended, or compounded during the preceding month reporting period as defined in section 66-675.

Sec. 10. Section 66-678, Revised Statutes Supplement, 2000, is amended to read:

66-678. (1) In lieu of the expense of remitting the diesel fuel tax pursuant to the Diesel Fuel Tax Act and complying with the statutes and rules and regulations related thereto, every supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each month reporting period.

(2) Except as otherwise provided in the Diesel Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such diesel fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the supplier, distributor, wholesaler, or importer as specified in the act shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the supplier, distributor, wholesaler, or

importer shall not be entitled to any deductions, credits, or refunds arising out of such supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of diesel fuel.

(4) 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. 11. Section 66-6,110, Revised Statutes Supplement, 2000, is amended to read:

66-6,110. (1) Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. ~~or more.~~ The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if mailed in an envelope properly addressed to the department, postage paid, and postmarked before midnight of the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates regardless of whether it is filed electronically.

Sec. 12. Sections 4 to 7, 14, and 15 of this act become operative on January 1, 2002. The other sections of this act become operative on their effective date.

Sec. 13. Original sections 66-486, 66-487, 66-488, 66-675, 66-676, 66-678, and 66-6,110, Revised Statutes Supplement, 2000, are repealed.

Sec. 14. Original sections 66-4,124, 66-4,125, and 66-4,129, Reissue Revised Statutes of Nebraska, and section 66-4,128, Revised Statutes Supplement, 2000, are repealed.

Sec. 15. The following sections are outright repealed: Sections 66-4,122 and 66-4,123, Reissue Revised Statutes of Nebraska.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.