

AN ACT

ENTITLED, An Act to revise certain provisions regarding the fuel excise tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-47B-3 be amended to read as follows:

10-47B-3. Terms used in this chapter mean:

- (1) "ASTM," the American Society for Testing and Materials, a private organization that utilizes committees of industry representatives and regulators to develop product quality standards and test methods to be used by industries, regulator agencies, and purchasing agents;
- (1A) "Aviation gasoline," a motor fuel that is formulated and produced specifically for use in aircraft;
- (2) "Blender," a person engaged in the activity of making blends or purchasing ethyl alcohol for resale to other blenders. A licensed blender may purchase denatured ethyl alcohol untaxed if the alcohol has not previously been blended with gasoline. A person need not be a blender to import or export an ethanol blend or purchase a fuel invoiced as a ten percent ethanol blend, M85 or E85 from a licensed supplier if the ethyl alcohol and the gasoline are both loaded over a terminal rack, or purchased as a blended product from a licensed blender. A person need not be a blender to mix two or more substances which have previously been subject to the fuel excise tax imposed by this chapter, or two or more substances which have not been subject to the fuel excise tax imposed by this chapter, if the mixed product does not result in producing a motor fuel or special fuel;
- (3) "Blends," one or more petroleum product, mixed with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include those blends that occur in the

process of refining by the original refiner of crude petroleum or by the blending of products known as lubricating oil and greases. The term does not apply to fuel additives which have been subject to sales or use tax imposed by chapters 10-45 and 10-46, or to dye;

- (3A) "Book transfer," a transaction in which a product is transferred from one supplier or out-of-state supplier or positionholder to another, if:
- (a) The transaction includes a transfer from the person who holds the inventory position for motor fuel or special fuel in the terminal as indicated in the records of the terminal operator; and
 - (b) The transfer is completed within the terminal at the time of the removal from the terminal for delivery to a customer of the transferee. The bill of lading issued by the terminal operator shall indicate the transferee as the supplier or shipper;
- (4) "Bulk container" or "bulk cargo area," any tank, vessel, or container used to store or transport fuel. This term does not include a supply tank which is mounted on a motor vehicle and connected to the engine of that motor vehicle;
- (5) "Bulk plant," a motor fuel or special fuel storage facility, other than a terminal, that is primarily used for redistribution of motor fuel or special fuel by a transport truck, tank wagon, or rail car;
- (6) "Compressed natural gas," natural gas which has been compressed, but not to a liquid state, for use as a motor vehicle fuel and which for purposes of taxation as a motor vehicle fuel, shall be converted to equivalent liquid gallons of gasoline at the rate of one hundred twenty cubic feet of natural gas as its natural service delivery line pressure to equal one volumetric gross gallon of gasoline;
- (7) "Compressed natural gas vendor," a person engaged in the business of selling compressed natural gas for use in the engine fuel supply tanks of motor vehicles and is regulated by the

Public Utilities Commission;

- (7A) "Consignee," the first person to hold title to fuel after it is withdrawn at a terminal rack or bulk plant and delivered into a bulk cargo area of a transport truck or railcar. The name of the consignee shall be identified and prominently displayed on the bill of lading;
- (8) "Department," the Department of Revenue;
- (9) "Destination state," the state for which a motor vehicle, railcar, or barge is destined for off-loading of motor fuel or special from its bulk cargo area by the consignee into storage facilities for consumption or resale. If title of the fuel passes from the consignee to another party prior to off-loading, the destination state is the state in which title passes. The destination state shall be identified and prominently displayed on the bill of lading. If the destination state is not prominently displayed on the bill of lading, it is presumed that South Dakota is the destination state;
- (10) "Ethanol blend," a blended motor fuel, commonly referred to as gasohol, containing a minimum of ten percent by volume of ethyl alcohol of at least ninety-nine percent purity derived from cereal grain which is blended exclusively with a product commonly or commercially known or sold as gasoline. The blending of casinghead or natural gasoline is not permitted in an ethanol blend fuel product in quantities larger than required to denature the ethyl alcohol;
- (11) "E85," motor fuel blends containing eighty-five percent or more by volume of ethyl alcohol;
- (12) "Ethanol producer," any person who for the purpose of making ethanol blend engages in the business of producing ethyl alcohol for sale, use, or distribution;
- (13) "Export," with respect:
- (a) To a seller, when the seller's motor fuel or special fuel is delivered out-of-state by or for the seller; and

- (b) To a purchaser, when the purchaser's motor fuel or special fuel is delivered out-of-state by or for the purchaser;
- (14) "Exporter," any person, who purchases or owns motor fuel or special fuel in this state and transports or delivers or causes the fuel to be transported or delivered to another state or country by any means other than pipeline;
- (14A) "Fuel additive," a product purchased or acquired for the purpose of adding it to motor fuel or special fuel which was formulated and produced exclusively to enhance the performance or quality of the fuel. The term does not include kerosene;
- (15) "Gallon," for purposes of fuel taxation, a United States gallon measured on a gross volume basis. Temperature adjusted or net gallons of measurement are not acceptable as units of measurement for taxation purposes unless used for the calculation of liquid petroleum gas or compressed natural gas;
- (16) "Gasoline," a fuel product commonly or commercially known or sold as gasoline or reformulated gasoline, which has not been blended with alcohol, naphtha, or any other fuel products such as casinghead, absorption, drip, or natural gasolines;
- (17) "Heating fuel," a special fuel that is burned in a boiler furnace, or stove for heating or industrial processing purposes;
- (18) "Highway construction work," all work which is performed in any capacity to propel vehicles, machinery, or equipment within the right-of-way in the construction, reconstruction, repair, or maintenance of public highways;
- (18A) "Highway contractor," any person engaged in the activity of highway construction work in this state. The term does not include any person who only owns and operates motor vehicles within the right-of-way hauling gravel or concrete and does not own or operate off-road machinery in the highway construction work;
- (19) "Import," with respect:

