

CHAPTER 57-43.2

SPECIAL FUELS AND IMPORTER FOR USE TAXES

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Biodiesel, designated B100" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets American society for testing materials specification D 6751.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel, including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [liters] without temperature or barometric adjustments.

14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, distributor, or consumer.
17. "Importer" means a refiner, supplier, distributor, or consumer who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; or is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
20. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and

distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.

34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

57-43.2-02. Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A refiner, supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

57-43.2-02.1. Additional special fuel tax. Repealed by S.L. 1997, ch. 499, § 3.

57-43.2-02.2. Refund of tax for fuel used for heating and for an agricultural, industrial, or railroad purpose. Repealed by S.L. 1999, ch. 528, § 7.

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section

57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and after that date is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

2. Special fuel, other than diesel fuel, sold for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of one percent under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

57-43.2-02.4. (Effective through June 30, 2010) Special fuels tax exemption for hydrogen. Sales of hydrogen to power an internal combustion engine or fuel cell are exempt from the taxes imposed by sections 57-43.2-02 and 57-43.2-03.

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of propane and a tax of four cents per gallon is imposed on all sales of diesel fuel and other special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.

6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

57-43.2-03.1. Dyed special fuel use by a city. A city that has computerized fuel dispensing equipment that allows tracking of fuel usage by its vehicles shall report to the tax commissioner, on a form prescribed by the commissioner, the highway and nonhighway use of dyed special fuels dispensed through that equipment. The city shall pay taxes under this chapter appropriate for that usage.

57-43.2-04. Tax chargeable to consumer. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-04.1. Tax collection allowance. The person required to remit the tax imposed by this chapter shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions. Any person to whom special fuel is sold on which the tax imposed by this chapter has been paid, who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

57-43.2-04.3. Refund of tax on tax-exempt sales. When a person purchasing special fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

57-43.2-04.4. Credit for taxes paid on worthless accounts and refunds. Taxes paid on special fuels represented by accounts found to be worthless, and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit or any part of it cannot be utilized because of a discontinuance of a business or for other valid reason, the amount may be refunded.

57-43.2-04.5. Refund to emergency medical services operation. Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for special fuel purchased and used by the emergency medical services operation.

57-43.2-04.6. Refund of tax for fuel used for a refrigeration unit on a truck. A consumer who buys or uses any special fuel for a refrigeration unit that has a separate supply tank on a truck or trailer on which the special fuels tax imposed under section 57-43.2-02 has been paid may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.

57-43.2-05. Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license - License fees.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner. The commissioner may require a separate license for liquefied petroleum gases.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
 - g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

57-43.2-06. License, fee, and bond. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-07. Bond or letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, retailer, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the special fuel taxes imposed by this chapter. A terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars. If the commissioner requires a separate license for liquefied petroleum gases, a separate security is required for that license, and the surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.
3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the special fuel tax, penalties, and interest due.
5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

57-43.2-07.1. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

57-43.2-07.2. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

57-43.2-08. Application for license - Issuance of license - Denial of license.

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.

3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

57-43.2-09. Revocation of license - Hearing to show cause - Reinstatement.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.
2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of required tax reports and the timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of the tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

57-43.2-10. Retention of records - Subject to inspection. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.

57-43.2-11. Report by refiner, supplier, distributor, retailer, importer, or exporter required.

1. A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date. The commissioner may require separate reports to be filed covering liquefied petroleum gases.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner, including:
 - a. A detailed schedule of special fuel refined, purchased, imported, and exported.

- b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
 - c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
 - d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
 - e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of special fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a report filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

57-43.2-11.1. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
- a. A detailed schedule of special fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of special fuel removed from the terminal by or on behalf of a position holder.
 - c. The number of gallons of special fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

57-43.2-11.2. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
2. A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting special fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of special fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the special fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.
 - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.

7. A drop load ticket must include the following:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

57-43.2-12. Monthly returns and payments. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-13. Presumption. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-14. Commissioner to audit report and assess tax.

1. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If a person gives false or fraudulent information in a report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful

attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.

5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

57-43.2-14.1. Determination if no report is filed. If a person fails, neglects, or refuses to file a special fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.2-15. An assessment made by the commissioner under this section or section 57-43.2-14 is presumed to be correct, and in any case when the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

57-43.2-15. Penalty and interest - Violations.

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
2. If a consumer fails to pay any tax due under this chapter, the commissioner shall impose a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the delinquency continues, not including the month within which the tax became due. The commissioner, for good cause shown, may waive all or part of the penalty or the interest provided by this subsection. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.
3. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
 - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material

fact in any application, record, report, or claim for refund provided for in this chapter.

57-43.2-16. Determination if no return made. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-16.1. Corporate officer liability.

1. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer, jointly or severally, having control or supervision of, or charged with the responsibility for making such returns and payments, is personally liable for the failure. 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. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the corporation.

