



# North Dakota Legislative Council

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## **ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - FUEL TAX REFUNDS FOR CERTAIN USERS**

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee every 6-year review cycle. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of fuel tax refunds for certain users and provides an explanation of the refund provisions, the perceived goals of the Legislative Assembly in creating or altering the refund provisions, and the data and testimony that will be required to conduct an effective analysis of the refund provisions.

### **EXPLANATION OF FUEL TAX REFUND PROVISIONS**

#### **Imposition of Fuel Tax**

Fuels taxes are imposed under three chapters of Century Code. Chapter 57-43.1 imposes a 23 cent per gallon tax on motor vehicle fuels, which includes gasoline and gasohol. Chapter 57-43.2 imposes a 23 cent per gallon tax on special fuels, which includes diesel, kerosene, compressed natural gas, liquefied petroleum gas, and other fuels except gasoline, gasohol, or aviation fuels. Dyed diesel fuel and special fuel other than diesel fuel which is sold for use in unlicensed machinery used for agricultural, industrial, or railroad purposes is exempt from the 23 cent per gallon special fuels tax and is instead subject to a 4 cent per gallon excise tax, with the exception of propane, which is subject to an excise tax of 2 percent. Chapter 57-43.3 imposes an 8 cent per gallon tax on aviation fuels. Tax remitted by certain users and on fuel purchased for specified uses is subject to refund.

#### **Refunds on Fuel Purchased by Specified Users**

The operator of an emergency medical services operation who purchases motor vehicle fuel, special fuel, or aviation fuel for use in a licensed emergency medical services operation may claim a refund of tax paid. Tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, and maintenance of a public road or airport also is subject to refund. A Native American may claim a refund of motor vehicle fuel or special fuel tax paid if the fuel was purchased from a retail fuel dealer located on the reservation where the Native American is an enrolled member, and in which a motor fuel agreement is not in place, and the fuel was delivered to the Native American purchaser on that reservation. Refunds also are allowed to fuel resellers who sold fuel on which motor vehicle fuel, special fuel, or aviation fuel tax was paid to an agency of the federal government.

#### **Refunds on Fuel Purchased for Specified Uses**

The tax paid on motor vehicle fuel purchased for use in nonlicensed equipment used for agricultural or industrial purposes is subject to refund. The amount of tax refunded on motor fuel purchased for industrial purposes must be reduced by one-half cent per gallon for deposit in the agricultural products utilization fund. Tax paid on special fuel purchased for use in a refrigeration unit that has a separate supply tank on a truck or trailer is subject to refund. The amount of special fuel tax refunded on fuel purchased for use in a refrigeration unit must be reduced by four cents per gallon to account for the payment of special fuel excise tax. Refunds also are allowed on motor vehicle fuel, special fuel, or aviation fuel if the fuel is removed for sale, resale, or use in another state that requires payment of tax on the fuel.

### **PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN ALLOWING FUEL TAX REFUNDS**

#### **Refunds on Fuel Purchased by Specified Users**

The refund provisions in Sections 57-43.1-03.3, 57-43.2-04.5, and 57-43.3-03.1, for motor vehicle fuel, special fuel, and aviation fuel tax paid on fuel purchased by the operator of an emergency medical services operation, were enacted by House Bill No. 1138 (2007). The perceived goal of the Legislative Assembly in enacting the fuel tax refunds was to lower the operating costs of emergency medical services operations to keep the operations

economically viable, especially in rural areas. It was estimated the refund provisions would reduce fuel tax collections by \$75,875 during the 2007-09 biennium. The fiscal analysis assumed 245,000 gallons of fuel would be used by emergency medical services operations annually. The refund provisions have not been amended since their enactment, with the exception of a technical change made to Section 57-43.1-03.3 in 2013.

Refund provisions for tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, or maintenance of a public road or airport were first enacted by House Bill No. 360 (1937). The refund provisions were moved to their current location in Section 57-43.1-08 as part of a comprehensive motor vehicle fuels tax law consolidation undertaken by the 1981-82 interim Tax Statutes Revision Committee. The committee's work resulted in the passage of House Bill No. 1073 (1983). The fiscal impact of the refund was not provided during the 1983 legislative session. The only changes to the refund provisions since 1983 were technical in nature.

The motor vehicle fuel and special fuel tax refund provided in Section 57-43.1-03.2, for fuel purchased by a Native American from a retail fuel dealer located on the reservation where the Native American is an enrolled member, was enacted by Senate Bill No. 2012 (2005). The goals of the Legislative Assembly in offering the refund were not addressed in the 2005 legislative history for the bill. The fiscal impact of the refund provisions could not be determined during the 2005 legislative session. The only change to the refund following enactment was by Senate Bill No. 2003 (2011), which eliminated the requirement that the Attorney General determine the amount of fuels tax refunds due to Native American tribal members for fuel purchases on a reservation.

The motor vehicle fuel, special fuel, and aviation fuel tax refunds provided in Sections 57-43.1-06.1, 57-43.2-04.3, and 57-43.3-03, for resellers who sold fuel on which tax was paid to an agency of the federal government, was enacted by Senate Bill No. 2177 (1999) as part of a larger fuel revision to provide clarity to existing law and create uniformity between the three fuel tax chapters. The estimated fiscal impact of the refund was not specified during the 1999 legislative session. The refund provisions have not been amended since their enactment.

### **Refunds on Fuel Purchased for Specified Uses**

Refund provisions for tax paid on motor vehicle fuel purchased for use in nonlicensed equipment for agricultural purposes have been available since the motor vehicle fuel tax law was first enacted by an initiated measure approved by the voters at a statewide election held on June 30, 1926. The refund provisions were relocated to Chapter 57-43.1 by House Bill No. 1073 (1983) as part of a comprehensive motor vehicle fuels tax law consolidation undertaken by the 1981-82 interim Tax Statutes Revision Committee. The refund provisions were moved to their current location in Section 57-43.1-03.1 by House Bill No. 1200 (1989), which also increased the amount withheld from agricultural fuel tax refunds by one and one-half cents per gallon, from one-half cent to two cents, for deposit in the agricultural fuel tax fund. The fiscal impact of the refund was not provided during the 1989 legislative session.

Section 57-43.1-03.1 was amended several times following its enactment in 1989. House Bill No. 1575 (1991) increased the amount withheld from the refund by an additional two cents per gallon for deposit in the highway tax distribution fund. Senate Bill No. 2019 (1997) increased the amount withheld from the refund from four cents to seven cents per gallon through December 31, 1999, and reduced the seven cents withheld per gallon to six cents per gallon after December 31, 1999. The period of time for which the increased amounts were withheld in Senate Bill No. 2019 (1997) was extended for an additional 2 years by House Bill No. 1019 (1999) and an additional 2 years by Senate Bill No. 2019 (2001). House Bill No. 1311 (1997) provided a definition of agricultural purposes for the purpose of providing the refund. House Bill No. 1286 (1997) eliminated the assignment of claims for refunds and instead required the filing of refund claims. House Bill No. 1020 (2015) eliminated all deductions on the amount of tax paid on fuel purchased for agricultural purposes for the purpose of providing the refund.

Refund provisions for tax paid on motor vehicle fuel purchased for use in nonlicensed equipment for industrial purposes have been available since the motor vehicle fuel tax law was first enacted by an initiated measure approved by the voters at a statewide election held on June 30, 1926. The refund provisions were moved to their current location in Section 57-43.1-03 as part of a comprehensive motor vehicle fuels tax law consolidation undertaken by the 1981-82 interim Tax Statutes Revision Committee. The committee's work resulted in the passage of House Bill No. 1073 (1983). The fiscal impact of the refund was not provided during the 1983 legislative session. The newly created statute was amended by Senate Bill No. 2095 (1983), to reduce the amount refunded by one-half cent per gallon, before the adjournment of the 1983 Legislative Assembly. Section 57-43.1-03 was amended seven times following enactment in 1983. Substantive changes to the law included changes enacted by Senate Bill No. 2190 (1993), which removed language regarding assignment of the one-half cent withheld for each taxable gallon refunded, House Bill No. 1311 (1997), which provided a definition of industrial purposes for the purpose of providing the refund, and House Bill No. 1099 (2023), which eliminated the requirement to reduce refunds claimed by a consumer who buys or uses motor vehicle fuel for an industrial purpose and to deposit the one-half cent withheld from the refund into the agricultural products utilization fund.

The special fuel tax refund provided in Section 57-43.2-04.6, for consumers who purchase special fuel for use in a refrigeration unit, was enacted by Senate Bill No. 2224 (2009). The perceived goal of the Legislative Assembly in offering the refund was to allow drivers refueling at truck stops at which dyed fuel was not available to fill their refrigeration units with clear fuel and receive a refund on the amount of tax paid in excess of the tax that otherwise would have been paid on the dyed fuel. The fiscal impact of the tax refund could not be determined during the 2009 legislative session. The refund provisions have not been amended since their enactment.

Refund provisions for tax paid on motor vehicle fuel or special fuel removed for sale, resale, or use in another state were first enacted by House Bill No. 1164 (1975). The refund provisions were relocated to Section 57-43.1-06 by House Bill No. 1073 (1983) as part of a comprehensive motor vehicle fuels tax law consolidation undertaken by the 1981-82 interim Tax Statutes Revision Committee. The fiscal impact of the refund was not provided during the 1983 legislative session. The refund provisions were amended several times following the 1983 session. House Bill No. 1200 (1989) required the amount of tax refunded to be reduced by two cents per gallon for fuel purchased for agricultural purposes and one-half cent per gallon for fuel purchased for industrial purposes, a reduction that was later eliminated by House Bill No. 1117 (1991). House Bill No. 1311 (1997) added time limits for claiming the refund and required a claimant to include proof the fuel purchased for sale or resale in another state was reported to the taxing agency in the claimant's refund application materials.

The refund provisions for tax paid on special fuel removed for sale, resale, or use in another state were removed from Section 57-43.1-06 and placed in Section 57-43.2-04.2 by Senate Bill No. 2177 (1999) as part of a larger fuel revision to provide clarity to existing law and create uniformity between the three fuel tax chapters. Senate Bill No. 2177 also enacted Section 57-43.3-03, which provides an aviation fuel tax refund for fuel removed for sale, resale, or use in another state. The estimated fiscal impact of the refunds were not specified during the 1999 legislative session. Only minor technical changes were made after 1999 to the motor vehicle fuel, special fuel, or aviation fuel tax refund provisions for fuel removed for sale, resale, or use in another state.

### **DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF FUEL TAX REFUNDS**

Data pertaining to the following items will need to be collected to effectively analyze fuel tax refund provisions:

1. The number of claimants;
2. The fiscal impact of fuel tax refunds;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of fuel tax refunds;
4. Negative impacts created as a result of offering fuel tax refunds; and
5. Benefits that flow to out-of-state concerns as a result of offering fuel tax refunds.

Testimony will need to be solicited from the following parties to effectively analyze fuel tax refund provisions:

1. The Department of Commerce;
2. The Tax Department;
3. The Economic Development Association of North Dakota; and
4. Fuel purchasers.