- (a) To a seller, when the seller's motor fuel or special fuel is delivered into South Dakota from out-of-state by or for the seller; and
 - (b) To a purchaser, when the purchaser's motor fuel or special fuel is delivered into South Dakota from out-of-state by or for the purchaser;
- (20) "Importer," any person who purchases or owns motor fuel or special fuel in another state or country and transports or delivers or causes the fuel to be transported or delivered into this state by any means other than pipeline;
- (21) "Jet fuel," a special fuel that is formulated and produced specifically for use in jet aircraft;
- (22) "Liquid," any substance that is liquid in excess of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute;
- (23) "Liquid petroleum gas," liquid petroleum gas (LPG) when used as a motor vehicle fuel shall be converted for purposes of taxation to equivalent liquid gross gallons using the conversion factor of 4.24 pounds per gallon of liquid at sixty degrees Fahrenheit;
- (24) "Liquid petroleum gas user" a person who uses liquid petroleum gas in the engine fuel supply tank of a motor vehicle and wishes to purchase liquid petroleum gas in bulk into a storage tank which has a delivery hose attached thereto on a tax unpaid basis in this state;
- (25) "Liquid petroleum gas vendor," a person engaged in the business of selling liquid petroleum gas, wholesale or retail, for use in the engine fuel supply tank of a motor vehicle in this state or has the capability of selling liquid petroleum gas for use in the engine fuel supply tank of a motor vehicle. The term applies to any vendor who uses LPG in a motor vehicle;
- (26) "M85," motor fuel containing eighty-five percent or more by volume of methyl alcohol;
- (26A) "Marketer," any person who is engaged in business as a wholesale distributor or retail dealer.

- (27) "Motor fuel," includes:
- (a) All products commonly or commercially known or sold as gasoline, ethyl alcohol, methyl alcohol, and all gasoline blends. These products may include in some quantity casinghead, absorption, natural gasoline, benzol, benzene, naphtha, except that flashing above one hundred degrees Fahrenheit, and Tagliabue closed cup test, which is sold and used only as cleaner's or painter's solvent; and
 - (b) Any liquid prepared, advertised, offered for sale or sold for use as commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Material Designation D-86) shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit;
 - (c) The term does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute; nor does it include compounds or blends of fuels which are prepared and used strictly as racing fuels in motor vehicles operated solely off of public highways in organized racing events;
- (28) "Motor vehicle," includes all vehicles that are required to be registered and licensed by a jurisdiction and are designed for use upon the public roads and highways. Terrigators and spray coupes that are not designed for use upon the public roads and highways are not included in this definition;
- (29) "Nonhighway agricultural use," fuel used off the public highways and roads of this state for producing, raising or growing, and harvesting of food or fiber upon agricultural land,

including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;

- (30) Nonhighway commercial use," fuel used off the public highways and roads of this state for business purposes other than a nonhighway agricultural use. Recreational vehicles including snowmobiles, go-carts, golf carts, bumper boats, and similar vehicles are not included in this definition;
- (31) "Out-of-state supplier," any person who does not meet the geographic jurisdictional connections to this state required of a supplier, and is registered under Section 4101 of the Internal Revenue Code;
- (32) "Person," a natural person, a partnership, a limited partnership, a joint venture, a firm, an association, a corporation, a cooperative, a representative appointed by a court, the state, a political subdivision, or any other entity, group, or syndicate;
- (33) "Public highways or roads," any way or place of whatever nature, including waterways and snowmobile trails, which are open to the use of the public as a matter of right for the purpose of vehicular, snowmobile, or watercraft travel, even if the way or place is temporarily closed for the purpose of construction, reconstruction, maintenance, or repair;
- (33A) "Petroex number," a string of alpha or numeric characters that are used to communicate transactional information between a transporter or consignee and a supplier;
- (34) "Qualified motor vehicle," a motor vehicle used, designed, or maintained for transportation of persons or property and:
 - (a) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds;
 - (b) Having three or more axles regardless of weight; or
 - (c) Is used in combination when the weight of such combination exceeds twenty-six

thousand pounds gross vehicle weight. The term does not include recreational vehicles used for pleasure;

(34A) "Racing fuel," a motor or special fuel that is specifically produced for use in race cars. The term does not include E85 or M85;

(35) "Rack," a dock, a platform, or an open bay with metered pipes, hoses or both that is used for delivering motor fuel or special fuel from a refinery or terminal into the cargo area of a motor vehicle, rail car, marine vessel, or aircraft for subsequent transfer or use into the engine fuel supply tank of a locomotive or any self-propelled vehicle. The term includes a pipe, series of pipes, or pipeline used to withdraw motor fuel or special fuel from one pipeline system to another pipeline system or storage facility, if the fuel withdrawn is committed for sale or use in this state;

(36) "Retail dealer," a person who sells or distributes motor fuel or special fuel to the end user within this state;

(37) "Sale," the title of fuel passed from the seller to the buyer for a consideration;

(38) "Secretary," the secretary of the Department of Revenue;

(39) "Special fuel," all combustible gases and liquids that are:

- (a) Suitable for the generation of power in an internal combustion engine or motor; or
- (b) Used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

The term includes diesel fuel, fuel oil, heating fuel, all special fuel blends, and all kerosene products except K-1. The term does not include motor fuel, liquid petroleum gas, compressed natural gas, natural gas which is not compressed natural gas, compounds or blends of fuels which are prepared and used strictly as racing fuels in motor vehicles operated solely off of public highways in organized racing events. The term, special use fuel, is synonymous with the term, special fuel;

- (40) "Supplier or shipper," a person that imports or acquires upon import into this state motor fuel or special fuel by pipeline or marine vessel from another state, territory, or possession of the United States into a terminal within this state, or that imports motor fuel or special fuel into this state from a foreign country or that produces, manufactures, or refines motor fuel or special fuel, except ethyl alcohol, within this state, or that owns motor fuel or special fuel in the pipeline and terminal distribution system in this state and makes sales or authorizes removal of motor fuel or special fuel from a terminal in this state at the rack or is the receiving exchange partner in a two party exchange or the final transferee in a book transfer, and is subject to the general taxing or police jurisdiction of this state, or is required to be registered under Section 4101 of the Internal Revenue Code for transactions in taxable fuels in the bulk distribution system. The person need not be required to be registered under Section 4101 of the Internal Revenue Code if operating as a railroad company or utility company. A terminal operator may not be considered a supplier merely because the terminal operator handles motor fuel or special fuel consigned to it within a terminal. The name of the supplier or shipper shall be identified and prominently displayed on the bill of lading;
- (41) "Tank wagon," a vehicle designed to transport motor fuel or special fuel in bulk, in lots of four thousand two hundred gallons or less;
- (42) "Terminal," a fuel refinery or storage and distribution facility that is supplied by pipeline or marine vessel, from which motor fuel or special fuel may be removed at a rack and that has been registered as a qualified terminal by the Internal Revenue Service for receipt of taxable fuels free of federal fuel taxes;
- (43) "Terminal operator," the person who by ownership or contractual agreement is charged with the responsibility and physical control over the operation of the terminal;
- (44) "Transfer in bulk into or within a terminal" includes the following:

- (a) A marine barge movement of fuel from a refinery or terminal to a terminal;
 - (b) Pipeline movements of fuel from a refinery or terminal to terminal;
 - (c) Book transfers of product within a terminal between suppliers, out-of-state suppliers, or positionholders before completion of the removal of the fuel across the terminal rack;
 - (d) Two-party exchanges between licensed suppliers and out-of-state suppliers or position holders;
- (45) "Transmix," the buffer between two different products in a pipeline shipment, or a mix of two different products within a refinery or terminal that results in an off-grade mixture;
- (46) "Transporter or carrier," any person who engages in the activity of interstate or intrastate movement of fuel within this state by transport truck, rail car, or by any other means in quantities of over four thousand two hundred gallons. The term does not include persons who transport fuel by pipeline or barge. The name of the transporter or carrier shall be identified and prominently displayed on the bill of lading;
- (47) "Transport truck," a vehicle, combination of vehicles, or railcar designed to transport motor fuel or special fuel in bulk, in lots greater than four thousand two hundred gallons;
- (48) "Two-party exchange," a transaction in which a product is transferred from one supplier or out-of-state supplier or positionholder to another in exchange for other product, sometimes located at a different location, if:
- (a) The transaction includes a transfer from the person who holds the original inventory position for motor fuel or special fuel in the terminal as indicated in the records of the terminal operator; and
 - (b) The exchange transaction is completed before removal from the terminal by the receiving exchange partner. The bill of lading issued by the terminal operator shall indicate the receiving exchange partner as the supplier or shipper;

(49) "Wholesale distributor," any person who purchases motor fuel or special fuel from a supplier or another wholesale distributor, or removes the fuel from a terminal at the rack, for subsequent sale to another wholesale distributor or retail dealer.

Section 2. That § 10-47B-5 be amended to read as follows:

10-47B-5. A fuel excise tax is imposed on all motor fuel and special fuel that is removed from a terminal in this state at the rack or used at the terminal. This tax is not imposed if the fuel is withdrawn from a terminal for export by the consignee, if the consignee is specifically licensed to export fuel from this state, into the state which is indicated as the destination state on the bill of lading which was issued by the terminal operator for the fuel. This tax is not imposed if the fuel removed is ethyl alcohol which has been removed by a licensed blender or supplier, for resale over a terminal rack, is invoiced separately from gasoline, and is not sold as an ethanol blend. The tax imposed shall be at the rate indicated in § 10-47B-4.

Section 3. That § 10-47B-9 be amended to read as follows:

10-47B-9. A fuel excise tax is imposed on unblended ethyl alcohol sold by an ethanol producer, supplier, importer, or blender unless the sale is made to a licensed supplier for resale, to a licensed blender, or to a licensed exporter for export to another state who is specifically licensed to export to that state. The tax imposed shall be at the rate set for motor fuel in § 10-47B-4.

Section 4. That § 10-47B-10 be amended to read as follows:

10-47B-10. A fuel excise tax is imposed on all motor fuel or special fuel which has been removed from a terminal in this state at the rack by a licensed exporter for which the bill of lading issued for the fuel by the terminal operator indicates a destination state other than South Dakota, and the fuel is later diverted by the exporter to a destination within this state for off-loading or is transferred or sold to another person within this state prior to off-loading in any destination state. This tax is not imposed if the fuel is ethyl alcohol, the exporter is also licensed as a blender or supplier, and the product is purchased and invoiced separately from gasoline and not as an ethanol blend. The tax

imposed shall be at the rate set for motor fuel or special fuel in § 10-47B-4.

Section 5. That § 10-47B-18 be repealed.

Section 6. That § 10-47B-19 be amended to read as follows:

10-47B-19. The following are exempt from fuel excise tax imposed by this chapter:

- (1) Motor fuel or undyed special fuel removed from a terminal in this state at the rack by the federal government or defense fuel supply center for consumption in any federal government motor vehicle, machinery, equipment, or aircraft;
- (2) Motor fuel or undyed special fuel imported into this state by the federal government or defense fuel supply center for consumption in any federal government motor vehicle, machinery, equipment, or aircraft;
- (3) Special fuel that has been dyed in accordance with this chapter. The tax liability is reestablished if the dyed special fuel is used in the engine fuel supply tank of self-propelled machinery and equipment for use in highway construction or repair work within the right-of-way within this state;
- (4) Transmix removed from a terminal in this state at the rack by the terminal operator and transferred to another terminal, or to a licensed supplier for refinement and re-introduction into the pipeline system;
- (5) Undyed special fuel removed from a terminal in this state at the rack and delivered directly into a railroad locomotive if the railroad company is also the supplier. Undyed special fuel transported from the terminal to the locomotive fueling site by truck or railcar is not exempt from the tax;
- (6) Motor fuel or undyed special fuel removed from a terminal in this state by an electrical power company or cooperative and directly used for the generation of electricity. Motor fuel or undyed diesel fuel transported from the terminal to an electrical generation plant by truck or railcar is not exempt from the tax; or

- (7) Motor fuel or special fuel transfers in bulk into or within a terminal. The subsequent removal of the fuel from the terminal is not exempt from tax .

Section 7. That § 10-47B-21 be amended to read as follows:

10-47B-21. The fuel excise tax imposed on motor fuel and special fuel by § 10-47B-5 and not exempted by § 10-47B-19 shall be remitted to the state by the supplier who owns title to the fuel immediately before it is removed from a terminal in this state at the rack or used at the terminal. If a two party exchange has taken place, the receiving exchange partner shall remit the tax upon the subsequent removal of the fuel from the terminal. If a book transfer has taken place, the transferee shall remit the tax upon the subsequent removal of the fuel from the terminal. If the destination state is not clearly indicated on the face of the bill of lading as required by § 10-47B-53, South Dakota taxes shall be remitted by the supplier.

Section 8. That § 10-47B-22 be amended to read as follows:

10-47B-22. The tax imposed on motor fuel and special fuel by § 10-47B-6 and not exempted by § 10-47B-19 shall be remitted by the importer. The importer does not need to remit this tax if the importer demonstrates that the fuel was acquired by the importer from an out-of-state supplier licensed in accordance with the provisions of this chapter at an out-of-state terminal and that South Dakota will be paid the tax by the out-of-state supplier. This may be evidenced with a bill of lading indicating South Dakota as the destination state and an invoice indicating that South Dakota tax was charged by the out-of-state supplier. An importer is not responsible for payment of the tax if the tax is being paid to this state by another jurisdiction with whom this state has entered into an interstate precollection agreement.

Section 9. That § 10-47B-23 be amended to read as follows:

10-47B-23. The tax-imposed on motor fuel and special fuel by § 10-47B-6 and not exempted by § 10-47B-19 shall be remitted by the out-of-state supplier who owns title to the fuel immediately before it is removed from a terminal located outside of this state if the bill-of-lading issued for the fuel

by the terminal operator indicates South Dakota as the destination state unless the fuel is removed by the federal government or defense fuel supply center. If a two party exchange has taken place, the receiving exchange partner shall remit the tax upon the subsequent removal of the fuel from the terminal. If a book transfer has taken place, the transferee shall remit the tax upon the subsequent removal of the fuel from the terminal.

Section 10. That § 10-47B-26 be amended to read as follows:

10-47B-26. The tax imposed by § 10-47B-10 and not exempted by § 10-47B-19 shall be remitted by the exporter who diverts the fuel to a destination within this state. The party who withdrew the fuel from the terminal at the rack shall pay the tax if the fuel is transferred or sold to another person within this state prior to off-loading in any destination state.

Section 11. That § 10-47B-30 be amended to read as follows:

10-47B-30. The tax imposed by § 10-47B-7 shall be calculated and paid in accordance with the interstate compact or reciprocal agreement under which the person is licensed or governed.

Section 12. That § 10-47B-36 be amended to read as follows:

10-47B-36. If a monthly report is filed or the amount due is remitted later than the time required by this chapter, the supplier, out-of-state supplier, or importer may retain none of the money authorized by § 10-47B-34 or 10-47B-38.

Section 13. That § 10-47B-39 be amended to read as follows:

10-47B-39. An exporter of fuel shall pay to this state an amount equal to two-thirds of the allowance provided for in § 10-47B-34 or the entire amount allowed for in § 10-47B-38 on the tax that the exporter is entitled to be refunded by § 10-47B-125 for motor fuel or undyed special fuel exported from this state which was withdrawn from a bulk plant in this state or from a terminal in this state for which a bill of lading was issued with a South Dakota destination which was later diverted to a location outside of this state.

Section 14. That § 10-47B-41 be amended to read as follows:

10-47B-41. A corporation subject to the taxes imposed by this chapter and its corporate officers are jointly and severally liable for the filing of reports or returns and the payment of tax, penalty, and interest due. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. An officer subject to personal liability is not discharged from that liability upon vacating the office. An officer may be discharged from future liability upon notifying the secretary in writing. The sum due for such a liability may be assessed and collected as provided by law.