57-43.2-16.2. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.
2. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

57-43.2-16.3. Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the filing of a lien or the satisfaction of a lien.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property, and in the action the attorney general shall have the assistance of the state's attorney of the county in which the action is pending.
8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

57-43.2-17. Fraudulent return. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-18. Distribution of tax. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-19. (Effective through June 30, 2011) Transfer, deposit, and distribution of funds. All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in a highway tax distribution fund, except all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.2-03 of up to one million six hundred thousand dollars per biennium must be transferred to the state treasurer who shall deposit the moneys in the highway-rail grade crossing safety projects fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

(Effective after June 30, 2011) Transfer, deposit, and distribution of funds. All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in a highway tax distribution fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

57-43.2-20. Erroneously or illegally collected taxes. If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that person. The refund must be paid from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount which is in excess of five dollars.

57-43.2-21. Inventory gains - Losses.

1. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one-half of one percent of all other special fuel received during the period covered by the inventory reconciliation.
4. For the purposes of this chapter, it is presumed that all special fuel received above these allowances, except that gallonage shown as actual inventory based on physical inventory readings at the end of the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

57-43.2-22. Administration - Assistance authorized - Rules. The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this chapter and may adopt and enforce reasonable rules relating to the administration and enforcement of this chapter.

57-43.2-23. Violations. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-24. Penalties. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-25. Liquefied petroleum gas dealers - License - Fee - Permits - Bond. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-26. Levy of importer for use tax. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-27. Computation. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-28. Exemptions. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-29. Importer for use license required. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-30. Issuance and display. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-31. Assignment forbidden. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-32. Revocation, cancellation, and surrender of importer for use license.
Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-33. Occasional trip permits. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-34. Authorization of the commissioner. Repealed by S.L. 1993, ch. 564, § 7.

57-43.2-35. Credit for North Dakota purchases - Refunds. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-35.1. Credit for taxes paid on worthless accounts and refunds. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-36. Importer for use tax reports, payments, records, penalties, disposition of funds, audits, and assessments. Repealed by S.L. 1999, ch. 526, § 84.

57-43.2-37. Cooperative agreements between states.

1. The director may enter into cooperative agreements with other states for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward to officers of another state any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The director may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of special fuels.
4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of special fuels. For persons not based in this state and who have taxable use of special fuel in this state, the director or the commissioner may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.

5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

57-43.2-38. Special fuel tax for interstate motor carriers - Computation - Credits - Refunds.

1. An interstate motor carrier importing special fuel into this state is subject to the special fuel tax imposed by section 57-43.2-02 on the number of gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.
2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

57-43.2-39. Interstate motor carrier required to obtain license - Display - Revocation or cancellation of license - Occasional trip permits in lieu of license.

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.2-37 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.2-37 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

57-43.2-40. Interstate motor carrier tax reports - Payments - Audits - Assessments.

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.2-37. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.2-19.

2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.2-37 and make those records available to the director or the commissioner for examination.
3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

57-43.2-41. Dyed special fuel - Administrative fees - Inspections - Penalty.

1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the tax imposed by section 57-43.2-03 and, unless otherwise provided in this section, may not be used in the fuel supply tank of a licensed motor vehicle. The owner or operator of a licensed motor vehicle found to contain dyed special fuel in the fuel supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to be determined based on the capacity of the fuel supply tank of the licensed vehicle involved and is subject to administrative fees as follows:
 - a. A two hundred fifty dollar fee for the first violation.
 - b. A five hundred dollar fee for a second violation occurring within three years of a previous violation.
 - c. A one thousand dollar fee for a third violation occurring within three years of two previous violations.
 - d. A five thousand dollar fee for the fourth and subsequent violations occurring within three years of three or more previous violations.
2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be considered dyed if the fuel contains traces of the dye in an amount sufficient to be found in violation of federal laws and rules.
3. For purposes of enforcing the provisions of this section, the highway patrol, by agreement with the commissioner, may:
 - a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of fuel from the fuel supply tank of the vehicle in a manner and in a quantity sufficient to determine whether the fuel is a special fuel and to determine the dye content of the fuel.
 - b. Physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel for coloration, markers, and shipping papers.

Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping papers by the highway patrol is subject to a civil penalty of not more than one thousand dollars per occurrence.

4. The highway patrol may issue a citation covering any violation of this section, and the person receiving a citation has the right to a hearing before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing.
5. This section does not apply to:
 - a. A person who purchased dyed special fuel in another state or Canadian province and imported that fuel into the state in the supply tank of a licensed

motor vehicle provided the state or Canadian province where the fuel was purchased does not prohibit its use in that vehicle.

- b. A state or local government using dyed special fuel in licensed vehicles for purposes of construction, reconstruction, repair, or maintenance of public roads or highways.
6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund.