

MOTOR FUEL STATUTES

Administration: These are selected motor fuel tax statutes administered by the Department of Revenue. The Department of Agriculture is named in some of these statutes. Inquiries concerning these references can be made to the Department of Agriculture, which is located in the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-3422.

Revisions: The provisions of these statutes were revised during the 2012 session of the Nebraska Legislature.

Rules: The Department of Agriculture has no authority to promulgate regulations under these statutes.

Note: References in these statutes to "Department" refer to the Department of Revenue. Department of Agriculture is stated as such.

INDEX

<u>Section</u>	<u>Subject</u>
66-720.	License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.
66-729.	Permit or license; issuance; when; department; powers and duties.
66-731.	Department; computer system; shared information.
66-738.	Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.
66-739.	Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.
66-1226.	Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties.
66-1344.	Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.

66-720. License or permit; suspension; grounds; procedure; cancellation; reinstatement fee. (1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

- (a) Cancellation of security;
- (b) Failure to provide additional security as required;
- (c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;
- (d) Failure to pay taxes due within the time provided;

- (e) Filing of any false report, return, statement, or affidavit, knowing it to be false;
 - (f) Delivering motor fuel to a Nebraska destination if Nebraska is not listed as the destination state on the original bill of sale, bill of lading, or manifest except as authorized under section 66-503;
 - (g) Failure to remain in compliance with requirements of the State Fire Marshal regarding underground storage tanks;
 - (h) Failure to remain in compliance with requirements of the Department of Agriculture regarding weights and measures;
 - (i) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-495.01;
 - (j) No longer being eligible to obtain a license or permit; or
 - (k) Any other violation of the motor fuel laws or the rules and regulations.
- (2) The department shall mail notice of suspension of any license or permit.
- (3) The licensee or permitholder may, within sixty days after the mailing of the notice of such suspension, petition the Department of Revenue in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within ten days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or canceling such license or permit.
- (4) If a petition is not filed within the sixty-day period, the suspended license or permit shall be canceled by the department at the expiration of the period.
- (5) The department shall not issue a new permit or license to the same person for one year from the date of cancellation. Any reissuance of a permit or license to the same person within three years from the date of cancellation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.
- (6) Suspension or cancellation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

66-729. Permit or license; issuance; when; department; powers and duties. After reviewing an application received in proper form, the department may issue to the applicant a permit or license. The department may refuse to issue a permit or license to any person:

- (1) Who previously had a permit or license issued under the motor fuel laws of any state which, prior to the time of filing the application, has been suspended or canceled for cause;
- (2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been suspended or canceled for cause;
- (3) Which has as a partner, limited liability company member, or shareholder, with a ten percent or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;
- (4) Who is not in compliance with requirements of the State Fire Marshal regarding underground storage tanks;
- (5) Who is not in compliance with the Department of Agriculture regarding weights and measures;
- (6) Who has been convicted of a felony in the last ten years; or
- (7) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant him or her at least ten days' written notice of the time and place.

66-731. Department; computer system; shared information. (1) The department shall develop, implement, and maintain a computer system for the automated recording and analysis of the motor vehicle fuel tax, the diesel fuel tax, and related information. The system shall be capable of directly accepting and recording data filed by magnetic media.

(2) The department shall share information pertaining to motor fuel use, tax collection, and related information with the Department of Agriculture, the State Fire Marshal, and the Nebraska State Patrol. The information shall be made available to these agencies and to any other state, federal, or local agency with a valid need for the information as determined by the Department of Revenue.

(3) The department may forward to any agency in this state, to the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, and the provinces or the Dominion of Canada, or to any other person any information which the department may have relative to the receipt, storage, delivery, sale, use, or other disposition of motor fuel.

(4) The department may forward to any person statistical information, lists of licensees or permit holders, or totals for any licensee or permit holder.

66-738. Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized. The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded by a separate appropriation program within the department. All provisions of the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, pertaining to the Department of Revenue, the Tax Commissioner, or the division, shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to audit by the Auditor of Public Accounts, at such time as he or she determines necessary, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of the year under audit. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions of the department and the Division of Motor Carrier Services of the Department of Motor Vehicles, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such acts and sections. The auditors and field investigators in the Motor Fuel Tax Enforcement and Collection Division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

Funds appropriated to the division may also be used to contract with other public agencies or private entities to aid in the issuance of motor fuel delivery permit numbers as provided in subsection (2) of section 66-503, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.

66-739. Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment. There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to section 39-2215. The fund shall be used exclusively for the costs of the Motor Fuel Tax Enforcement and Collection Division created by section 66-738 and other related costs for the Department of Agriculture, the Nebraska State Patrol, and functional areas of the Department of Revenue as provided by such section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motor Fuel Tax Enforcement and Collection Cash 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.

66-1226. Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties. (1) The Legislature hereby adopts by reference the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. The Department of Agriculture shall file copies of such publication with the Secretary of State and Clerk of the Legislature.

(2) Commencing on January 1, 1992, all automotive spark ignition engine fuels sold in Nebraska shall meet the specification as found in the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. Any person who violates this subsection shall be guilty of a Class I misdemeanor for the first such violation and a Class IV felony for all subsequent violations.

(3) For purposes of this section, automotive spark ignition engine fuels shall mean gasoline and its blends with oxygenates such as alcohol and ethers.

66-1344. Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties. (1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

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

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a nonrefundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be provided by the ethanol

facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and imposition of assessments made by the Department of Revenue relating to excess credits claimed by

ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, or the Nebraska Advantage Act.

actbe