Section 15. That § 10-47B-44 be amended to read as follows:

10-47B-44. Any person transporting motor fuel or special fuel in vehicles upon the public highways of this state shall carry on board a bill of lading issued by the terminal operator or the bulk plant operator of the facility where the motor fuel or special fuel was obtained. The bill of lading shall set out on its face the destination state of the motor fuel or special fuel transported in the vehicle. The transporter shall also carry on board any diversion tickets or drop load tickets issued for the shipment.

Section 16. That § 10-47B-48 be amended to read as follows:

10-47B-48. No bulk plant operator, wholesale distributor, retail dealer, or end consumer may knowingly accept delivery of motor fuel or special fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading, drop load ticket, and any diversion ticket issued by the terminal operator, bulk plant operator, or transporter, that sets out on its face South Dakota as the destination state of the fuel. If acceptance of a shipment was inadvertent, the bulk plant operator, wholesale distributor, retail dealer, or end user shall notify the department within twenty-four hours of the delivery and make arrangements for the proper payment of the tax.

Section 17. That § 10-47B-51 be amended to read as follows:

10-47B-51. The supplier and the terminal operator are entitled to rely for all purposes of this chapter on the representation made by the transporter or transporter's agent as to the destination state the terminal operator prints on the bill of lading. A petroex or similar number may not be relied upon

by the terminal operator or supplier as a representation of a destination state.

In all cases, the importer, the exporter, the transporter, the transporter's agent, and any purchaser are jointly and severally liable for any fuel tax due to this state. A defense available to one party to an action for the collection of the fuel tax imposed by this chapter is not available to the other parties. Each party's tax liability arises separately and shall be defended separately.

Section 18. That § 10-47B-53 be amended to read as follows:

10-47B-53. The bill of lading issued by a terminal operator, bulk plant operator, or transporter as dictated by this chapter shall contain the following information:

- (1) The terminal or bulk plant name and address;
- (2) The date the fuel was withdrawn from the terminal;
- (3) The name and address of the supplier, shipper, or owner of fuel within a bulk plant if withdrawn from a bulk plant;
- (4) The name of the transporter or carrier;
- (5) The destination state. A petroex or similar number does not fulfill this requirement;
- (6) The bill-of-lading number;
- (7) The number of gross gallons of each type of fuel;
- (8) The type of fuel product transported;
- (9) The name and address of the consignee; and
- (10) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 19. That § 10-47B-54 be amended to read as follows:

10-47B-54. The diversion ticket issued by a transporter shall contain the following information:

- (1) The transporter's or carrier's name and address;
- (2) The date and time the fuel was withdrawn from the terminal;
- (3) The diversion ticket number;

- (4) The name and address of the supplier or shipper indicated on the original bill of lading or the owner of fuel within a bulk plant if withdrawn from a bulk plant;
- (5) The destination state;
- (6) The original bill-of-lading number;
- (7) The terminal or bulk plant from which the product was withdrawn;
- (8) The number of gross gallons of each fuel type being diverted;
- (9) The type of fuel being diverted; and
- (10) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 20. That § 10-47B-55 be amended to read as follows:

10-47B-55. The drop load ticket issued by a transporter shall contain the following information:

- (1) The transporter's or carrier's name and address;
- (2) The date of delivery of the fuel;
- (3) The drop load ticket number;
- (4) The destination state on the original bill-of-lading, or diversion ticket, if issued;
- (5) The original bill of lading, and if available the diversion ticket number;
- (6) The destination state of each location at which the fuel was off-loaded;
- (7) The number of gross gallons off-loaded at each location;
- (8) The type of fuel off-loaded at each location; and
- (9) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 21. That § 10-47B-56 be amended to read as follows:

10-47B-56. Any person acting in South Dakota as a supplier shall first obtain a supplier's license.

Section 22. That § 10-47B-59 be amended to read as follows:

10-47B-59. Any person acting in this state as an exporter shall first obtain an exporter's license.

However, to obtain a license to export motor fuel or special fuel from South Dakota to another specified state, a person shall be licensed either to collect and remit fuel taxes or be licensed to deal in tax free fuel in the other specified destination state to which the fuel is exported.

Section 23. That § 10-47B-60 be amended to read as follows:

10-47B-60. Any person acting in this state as a transporter shall be licensed as a transporter.

Section 24. That § 10-47B-61 be amended to read as follows:

10-47B-61. Any person acting in this state as an importer shall be licensed as an importer.

Section 25. That § 10-47B-62 be amended to read as follows:

10-47B-62. Any person acting in this state as a blender shall be licensed as a blender.

Section 26. That § 10-47B-63 be amended to read as follows:

10-47B-63. Any person acting in this state as a liquid petroleum gas vendor shall be licensed as a liquid petroleum gas vendor.

Section 27. That § 10-47B-64 be amended to read as follows:

10-47B-64. Any person acting in this state as a compressed natural gas vendor shall be licensed as a compressed natural gas vendor.

Section 28. That § 10-47B-65 be amended to read as follows:

10-47B-65. Any person who is acting in this state as a wholesale distributor or retail dealer shall be licensed as a marketer. A separate license shall be obtained and maintained for each business location within this state.

Section 29. That § 10-47B-66 be amended to read as follows:

10-47B-66. Any person acting in this state as a liquid petroleum gas user shall be licensed as a liquid petroleum gas user.

Section 30. That § 10-47B-67 be amended to read as follows:

10-47B-67. Any person acting in this state as an ethanol producer shall be licensed as an ethanol producer.

Section 31. That § 10-47B-68 be amended to read as follows:

10-47B-68. Any person in this state who operates a bulk plant as defined by this chapter shall first obtain a bulk plant operator's license for each terminal site.

Section 32. That § 10-47B-69 be amended to read as follows:

10-47B-69. Any person acting as a highway contractor in this state as defined by this chapter shall obtain a highway contractor fuel tax license. No state, county, township, or municipality may award a public highway or street contract to a contractor who has not been issued a highway contractor fuel tax license. A highway contractor, with a highway contractor fuel tax license, may also operate as a licensed liquid petroleum gas user.

Section 33. That § 10-47B-71 be amended to read as follows:

10-47B-71. Each application for a license under §§ 10-47B-56 to 10-47B-70, inclusive, or interstate fuel tax agreement license shall be made upon a form prepared and furnished by the department. It shall be subscribed to by the applicant and shall contain the following information:

- (1) The name and mailing address of the business owner;
- (2) The name under which business is to be conducted;
- (3) The principal place of business of the owner and the location of any subsidiary operations which are to be included under the license application. Licensed marketers shall provide the address of each business location;
- (4) The type of business organization used by the applicant along with the names, addresses, social security numbers, and phone numbers of all owners, partners, officers, agents, or managers affiliated with the organization;
- (5) The applicant's federal employer identification number if available;
- (6) A description of the nature and extent of fuel transactions to be conducted by the applicant;
- (7) The types of fuel products to be handled;

- (8) Whether or not the applicant has previously held a fuel tax license issued by the state;
- (9) The names and addresses of banking references for those applicants who will be acquiring fuel tax liabilities with the department;
- (10) If applying for an interstate fuel tax agreement license, a properly signed agreement to maintain records;
- (11) A properly signed power of attorney, if the applicant's licensing responsibilities are completed by an independent reporting agent and the applicant wishes all department correspondence to be mailed to the agent;
- (12) If applying for an exporter's license, a copy of the applicant's license to purchase or handle motor fuel or special fuel tax free in the specified destination state or state for which the export license is to be issued; and
- (13) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 34. That § 10-47B-72 be amended to read as follows:

10-47B-72. All licenses issued pursuant to this chapter, except refund licensees, may, at the discretion of the department, be renewed on an annual basis.

Section 35. That § 10-47B-79 be amended to read as follows:

10-47B-79. No license issued by the secretary may be assigned and is valid only for the licensee in whose name it is issued. A valid license shall be presented upon request at any time when fuel subject to taxation under this chapter is purchased. The sale of a licensee's business shall be reported to the secretary by the licensee. The new owner of a previously licensed business shall make application for a new license under the provisions of this chapter.

Section 36. That § 10-47B-83 be amended to read as follows:

10-47B-83. The secretary may require a licensee to replace or increase the amount of the security or bond, if at any time in the secretary's opinion the tax revenues are not adequately protected under

the existing security or bond. Reasons for such action include:

- (1) The reduction of a bond or security whether by judgment rendered, payment made, or otherwise;
- (2) The secretary's judgment that any surety on a bond becomes unsatisfactory or discontinues conducting business within this state;
- (3) The secretary's judgment that because of taxpayer reporting or payment delinquencies, or issuance of checks against insufficient funds or with no account, the state's tax revenues may be jeopardized. Each check issued against insufficient funds or with no account or each delinquency is a separate incident and is subject to additional security in accordance with the schedule in this section. The increase in security shall remain in effect until the taxpayer has filed returns and remitted tax payments on time for twelve consecutive months; or
- (4) The cancellation of a bond by a surety or the withdrawal of security by a licensee.

In such cases, the secretary shall notify the licensee in writing of the increased or replacement security requirements. The licensee shall have thirty days from the date of written notification by the secretary to provide evidence of the replacement or supplemental security to the secretary. Failure of the licensee to provide such evidence shall be cause for the secretary to immediately cancel the license and send written notification of the cancellation to the licensee. After the cancellation, the licensee has thirty days in which to submit a written request to the secretary for an administrative hearing to review the cancellation.

Section 37. That § 10-47B-84 be amended to read as follows:

10-47B-84. If the secretary requires increased security under § 10-47B-83, the amount of security shall be the greater of the following amounts:

- (1) If a check is issued against insufficient funds or with no account, the amount of the tax owed;

- (2) If a delinquent tax return, the amount of the most recent tax return on which tax was submitted by the taxpayer;
- (3) If an interstate fuel tax agreement licensee, the minimum shall be calculated by multiplying two hundred fifty dollars times the number of member states within the interstate fuel tax agreement at the time of the delinquency or receipt of the check issued against insufficient funds or with no account;
- (4) A minimum of one thousand dollars; or
- (5) If a jeopardy assessment is made, the amount of the assessment.

Section 38. That § 10-47B-95 be amended to read as follows:

10-47B-95. For the purpose of determining the amount of motor fuel and special fuel tax due, each importer shall file with the department on forms prescribed and furnished by the department a monthly report. If the department deems it necessary, the report shall be filed by electronic methods. In addition to the information required pursuant to § 10-47B-97, the department may require the reporting of any information reasonably necessary to determine the amount of fuel excise tax due.

Section 39. That § 10-47B-98 be amended to read as follows:

10-47B-98. For the purpose of determining the amount of motor fuel and special fuel tax due, each terminal operator shall file with the department on forms prescribed and furnished by the department a monthly report. In addition to the information required pursuant to § 10-47B-100, the department may require the reporting of any information reasonably necessary to determine the amount of fuel excise tax due.

Section 40. That § 10-47B-119 be amended to read as follows:

10-47B-119. Any motor fuel consumer may apply for and obtain a refund of fuel taxes imposed and paid to this state, for motor fuel purchased and used by consumers in motor vehicles, recreation vehicles, and farm equipment used for nonhighway agricultural purposes; or used in motor vehicles or equipment for nonhighway commercial uses. The portion of this refund attributed to nonhighway

use of motor vehicles shall be calculated by multiplying the motor vehicle's average miles per gallon during the claim period times the number of nonhighway miles the vehicle was operated. The average miles per gallon and nonhighway miles shall be supported by actual individual vehicle fuel disbursement records and odometer readings. The portion of this refund attributed to nonhighway machinery and equipment shall be supported by individual vehicle fuel disbursement records.

Section 41. That § 10-47B-125 be amended to read as follows:

10-47B-125. A licensed exporter may apply for and obtain a refund for taxes paid to this state on motor fuel and undyed special fuel under the following conditions:

- (1) Fuel which was loaded at a bulk plant in this state and exported to another state or country for which the exporter was specifically licensed and for which a bill of lading or diversion ticket was issued indicating a destination state other than South Dakota, and the fuel was reported to the export state;
- (2) Fuel that is loaded at a terminal in this state for which a bill of lading was issued indicating South Dakota as the destination state, if the fuel or a portion thereof is diverted to another state and if a diverted load ticket is issued indicating the export state as the destination state; and the exporter is specifically licensed to import fuel into that state; and
- (3) Fuel that is withdrawn from an out-of-state terminal, and purchased from a licensed out-of-state supplier, with a South Dakota destination, and is then diverted to another state.

The claimant shall submit a copy of the original bill of lading, and a copy of the diversion.

Section 42. That § 10-47B-133 be amended to read as follows:

10-47B-133. Any licensed supplier or out-of-state supplier may apply for and obtain a refund for taxes paid to this state on any gallons of motor fuel or undyed special fuel withdrawn from a terminal at the rack and sold to a party who fails to pay the supplier or out-of-state supplier for the product and the taxes owed to this state. Application for this refund shall be made within sixty days of the occurrence of the delinquency. Upon application, all unpaid taxes of the delinquent party become due

and owing. The application for refund may include all taxes credited to the delinquent party since the occurrence of the delinquency. To qualify for a refund, a supplier or out-of-state supplier shall supply the department sufficient evidence and testimony to enforce any tax collection action by the department. Upon application of this refund, the department may make an assessment and take collection action against the purchaser of the fuel in accordance with the provisions of chapter 10-59. The supplier or out-of-state supplier is only eligible for a refund for the taxes not paid by a customer once every three years. The supplier or out-of-state supplier is responsible for the tax on all sales that take place after the application for refund is made and are not eligible for further refunds. Upon application for a refund under this provision, a delinquent purchaser is no longer entitled to delay the payment of tax to a supplier or out-of-state supplier as set forth in § 10-47B-32 for a period of three years. The department shall notify all licensed suppliers, out-of-state suppliers, and marketers that the party has been delinquent in the payment of tax and is not entitled to the delayed payment of tax as set forth in § 10-47B-32 for a three-year period and that no further refunds will be paid for sales made to the party during the next three-year period. Once notified of a delinquent purchaser, no supplier, out-of-state supplier, or marketer may make a refund for tax under this section arising from a sale to the party during the three-year period.

Section 43. That § 10-47B-145 be amended to read as follows:

10-47B-145. The secretary may reject any claims for tax refunds which do not conform to the criteria set forth under this chapter or reject any claim which cannot be supported by the claimant's records. The secretary may also assess tax against a refund claimant if it is determined that a refund claim was improperly paid from the claim.

Section 44. That § 10-47B-159 be amended to read as follows:

10-47B-159. Each fuel transaction in this state or between an out-of-state supplier and importer shall be supported by a sales/purchase invoice. All invoices shall be prepared on NCR (no carbon required) paper or with double-faced carbon so that the back of the invoice bears a carbon impression

of the data that is on the fact of the invoice. A copy of the invoice shall be maintained in the records of both the seller and the purchaser. The invoices shall be serially numbered and shall contain the following information:

- (1) The seller's name and address, which shall be machine-printed or rubber-stamped;
- (2) The seller's supplier's license number issued by the department if the fuel was sold at the pipeline or the seller's marketer's number if not sold at a pipeline;
- (3) The purchaser's name and address;
- (4) The date of sale and delivery of the fuel;
- (5) The number of gallons of fuel sold and delivered to the purchaser, the type of fuel and if diesel whether it is dyed or not;
- (6) The price charged per gallon of fuel;
- (7) If charged, the amount of fuel or sales tax. Fuel tax shall either be listed separately or as a statement by the marketer that the price per gallon required under subdivision (6) of this section includes the South Dakota fuel tax; and
- (8) The total amount of the sales invoice.

Section 45. That § 10-47B-167 be amended to read as follows:

10-47B-167. A licensed liquid petroleum gas vendor may sell liquefied petroleum gas exempt from the fuel tax imposed by this chapter, to a licensed liquid petroleum gas user or to a purchaser who owns a motor vehicle propelled by liquefied petroleum gas if the vendor delivers the gas into a bulk storage tank which has no liquid transfer line which could be used to deliver fuel into the fuel supply tank of a motor vehicle. The vendor shall certify that the vendor has inspected the bulk storage tank and that no liquid transfer line existed on the tank at the time of inspection. A purchaser shall obtain a propane user license before receiving liquefied petroleum gas into a bulk storage tank which has a liquid transfer line which could be used to deliver fuel into the fuel supply tank of a motor vehicle.

Section 46. That § 10-47B-182 be amended to read as follows:

10-47B-182. Any person who fails to issue a document pursuant to the provisions of §§ 10-47B-43, 10-47B-45, 10-47B-49, and 10-47B-50 or who fails to provide all of the information set forth by §§ 10-47B-53 to 10-45B-55, inclusive, is subject to a civil penalty of one thousand dollars per document. If the person believes that the assessment arose from a mistake of fact or error of law, the person may request a hearing in accordance with § 10-59-9.

Section 47. That § 10-47B-183 be amended to read as follows:

10-47B-183. Each importer or transporter who knowingly imports or delivers motor fuel or special fuel without a valid importer or transporter license or a bill of lading or diversion ticket showing South Dakota as the destination state is subject to a civil penalty of up to ten thousand dollars for each occurrence described in this section. If the person believes that the assessment arose from a mistake of fact or error of law, the person may request a hearing in accordance with § 10-59-9.

Section 48. That § 10-47B-185 be amended to read as follows:

10-47B-185. A person who operates or maintains a motor vehicle in this state with special fuel that contains dye as provided under § 10-47B-20 in the engine fuel supply tank is subject to a civil penalty of two hundred fifty dollars if the violation occurs in a motor vehicle which is not a qualified vehicle. If the violation occurs in a qualified vehicle, the person is subject to a civil penalty of five hundred dollars. The person is subject to a five hundred dollar civil penalty on all subsequent violations which occur in any motor vehicle other than a qualified vehicle and subject to a civil penalty of one thousand dollars on all subsequent violations which occur in any qualified vehicle. If the person believes that the assessment arose from a mistake of fact or error of law, the person may request a hearing in accordance with § 10-59-9. Any motor vehicle owned by the state, a county, or municipal corporation for the construction, repair, and maintenance of the public highways on any public highway is not subject to this section. Any intercity bus as defined by 26 U.S.C. § 6427(b) is not

subject to this section with regards to any dyed diesel fuel purchased in another state and imported in the engine fuel supply tank of the bus. Any fuel purchased in this state for use in an intercity bus shall be taxed and undyed. Any motor vehicle owned by the federal government is not subject to this section.

Section 49. That § 10-47B-187 be amended to read as follows:

10-47B-187. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by this chapter or refuses to exhibit these records to the secretary or the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a licensee under this chapter without obtaining a fuel tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business as a licensee under this chapter after the licensee's fuel tax license has been revoked by the secretary is guilty of a Class 6 felony;
- (7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;
- (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony;
- (9) Engages in the business of a licensee under this chapter without obtaining a fuel tax license after having been notified in writing by the secretary that the person is subject to the

provisions of the motor fuel tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business as a licensee files an application for a fuel tax license and meets all lawful prerequisites for obtaining the license within three days from receipt of written notice from the secretary;

- (10) Makes false or deceptive statements in applying for a license issued pursuant to this chapter or files an application as a subterfuge for the real person in interest whose license has been canceled for cause by the secretary is guilty of a Class 6 felony;
- (11) Ceases conducting business as a licensee as defined under this chapter and fails to surrender a license to the secretary as required after discontinuance is guilty of a Class 1 misdemeanor;
- (12) Knowingly submits a fraudulently prepared or supported claim for the refund of motor or special fuel taxes is guilty of a Class 6 felony;
- (13) Operates or maintains a motor vehicle in this state with special fuel that contains dye as provided in this chapter in the engine fuel supply tank, is guilty of a Class 2 misdemeanor. Any subsequent violation is a Class 1 misdemeanor. Any motor vehicle owned by the state, a county, or municipal corporation for the construction, repair, and maintenance of the public highways on any public highway and intercity buses as defined by 26 U.S.C. § 6427(b) is not subject to this subdivision. Any vehicle owned by the federal government is not subject to this subdivision;
- (14) Operates or maintains a motor vehicle which contains a product for use in the engine fuel supply tank of the vehicle for general highway use that does not meet ASTM standards as published in the annual book of standards and its supplements is guilty of a Class 1 misdemeanor. Any subsequent violation is a Class 6 felony;
- (15) Signs any form prescribed by the department with knowledge knowing that the form contains false or untrue information, in whole or in part, is guilty of a Class 6 felony;

- (16) Fails to carry aboard a qualified motor vehicle, fuel use tax operating credentials required under this chapter or fails to exhibit such fuel use tax credentials if so required by a law enforcement officer is guilty of a Class 2 misdemeanor;
- (17) Operates a motor vehicle with a capacity of more than four thousand two hundred gallons that is engaged in the shipment of motor fuel and special fuel on the public highways of this state without a bill-of-lading containing the information required by this chapter is guilty of a Class 1 misdemeanor;
- (18) Sells a product for use in the engine fuel supply tank of a motor vehicle for general highway use that does not meet ASTM standards as published in the annual book of standards and its supplements is guilty of a Class 6 felony. The department requires the possessor to dispose of any product in violation of this subdivision in the manner provided by federal and state law.

Section 50. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

Any person in this state who stores motor fuel for sale or use in this state shall maintain records to demonstrate that all taxes imposed by this state have been paid. If it is determined that all taxes due have not been paid or if adequate records are not maintained to show that all taxes due have been paid, the fuel is subject to an assessment by the department of up to twice the tax rate on all fuel involved.

Section 51. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

For purposes of the enforcement of this chapter, the point or location of a sale or transfer of fuel shall be at the location the fuel is delivered to the purchaser, transferee, or the person acting on behalf of the purchaser or transferee unless the point or location of sale or transfer is otherwise clearly indicated on the sale's invoice.

An Act to revise certain provisions regarding the fuel excise tax.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1051

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1051

File No. _____

Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor

=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State